Neutral Citation: [2025] UKFTT 00660 (TC)

Case Number: TC09543

FIRST-TIER TRIBUNAL
TAX CHAMBER

Tax Tribunal
Alexandra House
Parsonage Gardens
Manchester

Appeal reference: TC/2023/08583

VALUE ADDED TAX - Exemptions - Financial Intermediaries - Principal VAT Directive 2006/112/EC Article 135 - VAT Act 1994 Sch 9 Group 5 - Meaning of Note 5 and Note 5A - Appellant using websites to provide leads to IFAs - Whether appellant's services were exempt? - Yes - Appeal allowed.

Heard on: 11-12 March 2025
Judgment date: 5 June 2025

Before

TRIBUNAL JUDGE CHRISTOPHER MCNALL
MS ANN CHRISTIAN

Between

PERFORMANCE LEADS LIMITED

Appellant

and

THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Respondents

Representation:

For the Appellant: Mr Quinlan Windle and Mr Arthur Wong, both of Counsel

For the Respondents: Mr Max Simpson (with written submissions by Ms Esther Hickey), both HMRC litigators, of HM Revenue and Customs' Solicitor's Office

DECISION

INTRODUCTION

1. The Appellant, Performance Leads Ltd ('the Appellant'; 'PL') is a company offering "lead generation" services to independent financial advisors (IFAs). In barest outline, PL operates two websites ("financial-advisors-near-me.co.uk"; and "pension-advisers-near-me.co.uk") through which it identifies and gathers information about individuals who are seeking financial advice of various kinds, and it provides that information (the so-called 'lead') to its clients - who are the IFAs - with the overall purpose that the IFAs can be in touch with those individuals. PL receives, from the IFA, a fee per lead distributed. In the agreements between PL and the IFA, the IFA is referred to as the "partner". It was not suggested that there was a legal partnership between PL and the IFAs; rather, the term 'partner' shows indicates that PL and the IFA are working together. In this decision, we use 'partner' in that sense, and when that is the term used by PL.

2. Between May 2018 and February 2022, PL accounted for VAT on the basis that some of the supplies - namely, the leads - were chargeable to VAT.

3. However, PL latterly formed the view that most of those supplies were actually "intermediary services" in relation to financial services transactions within the proper meaning and effect of Schedule 9 Group 5 Item 5 ('Item 5') of the *Value Added Tax Act 1994* ('the 1994 Act') and, in consequence, its agent submitted an Error Correction Notification ("ECN") dated 27 May 2022 seeking repayment of £247,407.92 of overpaid VAT.

4. By way of a letter dated 3 March 2023, HMRC refused PL's claim for overpaid VAT ('the Decision'). That is the Decision which is the subject matter of this Appeal.

5. HMRC's refusal was on the basis:

   (1) PL had not demonstrated that all leads passed to IFAs would result in the supply of an exempt financial product; and

   (2) The level of data gathered by PL was not enough to amount to "*work preparatory to the conclusion of contracts*" within the meaning of Note (5) to Group 5.

6. The Decision was upheld at departmental review on 12 May 2023.

7. We are grateful to all the representatives for their assistance, especially given Mr Simpson's late assumption of this appeal on behalf of the Commissioners in place of Ms Hickey.

THE PARTIES' POSITIONS

8. This dispute has had a problematic procedural history.

9. An ADR appointment took place on 18 October 2023. From HMRC's side, it was attended by the decision-maker, a technical specialist, and a manager; and, from the Appellant's side, by its two directors and their agent.

10. According to the 'Record of Outcome', prepared by HMRC's in-house mediator some weeks after the event, and placed before us in the bundle, the parties' joint position at the end of mediation, was that "the only legal point at issue in the dispute is the interpretation of the words "work preparatory to the conclusion of contracts" in Note 5. That Record of Outcome goes on to say "The parties now agree that this is the only issue on which the dispute rests and the point which would be tested at any subsequent litigation".

