HM Revenue & Customs

Minutes of meeting held on 7 October 2020

Held by teleconference

Attendees:

Name	Company
Katharine Lindley	ATT
Sarah Hawkins	AMPS
Daniel Gallon	Association of British Insurers (ABI)
Susan Cattell	ICAS
Vince Flanagan	ILAG
Karen Goldschmidt	ACA
Gemma Mullis	CIPP
Clive Weber	APL
Larry Darby	LITRG
Paddy Millard	TOP
Ian Neale	Aries
Richard Wyatt	CIOT
Kate Boulden	PLSA
Dave Sadler	Aviva
Darren Fowlie	NEST
Anne Smith (Chair)	HMRC
Daniela Paul	HMRC
John Bhandal	HMRC
Mike Simmons	HMRC
Sarah Mee	HMRC
Poppy Edwards	HMRC
Yasmin Carney	HMRC
Ian Marston	HMRC

Apologies from: Andrew Edwards (HMRC), Renny Biggins (TISA)

Agenda Item 1 Welcome, introductions and actions

1. The acting Chair welcomed attendees, introduced herself and explained that the new Chair, Andrew Edwards sends apologies as he's unable to join this meeting.

2. The Chair thanked people for dialling in and explained the reason for holding this as a teleconference (rather than via a video conference on Microsoft Teams) was to avoid bandwidth issues and problems joining using a link.

3. HMRC held a roll call and the Chair introduced HMRC attendees.

4. There were no questions or comments from attendees on the last minutes and the Chair confirmed that these had been published on GOV.UK.

5. The action point from the last meeting was closed.

Agenda Item 2 Raising standards in the tax advice market: call for evidence

6. HMRC referred to the April 2020 meeting of the Pensions Industry Stakeholder Forum when the 'Raising standards in the tax advice market: call for evidence' was discussed.

7. HMRC explained that this call for evidence is now closed and wanted to provide an update on recent work on this including a recap of the background and the objectives for this work. The stakeholder engagement activities included discussions with professional bodies, legal regulatory bodies, accountants, HMRC Forums and other government departments.

8. HMRC explained there were six approaches in the call for evidence introduced to start the discussion. The feedback raises questions for HMRC:

    - The role HMRC wants tax advisers and agents to play in the tax system, and what HMRC needs to ensure is in place for agents to play that role?

    - What HMRC's role should be in overseeing compliance with agent standards?

    - What are HMRC's most pressing priorities for raising standards of tax advice, and how are these dependent on investment in HMRC agent services?

9. HMRC will also cover the emerging themes from the responses so far and next steps.

10. HMRC explained that it has been considering ways to raise agent standards for some time, and that the call for evidence was published in response to the Loan Charge Review published in 2019. That review highlighted the gravity and prevalence of tax avoidance promoters in the UK.

11. HMRC closed the call for evidence on 28 August 2020 and is currently reviewing and analysing the responses received.

12. HMRC explained that there are two themes to the call for evidence, consumer protection and market transparency.

13. HMRC explained that currently if agents aren't members of a professional body or don't have professional indemnity insurance, then the only recourse is through the courts. This can be a lengthy and costly process.

14. HMRC wants taxpayers to be able to trust the advice they receive. HMRC explained that currently there isn't a legal definition of accountant or tax adviser, and although there are specific pieces of legislation which describe tax advisers, they relate to specific areas of tax. Anyone can advertise and charge for these services, they don't need any specific qualifications.

15. HMRC explained that this is a complex area and is taking time to reach conclusions following the call for evidence. Policy changes will be made as a result of the call for evidence.

16. Over the last few months HMRC's knowledge and information teams and policy lab have been gathering evidence and carrying out research on how taxpayers come to employ tax advisers and common problems relating to this.

17. HMRC explained that most consumers are unaware that the market is not regulated and that there is no requirement for advisers to have specific expertise or qualifications in order to provide these services.

18. HMRC has been engaging with stakeholders through forums, meetings with professional bodies, legal regulatory bodies, individual agents and firms and has run 21 'round table' discussions. Requested by stakeholders, HMRC also had discussions around specific themes such as tax avoidance, future of the profession and HMRC operational services.

19. HMRC has also engaged other government departments to understand where else tax advisers might interact.

20. HMRC is aiming to publish the summary of responses in autumn 2020 and in early 2021 will start to refine the options and decide on next steps.

