

Economic Affairs Committee

Finance Bill Sub-Committee

Corrected oral evidence: Draft Finance Bill 2025-26

Monday 13 October 2025

4.05 pm

Watch the meeting

Members present: Lord Liddle (The Chair); Lord Altrincham; Baroness Bowles of Berkhamsted; Baroness Fairhead; Lord Leigh of Hurley; Lord Pitkeathley of Camden Town.

Evidence Session No. 1

Heard in Public

Questions 1 - 11

Witnesses

[I](#): Margaret Curran, Technical Officer, Chartered Institute of Taxation; Jason Piper, Policy Lead for Business and Tax Law, Association of Chartered Certified Accountants; Lindsey Wicks, Senior Technical Manager, Institute of Chartered Accountants in England and Wales; Lydia Challen, Co-Chair; Lydia Challen, Co-Chair, Law Society Tax Law Committee.

Examination of witnesses

Margaret Curran, Jason Piper, Lindsey Wicks and Lydia Challen.

Q1 **The Chair:** Welcome to this meeting of the Finance Bill Sub-Committee. I think we all know what the topic is. I will say at the start that the purpose of this committee is not really to answer the question of whether but to answer the question of how—is what the Government are proposing the best way of doing what they want to achieve? The House of Lords is not allowed to have opinions on substantive tax questions, on policy. We have a number of questions. Would you like to say, very briefly, to the committee something about who you all are?

Lindsey Wicks: I am from ICAEW. I am the senior technical manager for tax policy.

Margaret Curran: I am from the Chartered Institute of Taxation. I am a technical officer in the technical team.

Jason Piper: I am from ACCA, the Association of Chartered Certified Accountants. I am the head of tax and business law.

Lydia Challen: I am one of the co-chairs of the Law Society's tax committee.

The Chair: Thank you. That is very good. We are going to ask a number of questions. We will try not to get stuck on every question and I will try to move it on. Also, you do not all have to give a very detailed answer to each question, but you will probably want to say what you have to say at the start.

I will ask the first question. How appropriate is it to apply a criminal offence to the existing DOTAS regime, which currently gives HMRC only civil enforcement powers? It is about the appropriateness of criminality. Which of you will start?

Lindsey Wicks: I am happy to start. The regime was not designed with criminal offences in mind. The hallmarks that are used to decide whether a disclosure is made are drafted to be deliberately uncertain, and that is to encourage disclosure. That means that they are not sufficiently certain to apply in a criminal context. They can apply to reasonable tax planning that happens to fall within a hallmark, so it does not have to be mass-marketed tax avoidance. The uncertain scope of the wording in the hallmarks is highlighted by HMRC's guidance, which is quite extensive, and it underlines the potentially wide-ranging nature of the hallmarks.

There are quite a few examples in the guidance. For the standardised tax products hallmark there are things such as social investment tax relief, seed enterprise investment schemes, quoted eurobonds and excluded indexed securities. The guidance has to say that they are unlikely to fall within that hallmark unless they form part of wider arrangements. Similarly, the guidance has to provide reassurance that the loss hallmark does not apply to genuine business start-ups. There you could have losses that are unintended but a foreseeable, predictable outcome of a start-up. The financial products hallmark covers HMRC's view on why it should not apply to things such as earn-out rights, partition demergers and tax-advantaged share schemes, all of which are quite plain vanilla tax planning, but the fact that they have guidance to say why those hallmarks do not apply just shows the uncertain nature of the hallmarks.

Margaret Curran: I agree with that. There is uncertainty because they are vague and broad. The other issue here is that the criminal offence that is being proposed is strict liability, so the prosecution does not have to prove intent. That is problematic because normally, strict liability offences would be more appropriate where there is a measure that is very clear whether you have tripped over or triggered the offence: for example, a speeding offence or a parking fine. Where the hallmarks are uncertain, sometimes it is difficult to decide whether you need to make a notification. In our view, that is extra problematic if you can trigger that just by not making a notification without any mens rea or intent to do so,

Jason Piper: We would echo the same points. Tax is inherently a regulatory regime. It is a civil law construct, so the hurdles to impose a criminal offence around tax should be quite high. For all the reasons that have already been mentioned around the uncertainty of the DOTAS regime, which was not built for criminal liability, to then introduce an offence on top of that, and particularly a strict liability offence, is perhaps using the wrong tool for the job.

