



THE SOCIETY OF PENSION
PROFESSIONALS

making pensions work

Email: taxadviceconsultation@hmrc.gov.uk

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Dear Ms De Brito

SPP RESPONSE TO RAISING STANDARDS IN THE TAX ADVICE MARKET: PII AND DEFINING TAX ADVICE

We welcome the opportunity to respond to this consultation.

INTRODUCTION TO THE SOCIETY OF PENSION PROFESSIONALS (SPP)

SPP is the representative body for the wide range of providers of advice and services to pension schemes, trustees and employers. The breadth of our membership profile is a unique strength for the SPP and includes actuaries, lawyers, investment managers, administrators, professional trustees, covenant assessors, consultants and specialists providing a very wide range of services relating to pension arrangements.

We do not represent any particular type of pension provision nor any one interest-body or group. Our ethos is that better outcomes are achieved for all our stakeholders and pension scheme members when the regulatory framework is clear, practical to operate, and promotes value and trust.

Many thousands of individuals and pension funds use the services of one or more of the SPP's members, including the overwhelming majority of the 500 largest UK pension funds. The SPP's membership collectively employs some 15,000 people providing pension-related advice and services.

The SPP member firms provide professional advice and services in relation to pension matters, of which tax is often an essential component. It is often impossible to separate pension advice from tax advice as pensions are governed by the tax regime. The advice could be to pension trustees, employers, individuals, or to any of the providers of pensions services. A number of our members also provide tax advice and services on other matters.

The Society of Pension Professionals

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Executive Summary

We welcome measures intended to improve the quality of tax advice but want to be confident that the proposals would not introduce unintended consequences which could have the opposite effect or make accessing appropriate advice and information about tax matters burdensome or more expensive.

We note the joint TPR and FCA [Call for Input into the Consumer Journey](#) in which those organisations seek to understand how they can help at key points in the consumer journey to improve pension outcomes, and the [FCA's CP21/11: The stronger nudge to pensions guidance](#), which is looking to increase the use of the services provided by Pension Wise.

Our members provide advice and services to companies and trustees that necessarily includes taxation matters. This arises as tax considerations are fundamental to decisions including benefit design, funding solutions, investment advice, pension payroll and administration processes, and member communications.

In our response to the Call for Evidence we explained that pension advice operates within a highly complex and heavily regulated legislative landscape, within which tax is just one element. It is woven into everything else and therefore at times the distinction between tax advice, guidance or a service delivering a function of the tax requirements can overlap with other aspects of pensions advice, guidance and services. Therefore it is important that any additional safeguards to be introduced work effectively within the existing framework of regulation and protections for pension consumers. It would be impossible to isolate the regulation of tax matters from other pensions matters.

Our member firms are typically already regulated by one or more existing regulators and many individuals are also personally subject to their employer's Code of Conduct. Furthermore, those with professional qualifications are also subject to the Code of Conduct for their professional bodies – which includes the Institute of Chartered Accountants of England and Wales, the Institute and Faculty of Actuaries, the Pensions Management Institute, the Chartered Insurance Institute, the Solicitors Regulation Authority and others.

We are very supportive of operable proposals that will drive out poor practice in the market, and that provide appropriate additional protections and safeguards to taxpayers where they are needed. We can see that there is a risk with a blanket set of measures, however laudable, if not designed with the pensions market in mind, that this may have unintended consequences. We have seen this with recent changes introduced by the FCA in relation to pension transfer advice which triggered a significant number of advisers to withdraw from the market, resulting in less choice for pension consumers and higher costs of obtaining advice.

Yours sincerely

Fred Emden
Chief Executive, The Society of Pension Professionals

Detailed Response

Q1: In your opinion, would introducing a requirement for anyone providing tax advice to have professional indemnity insurance satisfy the policy aims of improving trust in the tax advice market, by targeting poor behaviour and allowing taxpayers greater redress when things go wrong?

We understand HMRC's concern about the practices of rogue operators providing advice that is knowingly incorrect due to a lack of integrity and other advisers inadvertently providing poor advice through incompetence.

While requiring anyone that provides tax advice to have PII cover would appear to ensure there is an avenue for redress when something goes wrong, we do have some doubts as to whether rogue operators would obtain it even if required to do so. Requiring PII cover might also introduce an element of moral hazard, whereby some advisers might be less circumspect in the advice they were providing secure in the knowledge that their advice is covered by PII. It is not therefore clear to us that simply requiring PII would improve trust in the market, and we are not convinced that tax payers would generally understand or value it at the point of taking advice.

In relation to pensions, the Pensions Ombudsman and the Financial Ombudsman Service already provide a route to redress for pension savers where errors have been made by firms operating in the pensions market.