11. Hence, as of 18 October 2023, the parties' joint position was clear.

12. It is therefore surprising that HMRC:

(1) Having identified this relatively narrow point at ADR, then sought an extension of time in which to file its Statement of Case (which was not delivered until April 2024); and

(2) When that Statement of Case eventually emerged, it sought to advance, despite HMRC's stated position at the conclusion of the ADR appointment, a number of other, and wider, arguments:

(a) The Appellant does not "bring together" persons seeking financial services and a financial service provider with a view to the provision of financial services: see especially Paragraph 38 ("The Appellant doesn't appear to have a sufficiently close nexus to the parties to any ultimate contract for the provision of financial services to meet the criteria of bringing together a person seeking financial services and a financial service provider with a view to the provision of financial services");

(b) The Appellant has not shown that the leads it generates result in anything other than a taxable supply being made by the IFAs: see SOC Paragraph 56 ("The Appellant has failed to show that the introductions they facilitate result in the IFAs making an exempt supply to the potential customers for financial services"); and

(c) The Appellant does not perform work preparatory to the conclusion of contracts for the provision of financial services, because it has not shown that it has carried out any activities which might amount to negotiation: see SOC Paragraph 44.

13. This (ostensibly unheralded) expansion in HMRC's scope of challenge, despite the parties' agreement at ADR, is undesirable. It is not self-evidently consonant with HMRC's obligations and practice under its Litigation and Settlement Strategy. However, and regardless of the technical position, this also makes the Tribunal's task more difficult, because the Tribunal, on the face of it, is then confronted with the issue of whether, at the final hearing, HMRC is to be restricted to the point identified at the conclusion of ADR; or whether HMRC can advance new, different, arguments. In some appeals, that might make a significant difference. It could be a matter upon which the Tribunal would have to hear argument and submissions, thereby adding to the length and complexity of the hearing, and the overall costs burden.

14. However, and for the purposes of resolving this appeal, and perhaps fortunately, it has ultimately not proved necessary to spend further time considering this point. We have decided to consider all the arguments placed before us by both parties, including those latterly introduced by HMRC.

15. In summary, before us, the Appellant's position is that the supplies covered by the Error Correction Notice fall within Item 5, and are consequently exempt from VAT.

16. In summary, before us, HMRC's position is this:

(1) In substance, what the Appellant is doing is advertising, which is not an exempt supply.

(2) Even if not advertising, the Appellant is acting as an intermediary, but for non-exempt supplies.

(3) It is not enough for a person claiming to have acted in an intermediary capacity to have made an introduction without them also having performed work preparatory to the conclusion of the contract with the IFA.

THE EVIDENCE

17. On behalf of the Appellant, we considered a 22-page witness statement from Neil Ainsworth. He is the Appellant's 'co-founder' and one of its two directors.

18. He was cross-examined by Mr Simpson. It was notable that much of his evidence - a lot of it of a technical character - was not challenged by HMRC. No specific challenge was taken to any of the 86 paragraphs. The cross-examination was more in the nature of a general, and open-textured, exploration of Mr Ainsworth's understanding of the business and the commercial purpose which it was fulfilling.

19. Mr Ainsworth is responsible for the technical and operational side of the business (his co-director being responsible for the "commercial and sales side"). He has been doing this since PL was incorporated. He impressed us as a person with a detailed and demonstrable knowledge of the Appellant's business. This was dealt with in detail in his witness statement, but emerged with force and clarity in the course of his oral evidence.

20. His honesty and reliability were not challenged. Notwithstanding the absence of challenge, we found him to be an honest and reliable witness. We accept his evidence.

21. On behalf of HMRC, we considered a witness statement from Officer Timothy Allen. He was the decision maker. His witness statement largely served to exhibit the documentation, which largely speaks for itself, and the Appellant did not require him to be called for cross-examination. His position in his statement, set out succinctly, was that "the service of filtering enquirers and gathering of customer data sufficient to find a suitable independent financial adviser is not the same as helping to complete an application for a finance product, or help negotiate such a contract, and is only intended at this stage to provide the IFA with a customer lead, rather than to participate in mediating a contract."

THE LAW

22. It is not in dispute that the Appellant bears the burden of establishing that its supplies are exempt, and that the relevant standard of proof is the civil standard (namely, the balance of probabilities; or, put differently, whether something is likelier than not).

23. Group 5 ("Finance") of Schedule 9 of the 1994 Act exempts the supplies of certain various financial services from VAT.