It may be time to step back and look a little more widely at what sort of schemes are now in place, what the landscape is and, therefore, what the criminal offence might be. The DOTAS regime potentially applies to a vast range of tax planning undertaken, often in a purely domestic context but for all sorts of reasons. Having the spectre of this possible criminal liability hanging over, which most professional advisers would never go anywhere near, is probably a step too far if alternatives are available.

Lydia Challen: We agree with everything that has been said, particularly the focus on the strict liability offence and the subjective nature of the hallmarks. As well as covering a very wide range of circumstances, the hallmarks make you ask some rather vague questions such as: has a main benefit of the arrangement been a tax advantage? Tax advantage is incredibly widely defined. It could encompass tax paying to avoid a tax problem, not just to gain an advantage in the sense that most people would think of it. You might have to ask yourselves whether a financial instrument has a contrived or abnormal feature. To a lot of people, a lot of what goes on in the commercial world might look a bit abnormal but that does not mean that it is abnormal; it just depends on the perspective from which you are looking at it. Views can reasonably differ on that, and it is very difficult for the advisory community to have to second guess all the time how it will be looked at, not even by the Revenue but possibly by a jury. You cannot bring your professional judgment to bear; you have to try to think of how other people would see it.

I have another couple of smaller points. The promoters' rules apply because they are an information-gathering power and the Revenue introduced them wanting the widest possible sources of information. They apply to people who are not the controlling minds behind all these schemes. They do not necessarily need to be people who are marketing the schemes. They can be people who, relatively speaking, are quite peripheral to the scheme but they are all currently within the disclosure obligation that is suggested would found this criminal offence.

There is also a very short deadline for complying with your disclosure obligations. It is five days from various trigger points, for example when you make something available for implementation. It is challenging for somebody who is not knowingly operating within the space that this proposal is trying to capture to have to work out in five days whether something that they would not necessarily think was within the intended scope of DOTAS is actually within the scope and to then make sure they

have done the disclosure so that they do not end up with a criminal offence.

Q2 Lord Leigh of Hurley: I declare that I am a member of the Institute of Chartered Accountants in England and Wales and the Chartered Institute of Taxation by qualification, for my sins.

The Government say that these measures are needed to counter the 20 to 30 or so bad actors. From that, can we assume that all this is focused on disguised remuneration? Do you think that there is a better way just to focus on these 20 to 30 bad actors and provide safeguards but focus on the 20 to 30 and leave everyone else alone?

Lydia Challen: Our understanding is the same as yours, that it is intended to capture mostly the aggressively mass-marketed remuneration-type schemes. The Law Society wholly supports that ambition, obviously, and we sympathise with the Government's problems in trying to find ways of addressing these promoters, who are extremely persistent. The Government are trying, therefore, to cut off all the routes by which they can sidestep the rules. That is precisely why we think the rules are not sufficiently targeted, unfortunately. As has been said by other panel members, they could capture routine commercial advice and reputable firms, and their true targets will probably continue to ignore the rules.

On what could be done, rather like this committee, the Law Society does not usually comment on policy, rather commenting on implementation. The proposals that we have submitted to HMRC on this are aiming it more at the mass-marketed remuneration schemes and, if necessary, coming up with a specific hallmark that could found a criminal offence but be targeted at those schemes. There might be all sorts of other ways one could address this: for example, dealing with how the schemes go to market in the first place, how they are advertised and other avenues, but that is probably beyond the Law Society's remit.

