



18 October 2010

Our ref: ICAEW Rep 106/10

By e-mail

The Right Honourable Lord Justice Munby
The Law Commission
Steel House, 1 Tothill Street
London SW1H 9LJ

Dear Sir James

Consultation on 11th Programme of Law Reform – Legal Professional Privilege

ICAEW welcomes the opportunity to comment on the consultation published by the Law Commission on 1 June 2010, on new law reform projects to be included in its programme of law reform.

ICAEW operates under a Royal Charter, working in the public interest. As a world leading professional accountancy body, we provide leadership and practical support to over 134,000 members in more than 160 countries, working with governments, regulators and industry in order to ensure the highest standards are maintained. Our thought leadership helps shape government thinking on regulatory policy and looks ahead at long-term issues for business and the accountancy profession.

We consider that the time is ripe for the Law Commission to undertake another study into the law of legal professional privilege.

The ICAEW's request is reinforced by last week's judgment in the case of *Prudential vs HMRC*, in which the Court of Appeal declined to extend the right to legal advice privilege at common law to the clients of tax advisers who are chartered accountants, even though lawyers giving identical advice to their clients would do so under the cloak of privilege. The Court, perhaps understandably, felt that this is a thorny question which can only be addressed by Parliament.

Since the Law Commission's last Report on Privilege in 1967 (Cmnd 3472), various reports have been considered by Parliament as to whether privilege should be extended to tax accountants (to date without any success) and there have been piecemeal extensions of privilege in limited form to various other professions, such as trade mark and patent attorneys.

In modern times, with the advent of new business structures (such as Multi-Disciplinary Partnerships), and bearing in mind that (as the Court accepted in *Prudential*) the vast majority of tax advice is given by accountants, ICAEW considers that (1) a thorough review and overhaul of the law of privilege is timely and (ii) the Law Commission is the body best placed to undertake this and to make recommendations as to how and on what basis privilege can be extended more generously to other professions where this is warranted by the interests of their clients.

We will separately submit a copy of your questionnaire on our proposal, but please also feel free to contact us should you wish to discuss any aspect of it or for our further views on the effect of legal professional privilege on the market in tax and other legal advice provided by skilled professionals.

Yours sincerely

Head of Business Law
ICAEW