24. It provides that the following "Items" are to be exempt:

> 1 The issue, transfer or receipt of, or any dealing with, money, any security for money or any note or order for the payment of money.
>
> 2 The making of any advance or the granting of any credit.
>
> …
>
> 3 The provision of the facility of instalment credit finance in a hire-purchase, conditional sale or credit sale agreement for which facility a separate charge is made and disclosed to the recipient of the supply of goods.
>
> 4 The provision of administrative arrangements and documentation and the transfer of title to the goods in connection with the supply described in item 3 if the total consideration therefor is specified in the agreement and does not exceed £10.

5 **The provision of intermediary services in relation to any transaction comprised in item 1, 2, 3, 4 or 6 (whether or not any such transaction is finally concluded) by a person acting in an intermediary capacity …**

6 The issue, transfer or receipt of, or any dealing with, any security or secondary security being—

(a) shares, stocks, bonds, notes (other than promissory notes), debentures, debenture stock or shares in an oil royalty; or

(b) any document relating to money, in any currency, which has been deposited with the issuer or some other person, being a document which recognises an obligation to pay a stated amount to bearer or to order, with or without interest, and being a document by the delivery of which, with or without endorsement, the right to receive that stated amount, with or without interest, is transferable; or

(c) any bill, note or other obligation of the Treasury or of a Government in any part of the world, being a document by the delivery of which, with or without endorsement, title is transferable, and not being an obligation which is or has been legal tender in any part of the world; or

(d) any letter of allotment or rights, any warrant conferring an option to acquire a security included in this item, any renounceable or scrip certificates, rights coupons, coupons representing dividends or interest on such a security, bond mandates or other documents conferring or containing evidence of title to or rights in respect of such a security; or

(e) units or other documents conferring rights under any trust established for the purpose, or having the effect of providing, for persons having funds available for investment, facilities for the participation by them as beneficiaries under the trust, in any profits or income arising from the acquisition, holding, management or disposal of any property whatsoever."

25. Item 5 (in bold) is the one in issue in this case.

26. Following Item 5 in the 1994 Act, and therefore also a species of primary legislation, are a series of "Notes". These relevantly provide as follows:

"**NOTES**

…

(5) For the purposes of item 5 “intermediary services” consist of bringing together, with a view to the provision of financial services—

(a) persons who are or may be seeking to receive financial services, and

(b) persons who provide financial services,

together with (in the case of financial services falling within item 1, 2, 3 or 4) the performance of work preparatory to the conclusion of contracts for the provision of those financial services, but do not include the supply of any market research, product design, advertising, promotional or similar services or the collection, collation and provision of information in connection with such activities.

(5A) For the purposes of item 5 a person is "acting in an intermediary capacity" wherever he is acting as an intermediary, or one of the intermediaries, between—

(a) a person who provides financial services, and

(b) a person who is or may be seeking to receive financial services …

(5B) For the purposes of notes 5 and 5A "financial services" means the carrying out of any transaction falling within item 1, 2, 3, 4 or 6.
…"

27. Group 5 implements Article 135 of EU Council Directive 2006/112/EC (the "**PVD**") which relevantly provides:

"1. Member States shall exempt the following transactions:

(a) insurance and reinsurance transactions, including related services performed by insurance brokers and insurance agents;

(b) the granting and the negotiation of credit and the management of credit by the person granting it;

(c) the negotiation of or any dealings in credit guarantees or any other security for money and the management of credit guarantees by the person who is granting the credit;

(d) transactions, including negotiation, concerning deposit and current accounts, payments, transfers, debts, cheques and other negotiable instruments, but excluding debt collection;

(e) transactions, including negotiation, concerning currency, bank notes and coins used as legal tender, with the exception of collectors' items, that is to say, gold, silver or other metal coins or bank notes which are not normally used as legal tender or coins of numismatic interest;

(f) transactions, including negotiation but not management or safekeeping, in shares, interests in companies or associations, debentures and other securities, but excluding documents establishing title to goods, and the rights or securities referred to in Article 15(2);

[…]”

28. There is no dispute between the parties that the UK domestic legislation correctly transposes the PVD into UK domestic law.