21. HMRC is currently reviewing call for evidence responses with a view to advising ministers. HMRC explained that the timeline for this had been affected by the pandemic and couldn't confirm if the summary of responses would be published within the usual 12 week period following the end of a consultation exercise.

22. One attendee asked if HMRC is planning any further engagement with external forums. HMRC explained that although the call for evidence is closed, because of the far-reaching nature of this work HMRC wants to continue conversations with organisations even after the response document is published.

23. HMRC aims to reach out to its forums for representatives to engage on proposals going forward and hoped that outlining the emerging findings might help attendees decide if they want to engage further on this.

24. One attendee asked for confirmation that a summary of findings will be published and then further work will take place to refine options and that HMRC won't go straight draft legislation.

25. HMRC reassured attendees that the call for evidence and summary of responses was the start of work in this area to understand what current thoughts are. HMRC will engage and if necessary, consult further before making any changes to policy. HMRC explained that once this work has concluded those involved will have an idea of what HMRC is proposing but ultimately ministers will decide on the policy based on HMRC's findings.

26. HMRC knows from discussions that making better use of HMRC powers (option one) including looking at HMRC's current powers is important.

27. The call for evidence considers improving the right of recourse for consumers (option two) - what's already available to help consumers make better choices and be more aware of their options. HMRC explained that currently there is some self-regulation through professional body membership.

28. HMRC knows that a third of agents are unaffiliated and if agents don't have professional indemnity insurance, the only recourse that consumers have is to take agents to court.

29. HMRC also knows that many consumers are unaware that there is no regulation in the market and people are surprised when they hear this because they assume that as it relates to money and tax it would be regulated.

30. HMRC is considering how to improve transparency and raise consumer awareness (option three) around the questions the consumer should ask when they're seeking the services of a tax adviser and how HMRC should explain the pitfalls to consumers.

31. HMRC explained that it’s engaging with other government departments on this work because agents who interact with HMRC also have a footprint in other departments.

32. HMRC is keen to promote a joint approach and is currently working with The Money and Pensions Service and The Pensions Regulator amongst others, to look at learning lessons, particularly around unaffiliated agents, and sharing information between departments.

33. HMRC explained that currently it makes public interest disclosures to professional bodies when they find that agents who are members of those bodies have fallen below the standard expected. Whether or not they are members of professional bodies, HMRC can take action to address issues.

34. HMRC explained that option four considered penalties for tax advisers.

35. HMRC explained that in regard to maximising the supervisory role of professional bodies (option five), it needs to understand better the different approaches that professional bodies use. HMRC referred to the Professional Conduct in Relation to Tax (PCRT) but noted that not every professional body incorporates these into their standards.

36. HMRC explained that external regulation (option six) could be a future consideration but that it first wants to understand the unsupervised market better.

37. HMRC explained that standards need to be considered and acknowledged that there are differing standards in the tax advice market. HMRC will also consider the behaviours and knows that a ‘one size fits all’ approach wouldn’t work. So HMRC will look at the range of behaviours from those who need support in order to provide a better service to their clients, to those who deliberately break the rules such as promoters and enablers of tax avoidance.

38. HMRC explained that the call for evidence also considers defining tax advice. HMRC explained that tax advisers could be called ‘agents who interact with HMRC on behalf of customers’ but that might be too narrow.

39. HMRC wants to understand better how professional indemnity insurance operates.

40. HMRC will consider the HMRC Standard for Agents which aligns closely with the PCRT but doesn’t mention the client/agent relationship. HMRC wants to promote awareness of these standards so that consumers know what to expect from their agents and what action to take if they feel their agent has fallen short of those standards.

41. HMRC will consider current behaviours and extreme behaviours, how these might be segmented and tackle these in different ways.

42. HMRC will consider other areas where tax advice is given. Payroll services provided feedback that they sometimes give legal advice and the Law Society explained that tax agents are giving legal advice because tax is law.

43. HMRC also wants to understand what the long term future is for unaffiliated agents. HMRC is considering international models and has presented at an international conference with various tax authorities from different jurisdictions. American attendees fed back that the American authorities had introduced stringent regulation but that it didn't work. HMRC wants to learn lessons from this by understanding why it didn't work.