Jason Piper: Likewise, given the small number of advisers or actors who are being targeted here, taking what was originally a very broad set of rules and trying to focus them in this way will always be extremely challenging. We are trying to scope out some people and there will have to be safeguards for those who cannot be scoped out. The targets of the measures are bad faith actors and we know that they will do everything they can to try to work around the safeguards, to bring themselves within them, to exploit any loophole that they can find in the measures.

It would be extremely challenging to ever create anything that could deal with them, and perhaps it makes more sense to come from another tack. As we will come on to later, I suspect, we know that the vast majority of them are now operating overseas, and having some kind of a hallmark around the overseas operations might be a better way to deal with it. Ultimately, the dream would be to have an environment where people recognise that if you are taking advice on a UK tax structure, there

should be no good reason to take that advice from someone who is not based in the UK.

That is a long way from where we are at the moment and a different ultimate goal but it reflects that this comparatively small part of the tax system is having an impact on how people view the tax system as a whole, and that trust in the tax system is very important. We need measures that are proportionate and effective but at the same time encourage trust in the system as a whole and do not destroy the commercial operation of it for the compliant advisers.

Margaret Curran: Going back to the point, the offence as it has been crafted is a bit of a blunt instrument but it will not be easy to try to narrow that down to target these persistent 20 to 30 promoters who seem to be causing all the problems around disguised remuneration. We have come up with some ideas at the CIOT—I am not saying that any of these is a perfect solution, because it is a challenging, knotty issue.

It could be more targeted at the features of the types of schemes that are problematic. I know that some of the hallmarks cover that but perhaps it could be targeted more specifically at the type of business models of the promoters and the features of their schemes around generic counsel's opinions, restrictions on users' ability to share the opinion, multiple users and so on.

Another idea we had was whether the schemes could be targeted at avoidance schemes, crafted around wording from the HMRC standard for agents, so schemes that "are highly artificial or highly contrived and seek to exploit shortcomings in the relevant legislation".

There is another option that was floated in the original consultation about devising a separate disguised remuneration hallmark and applying the criminal offence just to that rather than to every hallmark, but I gather that it could be problematic to craft that, although it is still an option.

Another option that is being considered is whether to scope out advisers that will need to register under the new agent registration requirements that come in next April. Agents have to register under that if they interact with the HMRC, and I think a lot of the people behind these sort of disguised remuneration schemes probably are not in that category because they do not actually interact with the HMRC. Scoping out people who do would take out a lot of people who this is just not aimed at—compliant advisers.

The Chair: You have put all this in a letter that we have, which we can circulate and consider. That is all very helpful. Do you have anything to add?

Lindsey Wicks: One thing on the proportionality, just to give an idea of the size of the potential population and the 20 to 30 that should be the target, is that the size of the tax advice market is 85,000 firms. If this

potentially applies to all 85,000 firms, that is clearly disproportionate compared to the target.

Q3 Baroness Bowles of Berkhamsted: This continues on from the previous question. To act as a deterrent, there needs to be a realistic prospect of prosecution. With HMRC saying that a number of the remaining promoters—the baddies—are mainly offshore, how likely are we to get a prosecution? We have 85,000 firms quaking and the people doing the wrong stuff are happily overseas. Will we get any prosecutions at all?

Margaret Curran: I think that would be very challenging. Most of these promoters have at least some offshore presence, so it will be an extra difficult hurdle if people need to be extradited. I do not know whether there are provisions in place for those overseas jurisdictions. I am not a criminal lawyer and I have to caveat what I say about this because I do not have that expertise, but the consultation process did not really address that issue. With any successful prosecution there probably will be other hurdles as well because these cases will be heard before a jury and the burden of proof will be beyond reasonable doubt. That will probably pose its own challenges.

Baroness Bowles of Berkhamsted: We will end up with hard luck cases being brought that may eventually, after much heartache and prosecution and evidence, get off because there are reasonable excuses.