29. There is no dispute that the 1994 Act is "retained EU law", and that therefore, by virtue of the UK Parliament's enactment of section 28 of the *Finance Act 2024*, should continue to be interpreted by this Tribunal in the same way that it was before 1 January 2024, meaning consistently with the PVD and the principles laid down in decisions of the Court of Justice of the European Union made on or before 31 December 2020, insofar as that is possible in accordance with established principles of conforming construction.

THE DOMESTIC CASE LAW

30. This case concerns the scope of an exemption. The correct interpretative approach to this exercise was laid down by the Court of Appeal (Simler LJ, as she then was, with whom Lord Justice Underhill and Sir Launcelot Henderson agreed) in *Target Group v HMRC* [2021] EWCA 1043 (approved by the Supreme Court: [2023] UKSC 35)

(1) The exemptions contained in the PVD (and, formerly, the Sixth Directive) are independent concepts of EU law;

(2) The terms used in the PVD to specify exemptions must be interpreted strictly because they constitute exceptions to the general rule that VAT is to be levied on all services supplied for consideration by a taxable person;

(3) Where there is a specific exemption, a broader exemption should not be interpreted so widely as to undermine the deliberate legislative choice made in restricting other exemptions;

(4) What is meant by a "strict" interpretation (and the location and content of the evidential burden when an exemption is sought) was explained by Chadwick LJ in *Expert Witness Institute v Customs and Excise Commissioners* [2001] EWCA Civ 1882 at Para [17]:

> “... A ‘strict’ construction is not to be equated, in this context, with a restricted construction. The court must recognise that it is for a supplier, whose supplies would otherwise be taxable, to establish that it comes within the exemption; so that, if the court is left in doubt whether a fair interpretation of the words of the exemption cover the supplies in question, the claim to the exemption must be rejected. But the court is not required to reject a claim which does come within a fair interpretation of the words of the exemption because there is another, more restricted, meaning of the words which would exclude the supplies in question.”

31. Both parties accept that Judge Barbara Mosedale's succinct 12-point summary of the case law in *Dollar Financial UK Limited v HMRC* [2016] UKFTT 598 (TC) at [97] is accurate and comprehensive.

32. *Dollar Financial* is also relevant on its facts because it concerns the VAT status of lead generation services supplied to Dollar Financial, a pay-day lender, by overseas suppliers.

33. Judge Mosedale said as follows:

> "To summarise my findings of law, to be within 'negotiation of credit' legislation and case law shows that there are the following rules:
>
> (1) Exemptions should be interpreted strictly.
>
> (2) What matters is the nature of the supply and not identity of supplier.
>
> (3) An intermediary can act entirely electronically.
>
> (4) While the exemption is static, the services covered by it can evolve.
>
> (5) An intermediary will be remunerated for intermediation but will not be a party to the contract between borrower and institution.
>
> (6) Negotiation can be exempt even if no contract results.
>
> (7) An intermediary does not have to undertake the entire mediation.
>
> (8) An intermediary can be one in a chain of intermediaries.
>
> (9) Intermediation does not include the carrying out of back office functions.
>
> (10) Intermediation does not include advertising or acting as a mere conduit.
>
> (11) An intermediary is someone who (a) introduces two parties, one looking for a financial product and a person providing it; (b) or is someone who negotiates the terms of such products as between the borrower and lender; or (c) is someone who concludes a contract on behalf of one or other parties;
>
> (12) An intermediary who carries out introductory services (11)(a) must do more than merely advertising or acting as a mere conduit as (per (10)) that is not within the exemption: that extra could be assessing the suitability of the service provider to provide the loan or the suitability of the borrower to receive the loan.
>
> I do not refer to (1) expressly again: it seems to me that the criteria (2)-(12) are applications of the principle that exemptions should be interpreted strictly but not restrictedly. The exemption is interpreted in a practical fashion to apply to those who, whatever called and whatever means employed, are making what the drafters of the Directive envisaged would be an exempt supply."