44. HMRC explained that the next steps are to analyse the responses received and consider whether to advise ministers on next steps.

45. HMRC wants to continue conversations and is considering setting up a separate stakeholder forum group.

46. HMRC explained that work in this area is tied to the budget timetable and will depend on what the Chancellor of the Exchequer wants to do going forward.

47. HMRC mentioned the two other consultations, one on promoter strategy that closed on 15 September 2020 and another on disguised remuneration that closed on 30 September 2020.

48. One attendee referred to the professional indemnity insurance and asked if there had been much engagement with members of the Association of British Insurers (ABI) on professional indemnity insurance and if HMRC could provide any information feedback on this.

49. HMRC acknowledged that the ABI has responded to the call for evidence. HMRC hopes that this conversation will continue and will factor information provided into developing policy.

50. Another attendee asked if HMRC had engaged with the Taxation Disciplinary Board and explained that they have a lot of experience of what goes wrong relating to tax advice services.

51. HMRC confirmed that it had held round table discussions with Taxation Disciplinary Board representatives and that they had also responded to the call for evidence.

52. The attendee fed back that often it's overstretched workloads, rather than incompetence, that result in problems in tax advice. HMRC agreed and had received responses making this distinction and will consider how best to support advisers in this position.

53. Another attendee explained that they realised that HMRC's work on this covers a huge area but is concerned about what HMRC considers to be tax advice and whether this might include daily, operations that are part of professionals giving advice to their clients on lots of different subjects. For

example, a pension scheme can be seen as a tax vehicle operating within the tax framework, so any advice given by an actuary to the trustees could be deemed tax advice and come under any new measures introduced. However, the attendee felt that this shouldn't because to consider it tax advice could interfere with actuaries carrying out their daily role.

54. The attendee hoped that HMRC's definition of tax advice would exclude examples like this and explained the importance of not being restricted by onerous tax regulations.

55. HMRC thanked the attendee for their response to the call for evidence and agreed that these points were valid. HMRC will consider this feedback as part of ongoing work on this and invited the attendee to reiterate these concerns if there was a future consultation.

56. HMRC will initially consider how to protect the consumer and will look at who it is protecting consumers from and how to define those entities.

57. HMRC explained that advice can be provided by lots of different people, advisers and organisations. It could be a family friend who offers informal advice, the voluntary sector that offers support and more recently in the software market in some cases providing advice as part of helping with different processes such as filing a return.

58. One attendee explained that they weren't aware of or invited to HMRC's stakeholder meetings and asked if slides from these meetings could be shared with Pensions Industry Stakeholder Forum members.

Action point 1 – HMRC to share slides from round table discussions held on the Raising standards in the tax advice market: call for evidence.

[Closed HMRC circulated the slides alongside the minutes of the forum]

59. HMRC explained that people responding to the call for evidence were invited to these meetings and apologised to any attendees who responded but didn't receive the invitation. HMRC will hold additional discussions for those attendees who are interested.

60. Another attendee explained that the daily work of pensions lawyers often involves tax aspects and for the bar, barristers may specialise in tax advice. The attendee stressed the importance of not disturbing the good regulation that already exists in some areas and felt that this should be considered when defining tax advice.

61. HMRC thanked the attendee for their response.

62. Another attendee explained that as an adviser in financial planning they are regulated by the Financial Conduct Authority (FCA) but much of the advice they provide day to day crosses over into taxation. The attendee felt that if advisers are going to be regulated for both tax and by the FCA this will add

increasing levels of cost to an already expensive, regulated area.

63. The attendee also welcomed the distinction and consideration of unaffiliated advisers and felt that it's generally these advisers that cause the majority of consumer harm.

64. HMRC explained that this is reflected in the behaviours it's seeing as a result of compliance work.

65. HMRC reassured attendees that it isn't currently looking at government body regulation but possibly consulting on other ways to support unaffiliated advisers with the caveat that HMRC still has to produce and publish the call for evidence response document.

66. HMRC explained that this isn't the end of the conversation, HMRC will continue to engage with stakeholders on this. HMRC invited attendees to send in any questions they might have.

Agenda Item 3 Policy Team update

Pensions tax relief administration: call for evidence

67. HMRC referred to the Pensions tax relief administration call for evidence to look at options for addressing the differences for lower earners depending on whether their pension scheme operates the net pay method for providing tax relief or the relief at source method.