Departing slightly from the question that prosecutions will potentially be difficult, although I think you have already answered it, is there anything that one can do that completely reverses the thought process? Can you just have a system where a scheme has to be authorised in advance otherwise it is not allowed?

Margaret Curran: Already you have to notify.

Baroness Bowles of Berkhamsted: There is a difference between notifying and being authorised. It is a lot of work to authorise, but is there any other way of being safe?

Jason Piper: I think you would run into problems very quickly in how you define which schemes would need authorisation and what is a tax scheme; what is tax planning rather than routine compliance; and at what point are you simply responding to the law as it applies to you and you have to act, or where there is discretion to act, is your structuring exploiting that discretion to act in an acceptable manner that could be authorised or should not be?

HMRC has been struggling with this for many years with things such as wrongful behaviour and dishonest tax agents, going back 12, 15 years, and trying to define tax advice and who is a tax adviser, and what is advice beyond simple compliance. Although it is very clear if you have artificial entities being put into an offshore structure with no obvious commercial reason for it existing, it is easy to say that that is tax planning, but at what point does it reach tax planning and structuring

rather than simple commercial operation within tax law? It would not be feasible to authorise every single piece of routine vanilla commercial structuring.

Lindsey Wicks: It could hamper commercial transactions if you had to go through that process.

The Chair: In what way?

Lindsey Wicks: If you were going for authorisation.

Baroness Bowles of Berkhamsted: Are we starting from a presumption that all tax planning is not allowed and then there are exemptions? I am just trying to get at what the basic, underlying, fundamental tenet is. Are you allowed to plan tax or are you not?

Lydia Challen: Lots of case law suggests that you are allowed to plan tax and then the Government have tried to put boundaries around that. The reason they introduced DOTAS was so that they would know what tax planning was being done and then could decide whether they thought it needed to be addressed and counteracted in legislation or was completely normal and inoffensive. The problem with these rules is that they apply to all those types of tax planning.

Baroness Bowles of Berkhamsted: So do they just criminalise everything?

Lydia Challen: They criminalise their failure to disclose everything, yes. It has become very difficult because when DOTAS was introduced it was this deliberately wide power but in various bits of legislation since then it has been used as a proxy for avoidance. Some of it is avoidance but lots of it is not. But then, within the wider commercial market it becomes associated with avoidance and so reputable businesses do not want to do something that is in DOTAS because they think, "That means I am doing avoidance and I said to my stakeholders that I am not going to do avoidance". It might be completely within the scheme of the legislation or the way to structure into legislation that was designed for your set of circumstances. We will come on to that later perhaps, but if this is introduced, what will its effect be? People will not want to do things that are disclosed.

Baroness Bowles of Berkhamsted: If the offence is the failure to notify, which will either be blatant by somebody who knows they are safe because they are abroad or accidental and, therefore, marginal, will anything other than hard luck cases be caught? Will they end up with any fair prosecutions, as I would call them?

Margaret Curran: Maybe there is an analogy because already we have penalties for failing to disclose under DOTAS and they are very high. I think the maximum is about £1 million and there have been some recent cases at the tax tribunals of promoters who have been found not to have disclosed who should have disclosed. So there obviously is a way to get to some of these people through the civil system. The issue seems to be

that even these high penalties are not discouraging some of them from not disclosing.

Baroness Bowles of Berkhamsted: It is too lucrative.

Margaret Curran: Yes.

The Chair: This brings us on to question 4, about relief.

Q4 **Lord Altrincham:** Thinking about your firms, your previous firms and the 85,000 other firms, what effect do you think the existence of this new criminal offence will have on how advisers give advice and indeed whether they will give advice? I am just thinking about it from the firms' point of view.

Lindsey Wicks: You could ask what will change, because a lot of firms will already have governance processes in place to try to ensure that they are spotting when there is a hallmark and a potential obligation to notify. As Lydia has just said, many clients do not want to undertake tax planning that has a DOTAS reference number, so that is another check.

