

## Is it time for re-Morse to prevent more Loan Charge victims?



When challenged for altering his position, legendary economist John Maynard Keynes was quoted as responding with: “When my information changes, I change my mind. What do you do Sir?” And that’s precisely what the [Loan Charge Action Group \(LCAG\)](#) are asking of Sir Amyas Morse, who led an inquiry into the Loan Charge leading to conclusions that are now undermined by newly surfaced evidence.

LCAG has published a [12-page open letter to Sir Morse](#), containing a plethora of findings as a result of the considerable research conducted via Freedom of Information (FOI) requests made to HMRC.

According to the LCAG, the newly surfaced evidence, not believed to have been made available to Sir Morse at the time of his report “demonstrates that the conclusion of his Loan Charge review was fundamentally flawed and must now be revisited.”

### What is the Loan Charge?

In the Finance Act (No 2) 2017, the Government introduced aggressive measures to tackle the use of disguised remuneration loan schemes, known as the 2019 Loan Charge. Some rules had already been introduced within the Finance Act 2011 to ensure that Employee Benefit Trust (EBT) based loans were taxed as employment income. But, schemes then evolved into ones based around self-employed arrangements, which were not covered by Finance Act 2011.

When the Loan Charge was introduced in 2017, it granted HMRC power to look back almost 20 years over the tax affairs of those involved. This is far more than the four-year enquiry window that HMRC is granted to raise a standard discovery assessment, and predictably has had a devastating impact, resulting in seven people taking their own lives.

An independent review into the Loan Charge, headed by Sir Amyas Morse resulted in a report being published in December 2019 containing a number of recommendations including one that the Loan Charge should only apply to loans made after 2010 because “the law was clear”. LCAG argue that “the law only became clear as a result of the 2017 Supreme Court decision in the Rangers case, where it was found that employers, and not employees, were liable for any tax deemed to be due.”

This is the kernel of the issue, argued by LCAG – that the law makes employers liable, not the individuals, and as their paper argues, recruitment agencies should have been pursued the money under Section 44 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA 2003), not the contractors.

### What is the newly surfaced evidence?

The new evidence that has emerged has revealed the following:

- The CEO of HMRC admitted to colleagues that he had “repeatedly tried to obtain legal analysis to understand the strength of our claim with very little success” in relation to HMRC pursuing employees, as opposed to employers.
- HMRC are refusing to share details of legal cases that they publicly claim justify the Loan Charge, thereby facilitating their ‘right’ to pursue individuals.
- The idea of the Loan Charge was initiated by HMRC, who have admitted internally/privately that it takes away the basic right of citizens to challenge HMRC’s ‘view’ in court.
- HMRC have admitted they know agencies would be liable in many cases, and not the individual contractors. HMRC have exercised discretion to retrospectively remove the PAYE obligation on agencies, but a recent court case has confirmed this is unlawful.
- HMRC themselves engaged contractors using loan arrangements up until July 2020 without raising any concerns.

This evidence has come to light since the Morse Review and LCAG say that had it been known at the time, it could and should have changed the conclusions and recommendations.

The letter also raises concerns over the way HMRC interfered in the appointment of experts to the review and provides details on how they believe the recommendations made have not been implemented as intended.

## Calls for Fair Resolution of the Loan Charge

The [All-Party Parliamentary Loan Charge and Taxpayer Fairness Group \(formerly the Loan Charge APPG\)](#) which has 246 members from across both Houses, has also published an [open letter to the Prime Minister and Chancellor](#) calling for a fair resolution to the Loan Charge. This was [recently signed by the 142nd Parliamentarian](#).

A spokesperson for the Loan Charge Action Group, Steve Packham, says: "In the last two years, since Lord Morse conducted his review, significant new evidence has emerged that makes his conclusion - 'that the law was clear from December 2010' - unsound and untenable.

The law was not clear until the outcome of the Rangers Supreme Court case in 2017, which determined that employers should pay any tax deemed to be owed, something that we now know HMRC failed to do and instead went after individuals.

The truth about the Loan Charge and the extraordinary attempts by HMRC to twist and distort its reality is being exposed week-by-week, as more and more internal emails and documents are disclosed and further factual evidence is revealed through Freedom of Information requests."

The LCAG also draws attention to the fact there are approximately 161,000 open cases (as at end of March 2021) outstanding, and says that the Loan Charge "has done nothing to 'draw a line under usage of these schemes', which as you made clear in your own report was the stated objective of the Loan Charge when introduced."

Packham is urging Lord Morse, to have the courage to admit that his review has not dealt with the fundamental injustice of the Loan Charge and to back calls for a fair resolution.

Tax Barrister Keith Gordon, who has had longstanding concerns over the Loan Charge and who met Sir Amyas Morse as part of the Review, said today on Twitter: "When I met Sir Amyas, as he then was, I believed he was a man of integrity. So, when his report was published, I believed he had been misadvised on the Dec 2010 point. If I'm correct on these two points, I'm sure he'll take the LCAG letter seriously and reconsider his position."

When John Maynard Keynes was presented with new information, he changed his mind. The question now is whether Sir Amyas Morse will do the same.

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