34. Although this does not formally bind us, we agree that this is very helpful guidance, and we gratefully adopt it.

35. Neither party sought to argue that the interpretative approach to the Notes should be governed by any materially different principles of interpretation. The Notes are a species of primary legislation, and so it is well-established that the Tribunal's basic task to ascertain and give effect to the true meaning of the words used by Parliament, giving effect, within the permissible bounds of interpretation, to Parliament's purpose: see *R (Quintavalle) v Secretary of State for Health* [2003] UKHL 13 at [8] per Lord Bingham.

36. As to the meaning of Note (5), the VAT and Duties Tribunal (Judge Colin Bishopp) observed in *Debt Management Associates Ltd* (2002) VAT Decision 17880 (at Para [26]) - rejecting an argument advanced for HMRC by Mr Nigel Poole (as he then was) - there is no support in the legislation to support a contention that negotiations, if they are to come within Item 5, must lead, if successful to a contract; and that Note 5 is not to be read as if the bringing together of the parties and the conclusion of the contract are cumulative conditions. The words "together with" expand the scope of the exemption to include "work preparatory to the conclusion of contracts" in distinction to market research and the other descriptions of work which follow, which are excluded. This analysis was adopted and applied by the Tribunal (Judge Tildesley) in *Friendly Loans* [2009] UKFTT 247 (TC).

37. In *InsuranceWide.com Services Ltd* [2010] EWCA Civ 422, the Court of Appeal (Longmore, Etherton and Pitchford LJJ) considered an arrangement whereby the appellant would pass particulars of would-be insureds through an internet service provider to the operator of a panel of insurers, and the operator would put each customer in contact with an appropriate insurer chosen by the panel. If an insurance contract resulted, the taxpayer was paid a commission (ie, it was only paid for leads which ended up in a contract). HMRC declined to treat these services as exempt. The Tribunal (Miss J Gort) refused the taxpayer's appeal; but the High Court (Sir Edward Evans-Lombe) allowed it. The Court of Appeal considered the scope of the insurance exemption: see Para [85] *per* Etherton LJ. Etherton LJ held that those principles, applied to the facts found by the Tribunal, inevitably led to a dismissal of HMRC's appeal. Contrary to HMRC's contention, it was plain that the Appellant's services were much more than the provision of a click-through facility to a broker agent or insurer. The Appellant was identifying, and provided those looking for insurance with access to, insurers. The Appellant provided those seeking insurance with a means of directing them most effectively and efficiently to the most appropriate insurers: see at [2010] STC 1606b-c. The Appellant was not a 'mere conduit'.

38. As well as the above referred-to cases, we are invited to consider some other decisions of this Tribunal which have considered the application of the exemption. Even if these are not binding on us, they give an idea as to the Tribunal's approach to and treatment of the wider landscape of the financial intermediaries exemption.

39. In *Bloomsbury Wealth Management* [2012] UKFTT 379 (TC) the Tribunal (Judge Greg Sinfield and Mr Philip Gillett) held that the appellant's supplies were exempt within the meaning of Item 6 of Group 5 of Schedule 9. Bloomsbury was an IFA which provided services in respect of financial instruments to high net-worth individuals, and provided high level advice on asset allocation, types of asset and choice of fund managers, but did not provide portfolio management services itself. That was done by a third party nominee. The Appellant acted between clients and fund managers to enable clients to acquire and dispose of units; with the supply of such units being an exempt supply of services within Item 6. The Tribunal went on to say that the initial advice given by Bloomsbury was (applying the guidance in *Card Protection Plan*) an ancillary service to the principal supply of exempt intermediary services, and hence was also caught by the exemption.

40. In *Dollar Financial* [2016] UKFTT 598 (TCC) the Tribunal considered whether the Appellant's making of pay-day loans was an exempt supply. For a category which it described as 'L' (L for 'Leadgen') loans, a borrower using a website owned by an overseas entity completed an online application form which was subsequently sent to Dollar, which could choose whether to accept the lead or not. It was held that the overseas entity as an intermediary had a relationship with Dollar, because Dollar was liable to the overseas entity for purchased leads; and those transactions did therefore amount to the negotiation of credit, and were exempt. A second category - 'A' transactions - involved the overseas entity calling a borrower who had been made the offer of a loan by taxpayer but who had not accepted it, to try and persuade the borrower to take out the loan. The Tribunal held that the conversions did not amount to any form of introduction, and did not amount to the negotiation of credit.