68. HMRC explained that the call for evidence was published in July 2020 and reminded attendees that this closes on 13 October 2020. HMRC encouraged attendees to contribute to this.

69. HMRC expects to be able to provide a further update on this at the next meeting.

Collective money purchase schemes – draft legislation

70. HMRC referred to publication of the draft legislation for Finance Bill 2021 which included draft clauses on collective money purchase schemes. HMRC welcomes any responses on the draft clauses.

Reporting non-taxable death benefits

71. HMRC was asked to provide an update on the mandatory reporting of non-taxable death benefits. HMRC had previously explained it expected to make and lay regulations on this after summer recess.

72. HMRC acknowledged that these hadn't been made and laid yet but hopes to do so within the next few months. HMRC is unable to provide a date for when this will be.

73. HMRC is aware of industry concerns around system changes that pension scheme administrators will need to make as a result of making the reporting of non-taxable death benefits mandatory.

74. HMRC wanted to reassure attendees that the regulations are expected to follow the current process that exists for reporting voluntarily.

75. Although the regulations will be made and laid within next few months, HMRC will ensure that the effective date of these requirements will give pension scheme administrators enough time to amend their systems and processes to accommodate the change.

76. One attendee explained that there was a concern raised on HMRC's Pensions, PAYE and Real Time Information working group, regarding the scope of reporting that will be mandatory. The attendee explained that feedback from the working group was that most non-taxable death benefits are being reported on a voluntary basis. However, some benefits such as uncrystallised funds lump sum death benefits aren't currently being reported following advice in pension schemes newsletters, so there's still a question of what payments will be included in the regulations because this has an impact on the size of the changes that scheme administrators need to make. The attendee asked HMRC for clarification on this.

77. HMRC is waiting for ministers to sign off on what the regulations will look like, however HMRC will ensure that scheme administrators have plenty of time to make all necessary changes to accommodate the new requirements.

78. The attendee thanked HMRC for confirming that scheme administrators will have plenty of time to make necessary changes.

<u>Normal minimum pension age</u>

79. HMRC referred to media reports on a recent parliamentary question about the government's announcement in 2014 to increase the minimum pension age to age 57 from 2028. At the time of the announcement reference was made to legislate for this in due course but didn't include a timescale for this.

80. HMRC is unable to provide details (such as whether there will be a full consultation on this) or a date for this change because ministers haven't announced these. HMRC can confirm that details will be published in plenty of time to ensure that anyone affected by the change is given sufficient notice.

81. One attendee explained that they had thought that this wouldn't happen because it was an announcement by a previous government and thought that others in the pensions industry would feel the same. The attendee explained that if this is confirmed as current policy then the industry will now work on the basis that this will happen.

82. The attendee explained the relevance for attendees at this early stage is in member communications and caution over what appears in pension scheme literature.

83. HMRC confirmed that this is something the government intend to legislate for but currently there aren't details about when or how.

Guaranteed Minimum Pension equalisation (GMPe)

84. HMRC was asked to comment on updates to the Pensions Tax Manual following publication of supplementary guidance on guaranteed minimum pension equalisation.

85. HMRC isn't currently looking to update the Pensions Tax Manual on this because it's still awaiting the outcome of the latest hearing of the Lloyds case on transfers. Once HMRC has this and has reviewed to determine whether further supplementary guidance is needed, HMRC will then consider any updates to the Pensions Tax Manual to include the published supplementary guidance.

86. One attendee asked if the tax treatment on statutory conversion would also be included.

87. HMRC isn't currently in a position to provide any supplementary guidance on conversion. HMRC is still reviewing this but due to the complexity of the subject, doesn't expect to be able to provide any supplementary guidance on this in the short term.

88. The attendee explained the pensions industry is looking at conversion and is currently limited in terms of guidance on how to approach this.

89. HMRC understands industry concerns on this but doesn't have anything to add to existing guidance at this time. HMRC explained that until it has considered conversion further and determined if ministers want to change the legislation, the existing guidance applies.

90. The attendee thanked HMRC and went on to explain the difficulties for schemes trying to factor in GMP equalisation. The attendee appreciated that this is difficult for HMRC to resolve and hoped that possible legislation might resolve things.