ICAEW member firms say that the threat of a strict liability criminal offence weighs differently on them because it is personal jeopardy for the senior manager, which is probably tax partners within the firm. Where people have historically spent a lot of time trying to understand the scope of the hallmarks and to get comfortable with them and with HMRC's guidance about where the boundaries lie and when you need to disclose, they will probably want to revisit all of that and will not necessarily want to rely on guidance that can change. It is not legislation, it is just guidance. A lot of our firms say that the area where they spend a lot of time doing DOTAS analysis is in merger and acquisition work, where they need to think about the financial products hallmark. They may feel less comfortable doing that work going forward.

Margaret Curran: We have had similar feedback from our members. One of the issues is that the senior manager definition is very wide, so it is really unclear who that will pick up in a firm. It could pick up members of an LLP, partners in a partnership who have nothing to do with the tax function at all. We think that should be narrowed because that is exacerbating the risk for larger firms.

Q5 **Lord Pitkeathley of Camden Town:** I think I know where we are going with this. You mentioned that you are concerned about the impact that these changes will have on tax advisers and agents and, thereby, on the market. Can you give us some graphic examples and expand on your thinking about what will actually happen in the markets if these changes go ahead? I understand that it is speculation but it would be interesting to hear your views.

Margaret Curran: It is difficult to predict, obviously, but the risk around a criminal offence is much greater than civil penalties. Some of the feedback we have had is that firms may feel they have to make disclosures under DOTAS just in case to protect themselves. That comes

with its own risks as well, because it is a red flag to make a DOTAS disclosure and most compliant firms these days would not go anywhere near needing to make one. There is a risk of overdisclosure, which could impact PII cover, affordability and so on. Our worry is that it could distort the tax services market because firms might withdraw from giving certain types of what they consider to be high-risk advice around the sort of things that Lindsey just mentioned.

Lindsey Wicks: It is partly cost. If governance goes up or you need to introduce mandatory training, that will cost the firms and somebody has to pick up the cost. It could drive up the cost of tax advice. Equally, as I mentioned before, people might not be comfortable giving certain types of tax advice. People might be uncomfortable or unwilling to act where another adviser has suggested a structure, for example, and they have just been asked to give a view on the tax analysis of that structure.

We have to remember that the professional business services sector has been identified in the Government's industrial strategy not just as a growth sector and a sector that can export, but also as an enabling sector for growth across the economy. If accounting firms cannot provide highly complementary tax services to their clients, that will potentially have a wider impact on the whole economy.

As Margaret said, another potential impact if people start overdisclosing is that taxpayers might have to respond by accepting that this is the new world and it is acceptable to disclose schemes to protect yourself from a strict liability criminal offence. If that has to be accepted by the market, you could break the deterrent effect of DOTAS as it currently stands.

Q6 **Lord Leigh of Hurley:** Is there a risk, in your opinion, that commercial organisations will not be able to get proper tax advice on commercial transactions?

Margaret Curran: You have to look at it in the context of some of the other measures in the Finance Bill. We have another measure looking at non-compliance facilitated by advisors where there is a wide definition of deliberate conduct, which could bring in legal interpretation issues. You have to weigh that along with this; our members are saying that they can foresee a lot of difficulties going forward with the advice they can comfortably give because of the increased risk.

Lindsey Wicks: It is not necessarily that they will not be able to get advice, it is that they might have to get advice from elsewhere. There is a risk of exporting tax advice to other jurisdictions.

Jason Piper: A lot of what we have to say has already been covered but, yes, there is a cost to giving commercial advice and it is recovered through fees. As you increase the risk to the advice giver, they either have to introduce governance processes to manage that risk, which will increase the cost of giving the advice, or if the risk is too high, they simply will not give the advice at all. As has already been mentioned, that does not just mean they do not take the fees and the profit element on

giving the advice; commercial transactions that otherwise might have gone ahead will not, and that is much harder to quantify.