41. At Paragraphs 69-71 of her decision, Judge Mosedale commented as follows on her 'Intermediation does not include advertising' principle:

> "Intermediation does not include advertising
>
> 69. UK legislation clearly states that advertising is not negotiation, and neither party suggested this was wrong. The object of advertising is normally to create awareness of a product and to generate a demand for it where there was none before: while its purpose ultimately is to encourage persons seeking the financial product to contact the provider of the product or someone on his behalf, advertising does not aim to introduce any particular person to the product provider and certainly does not undertake any assessment of a borrower's suitability for credit, or of the lender's suitability to offer the borrower credit.
>
> 70. In *Insurancewide.com* and *Trader Media*, it was assumed that there was no exemption for a 'mere' click through service, in other words, where a website advertises the availability of something by enabling reader to click a button to access another website, even if the service was charged on the basis of the number of persons clicking on the button. Exemption was achieved by the traders in that case because they went further: the persons they brought to the insurers' websites were known to them in the sense that the intermediaries had obtained information from them about their needs and insurance history and had used that information to identify suitable insurers.
>
> 71. In the much earlier case of *Civil Service Motoring Association Ltd* [1998] STC 111 (CA), the taxpayer promoted to its members an affinity credit card issued by a bank in return for commission. Its supply to the bank was found to be the exempt negotiation of credit. Although this case preceded the CJEU decision in CSC, there was no suggestion it was wrongly decided. It seems to me the reason what the taxpayer did was not pure advertising was that it had negotiated the terms of the credit card with the bank prior to promoting it to its members. Its services were exempt, not because it introduced borrower to lender, but because it had negotiated the terms of the deal."

42. In her discussion of the Leadgen loans, Judge Mosedale said that the leadgens did not negotiate, and did not have agency powers to conclude a contract. So, their only route to exemption was because of their introductory service. In an important passage at Paragraph 132 she remarked "Introduction must be distinguished from advertising or acting as a mere conduit, and an assessment by the intermediary of the borrower's suitability for the loan is enough of a distinction".

43. At Paragraph 133, she went on to say:

> "But was there a real assessment in this case? For the reasons given at §§121-123 and §§125-130 I consider that there was. The appellant's criteria were simple but they were not the same as all other lenders (§16) and I do not consider that they were so simple that no real filtering took place; the leadgen applied all the criteria necessary for the appellant to determine whether to offer a loan bar the credit checks which, for regulatory reasons, the appellant had to do for itself, and I consider such partial assessment sufficient. In conclusion, I consider that the leadgens did enough to cross the line from being a mere conduit or advertiser into being intermediaries introducing the sort of person to whom the appellant might lend the sort of credit s/he was looking for. To my mind that is within the exemption of 'negotiation of credit' for the reasons given above and to that extent the appeal is allowed."

44. In *Staysure.co.uk Ltd v HMRC* [2022] UKFTT 134 (TC), the Tribunal (Judge Anne Redston) considered that the services provided by an intermediary which operated a lead generation service which, using an online "quote engine" connected individuals to a travel insurance provider were exempt under Schedule 9 Group 2 Item 4 ("the provision by an insurance broker or insurance agent of any of the services of an insurance intermediary [...]". The services were within the exemption "essentially because they were linked to essential aspects of the work carried out by the taxpayer [Staysure], namely the finding of prospective clients and their introduction to the insurer with a view to the conclusion of insurance contracts": see Para [10]. The Tribunal accepted the taxpayer's submission that the "quote engine" was not simply a modern form of pricing book, but "sophisticated technology which interacted with potential customers to assess whether they should be accepted for insurance": see Para [158].

FINDINGS OF FACT

45. On the basis of the evidence which we have read and heard, we make the following findings of fact.

The Appellant's websites

46. We were shown a number of screenshots. In our view, these are important evidence when it comes to the resolution of this appeal. They are contemporary, and there was no suggestion that the websites were constructed or presented in a misleading way. They are evidence of a kind which the Tribunal can objectively assess.

"Financial Advisors Near Me"

47. The offering of Financial Advisors Near Me is that a person can enter their postcode "to connect with a Local Financial Adviser", and to have a "Free consultation with an FCA certified Adviser".