We are not convinced that individual users of tax related services and providers would actually check if a provider has PII cover in place before using them. We expect the decision to use any provider will be based on price and ease of access. Large organisations have a formalised procurement process for appointments, and this will include PII requirements. Therefore, a targeted requirement focussed on the firms providing advice to smaller businesses and individuals, rather than to large companies and organisations is likely to have a more positive impact.

Q2: If the government introduces the requirement for professional indemnity insurance, what further steps would you recommend?

It will be important to ensure that the requirement is targeted to close current gaps in PII coverage rather than to result in duplication of coverage.

Q3: Are there any alternative options you would recommend?

It will be important that users of tax advisers and providers understand the importance of using competent advisers, and the financial risks of not doing so. Without this, demand for cheaper, possibly unscrupulous 'advisers' will remain.

Q4: Apart from the costs and potential effects outlined above, are there any other costs you foresee for advisers?

We do not expect there to be other costs for advisers who are already operating appropriately.

Q5. What are your experiences of obtaining professional indemnity insurance or of the market for professional indemnity insurance

Our members report that there is a limited market for placing insurance in the specific class of professional indemnity insurance. Looking across the market we believe that premiums have risen considerably, with greater restrictions on terms and conditions. Levels of excess have significantly increased. In terms of market competition, we consider the number of providers who will offer insurance for businesses that provide financial and tax advice limited. Few providers in such a

market will make the practicalities of securing suitable insurance challenging, with consequent effects on costs.

Q6. If you are a tax adviser who practices without insurance, why is this?

We are not aware of any member firms that fall into this category.

Q7. What factors do you take into account when pricing professional indemnity insurance?

Not applicable to SPP.

Q8. What are your views on the government's proposals for making information on promoters public? How would having more information about promoters of tax avoidance help you in making decisions about pricing or offering insurance?

Not applicable to SPP.

Q9: In your opinion, does the insurance market have the appetite and capacity to manage the new requirement?

Not applicable to SPP.

Q10. What checks do you carry out when you engage a tax adviser? Do you check whether they are insured?

Not applicable to SPP.

Q11. Do you have any experience of making claims or complaints against a tax adviser for bad advice that you would be happy to share with us?

Not applicable to SPP.

Q12. Do you think there are any lessons on how complaints are handled in similar industries that we can learn to help improve redress?

The pensions industry has an established framework for the handling of complaints from individual and small businesses, typically via the Pensions Ombudsman and the Financial Ombudsman service. Clients also have recourse through the providers' own internal complaints procedures.

Q13. What is the minimum level of cover you recommend, and why?

This will depend on many factors including the services provided by each firm, and what government policy actually wants to be achieved.

Q14. What activities should it be mandatory to cover, and why?

It is important that the coverage meets the policy objective and is applied fairly to operators in the market.

Q15. Should the government set mandatory minimum or maximum levels of:

- cover
- run-off cover
- excess

If minimum levels were set this would ensure that a consistent base level of protection exists for consumers, as is the case with other compulsory insurances. The insured events and coverage should be in line with government policy objectives and not set so high as to make insurance

disproportionately expensive. Tax advisers would be free to take out additional levels of cover or self-insure based on their own business model and finances.

Q16. What levels should these be?

We have no comment on this.

Q17. Should the government specify what advice must be covered by the policy? What advice do you think should be covered?

There is a risk that if particular activities are to be covered and others not, that unscrupulous operators will simply seek to characterise their activity as falling into the areas where PII is not required.

Any requirement to identify certain tax activities distinctly from others would create a burden on firms properly operating, as it would require separate record keeping, training and other administrative overheads. These all create cost for which there appears to no value to the consumer but would likely be passed on.

Q18. Are there any other insurance requirements the government should require?

Not applicable to SPP.

Q19. Who should be required to hold the insurance? Should it be the firm, the principal, everyone who is acting as a tax adviser?

It is appropriate for the insurance to be held by the firm that is providing the advice, or where the adviser is a single person, they should hold the PII. This aligns to the current model of coverage of PII for our member firms, and which we believe works well.

Q20. What impact do you think setting minimum mandatory levels of cover would have on:
- the market including availability of insurance
- affordability

Not applicable to SPP.

Q21. We intend to model the definition of who the requirement will apply to on one of the definitions currently extant in legislation. What a) benefits and b) issues are there with using the Dishonest Tax Agent definition or the Money Laundering regulations definition? Do you have a preference or alternative and why?

Our member firms will already fall into either or both of these categories. Additionally, the vast majority, and possibly all, are already within the scope of many of the other provisions in the Money Laundering Regulations. We strongly believe that consumers will be best served by a broad definition which does not create seemingly legitimate scope for rogue operators to carve themselves out of coverage. This would be harmful to those firms operating properly and with appropriate PII and other protections in place. However, this does need to be balanced to ensure that legitimate activities and operations relating to pensions that are not tax related are not inadvertently subject to additional requirements arising from these proposals, as the unintended consequences would be detrimental to pension consumers and those acting properly in the market.