Lydia Challen: Another aspect of this is that by penalising the advisor and incentivising certain behaviours from the advisor you are potentially setting up a conflict between the advisor and their client. The advisor should be helping the client to understand the full range of options and all their consequences. If the advisor is looking over their shoulder all the time to see whether they might personally be liable for a criminal offence, that introduces friction into that relationship. For all the same reasons, I think it will probably have a chilling effect on the giving of completely legitimate tax planning advice. The availability of good and frank tax planning advice is key to inward investment and the competitiveness of the UK generally. There are quite a lot of—I am sure unintended, but possibly quite adverse—consequences of this, especially in combination with the other Finance Bill measures.

Q7 Baroness Fairhead: We now move on to process and timing to get your views on the proposed timescale for enacting the measures on the promoters, and whether it is appropriate. If you do not think it is appropriate, what benefits do you think could be gained from a delay in implementing these measures?

Margaret Curran: This measure will be introduced from next April, so there is some uncertainty around the exact commencement proceedings, although that is not my main point here. We also have other legislation coming in next April that is targeting PAYE avoidance under payments in umbrella supply chains. My understanding from colleagues more versed in that area than I am is that that will be quite effective at dealing with disguised remuneration and PAYE underpayments in supply chains, because it is putting in joint and several liability up the chain.

That is coming in next April. The question is, if most of the schemes are disguised remuneration schemes that these 20 to 30 promoters are still promoting, then why not wait and see what effect that other legislation will have on the market from next April before we introduce this criminal offence, or at least delay it to see how much disruption there is and whether that other legislation puts paid to a lot of the problems? Because of the problems that we are discussing around targeting the offence, perhaps we do need more time to get to the bottom of an ideal solution to that too. We would advocate that a delay would be a good idea.

Lindsey Wicks: I agree. We acknowledge the desire to take action against the 20 to 30 promoters but we think that the criminalisation of non-disclosure has to be better targeted, delayed or abandoned. This is part of a suite of measures against promoters. There are other things such as the introduction of universal stop regulations and promoter action notices. Although they are targeted further down the chain to stop schemes that are already out there, the ICAEW would advocate them going first and seeing how that lands before the introduction of a strict liability criminal offence.

Q8 The Chair: That brings us to our next question, which is about time for consultation. Has sufficient time been allowed for discussion on the detail and scope of the measures?

Lydia Challen: We would say ultimately not. HMRC has made significant efforts to engage with the profession over the summer on the DOTAS changes and that should be recognised, but the time is not sufficient for measures of this breadth and sensitivity. As we have discussed, it is a very complex puzzle to solve and every time there is a proposal to take it down one route, a problem is identified with that route. However, there is just not sufficient time within the Finance Bill process to arrive at the right outcome, and the risk is that we have to have an outcome and then get the least optimal one. As Lindsey said, our view is that the proposals need to be delayed or abandoned if they cannot be sufficiently and adequately modified.

The Chair: Are you all in agreement on that?

Margaret Curran: To be fair to HMRC, it has been very good at engaging with us and is continuing to do so through this process.

Lydia Challen: One point is that the co-ordination of this measure with the other Finance Bill measures could have been better from the start. The cumulative effect of all these measures on the wider tax market is much more than any one of them on their own.

The Chair: Can you describe to lay people like me what the cumulative impact of all this in the last five years has been?

Lydia Challen: I was referring to the cumulative effect of the currently proposed measures. Three sets of measures are currently being enacted which, from a tax advisor's perspective, make the tax profession a lot less attractive to go into and perhaps more attractive to retire from. I do not think we have yet seen in practical terms the cumulative effect of the measures over the last five years. When I was last sitting here, we were discussing criminalisation of stop notices, which was not all that long ago. I think the legislation came in last year. Those are notices where a particular scheme is identified and a particular promoter is served with a stop notice, and then they can be prosecuted if they continue. It is not clear whether that has had any effect, but certainly it was billed at the time as the solution to this and yet here we are again, a year down the track, with a much less targeted proposal.