48. The Appellant's software will then find 'Financial Advisers In Your Area', but will not identify these. The customer selects the type of advice which they need. There are 12 'buttons' on this screen. The number of buttons and the description of these is chosen and populated by the Appellant. The buttons include items which the Appellant knows that is monetiseable: that is to say, which stand some prospect of being a lead which can be sold to IFAs as possible to produce paying work. For example, 'Pensions and Retirements'; "Inheritance Tax"; "Investments"; "General Financial Advice" and "Financial Planning". That is because the people clicking on these are (in a nutshell) likely to have money which genuinely calls for advice; or the descriptions are (as Mr Ainsworth put it) are a "flag for assets". Other buttons ("State pension", "Pension Credits" and "Debt Help") are non-monetisable, and get filtered out because (for example) people inquiring as to state pension, pension credits or debt help

are unlikely to have assets calling for advice. There are other buttons (eg, "Final Salary/Deferred Benefit Pension") which are more difficult to monetise, because an IFA specialising in those areas is required.

49. The next stage requires the entry of personal information, and that generates the lead. That page carries some small print, which describes (in our view, accurately) PL as "a free service connecting UK consumers with financial advisers who are fully authorised and regulated by the FCA."

50. Someone whose interest is monetisable gets an email from PL with details of an adviser who will contact them. A counterpart email is sent to the adviser.

51. Someone whose interest is not monetisable gets an email that the Appellant cannot help them with their enquiry.

52. In either event, that is generally the end of the Appellant's involvement. It is down to the IFA to contact the enquirer. This does not only make commercial sense (because, if the adviser does not make contact, it will not be able to convert the lead) but it is also part of the Appellant's Terms and Conditions which its partners enter into. The Partner/IFA promises to contact the customer within a certain time frame; and that, if it does not, then the Appellant may, at its sole discretion, "reallocate" the lead to another partner. The Appellant has a TrustPilot score, and there is evidence that, if a complaint happens to be made to the Appellant, it will try to address the complaint by making contact with the adviser.

"Pension Advisers Near Me"

53. The offering of "Pension Advisers Near Me" is materially similar. The Appellant is seeking to capture persons with general retirement, general pension, drawdown, pension transfer/consolidation or pension review inquiries, because these are categories which suggest that the inquirer is someone who has pension money available to them. Conversely, inquiries about pension credits, state pension, NHS and civil service pensions, and benefit enquiries are sifted out: they are less- or non-monetisable.

Discussion

54. It seems clear to us that the Appellant's activity is "[t]the provision of intermediary services in relation to any transaction comprised in item 1, 2, 3, 4 or 6 (whether or not any such transaction is finally concluded) by a person acting in an intermediary capacity."

55. For the purposes of Item 5 “intermediary services” consist of bringing together, with a view to the provision of financial services (i) persons who are or may be seeking to receive financial services, and (ii) persons who provide financial services, together with (in the case of financial services falling within item 1, 2, 3 or 4) the performance of work preparatory to the conclusion of contracts for the provision of those financial services, but do not include the supply of any market research, product design, advertising, promotional or similar services or the collection, collation and provision of information in connection with such activities.

56. There is definitely a "bringing together" here. Persons use the Appellant's websites looking for advice. The advice being looked for obviously relates to financial services. The scope of the advice is identified with reasonable precision, by way of the buttons, and the contact details of those whose queries are likely to represent monetisable leads are provided to advisers.

57. Advisers want, and are willing to pay the Appellant, for those leads. Website users are told that the initial consultation will be free; but they know that it will be with a financial professional; and it is plain that, if an initial free consultation takes place, and is productive,

then the adviser will try to acquire that person as a paying client. So, the bringing together is with a view to the provision of financial services.

58. The Appellant is, for the purposes of Item 5, a person "acting in an intermediary capacity" because it is acting as an intermediary between persons who provide financial services, and persons who are or may be seeking to receive financial services (meaning the carrying out of any transaction falling within item 1, 2, 3, 4 or 6).