We are mindful that the pensions market and the services and activities within it are very varied, and as we have noted, tax is intertwined within many non-tax services. For example, there are many lay trustees who have been appointed either by their employer or the members of a pension scheme (in accordance with various pensions regulations), and who are not pensions or tax specialists – typically they hold roles in their employer's business, and some are staff retired from

the business. Such trustees are not providing this service by way of business, but trustees are required to provide pension members with information that relates to tax matters, and they meet their obligations by delegating this to firm/s which provide the relevant specialist services. These firms make up many of SPPs membership. It is worth noting that there are some employers that have teams who provide some or all of these services to trustees 'in-house', rather than appoint an external third party. We would welcome clarity from HMRC about the requirements in these areas.

Q22. What activities do you think should be excluded from the requirement for compulsory professional indemnity insurance and why?

Activities which are already subject to appropriate protection could be excluded. It is important that there is no requirement for 'double' cover on any activity where there is already sufficient protection. The tax services provided by our members are frequently integrated with other professional services and therefore are already provided within a robust framework of protections for clients.

Q23. Would there be any benefit in having different minimum requirements for different activities?

SPP believes that any insurance should be proportionate to the risks and the services provided.

Q24. What benefits or issues would there be in considering the financial services regulatory distinction between advice and guidance for tax advice?

Tax matters are integral to the provision of almost all pensions activities. This includes services and advice provided to corporate clients as well as to individual members of pension schemes and arrangements.

There is a raft of legislation which requires a myriad of factual information to be provided to pension scheme members. In relation to members it is generally accepted that providing factual information and a general explanation of certain requirements would fall into 'guidance' rather than 'advice' in the financial services definition sense. However, the boundary is not always clear, has resulted in the FCA needing to provide specific guidance about the boundaries and in practice many operators have chosen to define their own boundary with a protective margin built in. The downside of this to the consumer is that additional support needs to be accessed separately, and at additional personal cost. We support measures which promote and sustain the cost effective provision of good quality information and communications to pension members.

We would be concerned at any requirement which creates additional operational burdens relating to the defining of its legitimate business activity – especially as much of that activity comes from statutory requirements.

We are mindful that though well understood by our members, the wider public's understanding of what is meant by the financial services definitions of guidance and advice is certainly less so. We have a concern that advisers providing poor quality or incomplete information and those promoting tax avoidance schemes would seek to argue that they operated in the sphere of providing guidance.

We have considered whether it might be possible to regulate tax advice and tax services in a way which distinguishes the two activities, and the possible merits of this, but in practice there is often not a hard line between the services. Our view is that it is not possible to draw a clear distinction that would not be vulnerable to being manipulated. We do however strongly agree with the sentiment that anyone providing tax-related services should be competent, have the necessary skills and knowledge for their role and be properly supervised – by their employer, the relevant regulatory body and, where appropriate, a professional body.

It is essential that there are no unintended and unforeseen consequences which could be unnecessarily detrimental to the market. Areas which are working well should not suffer as a result of over-regulation which could limit capacity and reduce standards of service

Q25. What benefits or difficulties do you foresee with the inclusion of a provision around UK taxation in the definition?

The definition should be such that it does not create scope for arbitrage by appearing to exclude non UK elements and thus create an apparently 'safe' and out of reach harbour for the rogue operators. In practice, consideration of taxation in other jurisdictions is often relevant to the provision of advice and services relating to UK tax, and therefore the definition should not preclude this from being in scope.

Q26. Do you agree with the 3 elements of enforcement?

We agree the sentiment of transparency, and for it to be beneficial the information provided needs to be simple, clear and provide taxpayers with the necessary understanding of the implications and impacts, should a provider not have the required level of cover in place. Otherwise the risk is that the unscrupulous operators will not provide accurate documentation. Bona fide operators will naturally comply, but it will be at additional cost to the business.

In relation to checking that advisers have insurance, the complexity and variations of operation and existing regulation already covering the tax market means that a flexible approach is needed. Analogous situations we are aware of include the FCA register of financial advisers which is available to the public, and the motor insurers bureau which shares information about those insured.

Q27. What are your views on the enforcement options described above?

These seem reasonable. It is important that enforcement is both operable and proportionate.

Q28. Do you agree that advisers who already hold professional indemnity insurance as it is required by their professional or regulatory body should automatically satisfy the new requirement? How could we check?

This seems reasonable.

Q29. The government's ambition is for HMRC to share information about the adviser with the client digitally. What are your views of this?

This is a reasonable ambition.

Q30. What effects do you foresee of introducing the requirement for everyone at the same time?

Introducing the requirement at the same time will ensure that taxpayers have consistent protection in place. However, in practice it may be appropriate for the requirement to be phased in over say a year where there is already some PII cover in place, where extended cover is needed. Advisers operating without PII cover in place would seem the priority to focus on.

Response ends