COVID-19 easements

91. HMRC referred to temporary changes introduced earlier in the year to help pension scheme administrators during the coronavirus (COVID-19) pandemic.

92. HMRC published an article in Pension Schemes Newsletter 124 explaining that the majority of these changes had been extended until 31 March 2021.

93. HMRC explained that there was one exception - the easement relating to protect pension age and re-employment which was a legislative change. At the time of publication HMRC didn't know what ministers wanted to do regarding this easement.

94. HMRC has now updated Pension Schemes Newsletter 124 confirming that this easement will end on 1 November 2020 in accordance with current legislation. HMRC will signpost this again in Pension Schemes Newsletter 125.

Action point 2 – HMRC to publish an article about the end to the protected pension age easement in Pension Schemes Newsletter 125.
[Closed – HMRC published an article in Pension Schemes Newsletter 125 https://www.gov.uk/government/publications/pension-schemes-newsletter-125-october-2020]

Agenda Item 4 Project Team Update

Managing Pension Schemes Service

95. HMRC explained that whilst development is still progressing on new features for the Managing Pension Schemes service, recent focus has been on options for migration strategy (from the Pension Schemes Online service to the Managing Pension Schemes service).

96. HMRC hopes to be able to provide more detail on migration and what it will mean for pension scheme administrators and practitioners in the new year. In particular, HMRC aims to provide more detail on the types of activities that scheme administrators and practitioners will need to undertake ahead of moving schemes onto the new service.

97. HMRC confirmed that the next big release onto the Managing Pension Schemes service is likely to be the registration of pension scheme practitioners which is currently planned for March 2021, however HMRC explained that this may be subject to change and will provide updates on this in pension schemes newsletters.

98. HMRC explained that this release should include registration of new pension scheme practitioners and the enrolment onto the Managing Pension Schemes service for existing pension scheme practitioners who need to be authorised for a scheme on that service.

99. HMRC confirmed that existing processes will continue for all pension schemes on the Pension Schemes Online service until migration takes place. HMRC will work with scheme administrators and practitioners on what migration will look like.

Government gateway credential deletion

100. HMRC published a message around HMRC government gateway strategy and the plan to start deleting government gateway credentials for users who haven't logged into HMRC systems or tax services within the last three years.

101. HMRC has had queries on what this means in practice. HMRC confirmed that the deletion of government gateway credentials doesn't remove the scheme administrator record from our pension services. The scheme administrator records still exist on the Managing Pension Schemes service or Pension Schemes Online service however HMRC explained that if users whose credentials have been deleted try to access these services, they'll get an error message.

102. HMRC explained that there is a process that users can follow to reset government gateway credentials and HMRC will publish guidance on this in due course. However, this is a fairly lengthy process so HMRC is encouraging customers to log on now to avoid having to reset their credentials.

103. HMRC asked attendees to publicise that the pension scheme and scheme administrator records won't be deleted and will provide an update in Pension Schemes Newsletter 125 and future newsletters.

Agenda Item 5 Any Other Business

SIPPchoice

104. HMRC is still considering its response to SIPPchoice. Once this is finalised, and after discussing this with solicitors and rewriting any guidance that needs to be changed or clarified, HMRC will publish this. HMRC hopes to be able to provide this soon.

Transfer requests

105. One attendee asked what HMRC expects scheme administrators to do on receipt of a transfer requests where the directors of a company set up a small self-administered scheme (SSAS) to receive transfers from existing personal pensions and the purpose for setting up the SSAS appears to be primarily to enable a loan to the sponsoring employer. The attendee explained that this would seem to fall under s153(5)(f) FA2004.

106. HMRC understands the concern. However, where a pension scheme is being set up, especially by long established companies for the provision of retirement benefits and the investment strategy is the sponsoring employer taking a loan from the scheme - this is permitted under current legislation.

107. HMRC explained that the loan is required to meet five criteria under the legislation. If these requirements are met, it would be difficult to argue that

the scheme was not set up to provide pension benefits under s153(5)(f) FA2004.

108. The attendee asked what HMRC would expect the pension scheme administrator to do - should they provide information to HMRC?

109. HMRC welcomes any information from pension scheme administrators on concerns over transfers.

<u>Close</u>

110. The Chair thanked attendees joining the meeting of the forum and explained that HMRC hopes to hold the next Pensions Industry Stakeholder Forum face to face in April 2021.