59. In our view, the financial services fall within Item 6.

60. Given that the intermediary services are for financial services within Item 6, then this does not require the bringing together to be coupled with ("together with") the performance of work preparatory to the conclusion of contracts because "together with" applies only to financial services falling within Item 1, 2, 3 or 4.

61. But even if we were wrong about that, and the financial services fall within Item 1, then it is still not necessary that the "bringing together" be done "together with" "the performance of work preparatory to the conclusion of contracts": this is exactly the point dealt with, and disposed of adversely to HMRC, by Judge Bishopp in *Debt Management Services*.

62. The Appellant is not conducting "market research", "product design", or "promotional or similar services". Nor is the Appellant "collect[ing], collat[ing] and provi[ding] information in connection with such activities".

63. The Appellant is not an advertiser or an advertising agency. The Appellant is not engaged in "advertising". It is not selling anything to the online 'customer', because to sell means to exchange goods or services for money. The Appellant is selling its services to its IFA partners, through its written, contractual, back-office, arrangements; and not through its public-facing websites. The Appellant does not get paid by the online customer, but by the IFA.

64. The websites themselves, viewed objectively, are obviously not advertisements in any conventional sense, because they do not promote (or even refer) to any named (or even identifiable) financial adviser. The highest it gets is that the customer will (if they get through the sift; the customer not even being told of the existence of this sift) get a free consultation with a financial adviser; but the customer does not know who that financial adviser will be; where they will be; when, or even how (eg online, phone or face to face) that free consultation will take place; or what length it will be when it does.

65. In our view, what PL is doing is squarely within the scope of the principles for exemption articulated and applied by Judge Mosedale in *Dollar*. PL was not negotiating; nor did it have agency powers to conclude a contract with the online inquirers. It was introducing.

66. Crucially, it was not acting as "a mere conduit" because it was assessing the inquirer's suitability, through its websites, and that is enough: see *Dollar* at [132].

67. There was a meaningful sift. It looks, to the untutored eye, simpler than it actually was. But, given the explanation of how it worked, the sift was operating as a real filter. It had to be, because PL's business was the provision of monetisable leads to IFAs. The sift was doing the job of sieving out potentially likely monetisable leads from those which were not.

68. Even if it could be said that this were a "partial" assessment ("partial", because PL, once it had made the referral to the IFA, generally had no further involvement; and there must have been a cohort of referrals to IFAs which, for whatever reason, beyond the knowledge and control of PL, did not end up 'taking'), the assessment was enough. PL is basically checking whether someone, in its informed view, is likely to be of interest to an

IFA. It was not necessary for PL to carry out a more complete assessment, in the sense of having to delve more deeply into the inquirer's financial circumstances.

69. PL therefore was doing enough - in our view, easily enough - to 'cross the line' from being a mere conduit or advertiser into being an intermediary introducing the sort of person from whom IFAs might be able to make money: that is to say, exactly the sort of people whom IFAs were looking for.

70. This is an intermediary service provided by PL acting in an intermediary capacity in relation to any transaction comprised in Item 6 ("the issue or dealing with any security").

71. It emerged only during HMRC's closing submissions that HMRC were apparently also seeking to argue that the IFA's services fell within Item 9 (The management of authorised open-ended investment companies, unit trust schemes, collective investment schemes, etc), meaning that the Appellant, even if an intermediary, was not providing intermediary services within the scope of Item 5.

72. It was rightly pointed out by Mr Wardle that HMRC (i) had not mentioned this in its Statement of Case; (ii) had not mentioned this in its Skeleton Argument (albeit, in fairness, both of those had been settled by Ms Hickey, and not Mr Simpson); and (iii) had not put this to Mr Ainsworth in cross-examination. In our view, it is contrary to the orderly and efficient progression and determination of appeals if important points are not raised until (i) after the evidence; and (ii) after the appellant has closed its case. Given that view, we disregard HMRC's position on that point. However, and lest this should fall for reconsideration, even if we had not disregarded that point, it would have failed. On the available evidence, the IFAs services are obviously not within Item 9 for the reasons advanced by Mr Windle.

OUTCOME

73. PL's appeal is allowed.

RIGHTS OF APPEAL

74. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is released. The parties are referred to "Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)" which accompanies and forms part of this decision notice.

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