Q9 Baroness Bowles of Berkhamsted: Should there have been more defence provisions? If you look at other "failure to prevent" things, like for bribery, it is a defence for the company at least to have procedures in place. Should there be that kind of approach? We are in a difficult situation here as I think we are on the side of HMRC in trying to stop bad stuff from happening, but you cannot do it in a way that means bad stuff will happen to innocent people. How do we break that and would procedures do that?

Lindsey Wicks: That is one of the things that we have been talking with HMRC about. People may be slightly nervous because, with things like the corporate criminal offence for facilitation of tax evasion, you have two hurdles to start with—there has to be tax evasion by a taxpayer and facilitation by somebody—whereas failure to make a disclosure is automatic, so there is that gateway into it. Are procedures enough of a defence or are you waiting for your day in court, by which time the reputational damage has been done?

Q10 **Lord Leigh of Hurley:** Are you worried about the possibility or would you want the possibility of criminal offences being applied to certain R&D advisors who are not your members but are none the less providing tax advice in a way that is—certainly when we looked at it last time—bordering on the criminal?

Lydia Challen: Offences are already on the statute book for tax, and they are quite wide-ranging. Cheating the public revenue is a wide offence. I cannot give you a Law Society view on that question but my own view is that those sorts of offences should be tried under the law as it is today, rather than creating specific offences. They are honesty-related offences and if people have been dishonest, that is the right way to go.

The Chair: I suppose if I were a politician trying to defend what the Government are doing, I would say something like: "This is targeted at a tiny group of people, it is not intended to have wide scope. Why can you not trust us to produce guidance which makes that clear?" I think that would be the defence.

Lydia Challen: With respect, this Government may not always be in power.

Margaret Curran: Guidance is not the law and the courts will not refer to HMRC's guidance, so that is the problem. That is why I think having a strict liability is problematic. Perhaps if it was not strict liability, that would go some way to help, along with beefing up the safeguards—for example, putting in reasonable procedures—because at the moment all we have is reasonable excuse. That might be okay for a small firm, but for a larger firm that is potentially problematic and reasonable procedures might be better in that scenario.

Lord Leigh of Hurley: Are you suggesting, "Trust me, I'm from the Government", does not cut any ice anymore?

The Chair: Is there anything else that you have not said that you think we should hear before you depart?

Jason Piper: I would go back to that previous point about the Government saying they do not want to apply this to other people. That is all very well, but will the advisor's insurers necessarily believe that? Part of the challenge is getting the indemnity insurance that has been mentioned before. The insurance companies will be looking at the risk

that it could be misapplied, whatever the good intentions of the Government.

Lydia Challen: No conscientious advisor goes to work in the morning thinking that, if they mess up, they want to face the prospect of a criminal offence. The question of, "Trust us, we're the Government", comes down to a question of saying "This will be selectively prosecuted". Having wide offences with selective prosecution is not really compliant with general rule of law principles. Having something this broad on the statute book that everyone knows will capture lots of people accidentally, and then cutting it down by deciding who to prosecute, is not good policy-making in our view.

Q11 **Baroness Bowles of Berkhamsted:** Did you say that you do not solve the problem by having better defences, that it is just too wide in the first place?

Lydia Challen: A defence can be structured in a way that you have to consider whether there is a defence at the same time as considering whether there is an offence. If it comes within how you construct the offence, that is not necessarily problematic, but the defences have to be easy to demonstrate and our view is that you need to target more clearly the offence before you bring in the defences in this context. We should be addressing what these people who we want to deal with are actually doing and what is the offensive part of that behaviour. Failing to disclose their schemes is one aspect of the things that are offensive but it is not the only or possibly even the main aspect of it. There can be all sorts of other reasons why people fail to disclose schemes that are nothing to do with the people we are trying to target. To us it seems like a very big sledgehammer to crack a very persistent nut.

The Chair: On that note, we will say thank you for giving us such clear views. We will take them into account and decide what to do. Thank you very much for coming along.