



HM Revenue
& Customs

Raising standards in the tax advice market: call for evidence

Publication date: 19 March 2020

Closing date for comments: 28 May 2020

Subject of this consultation:	This document seeks views on how to raise standards in the tax advice market.
Scope of this consultation:	The call for evidence asks for suggestions about how to raise and maintain high standards of competence and behaviour in the tax advice market in order to protect consumers and improve compliance.
Who should read this:	Anyone who provides or receives tax advice. For example, accountants, tax agents, legal professionals, payroll professionals, bookkeepers, insolvency practitioners, financial advisers and their clients. Charities and other voluntary organisations that help people with their tax affairs. Software providers and employment agencies, umbrella companies and other intermediaries who arrange for the provision of workers to those who pay for their services, and end engagers of labour.
Duration:	The call for evidence will run for 10 weeks starting on 19 March 2020 and ending on 28 May 2020.
How to respond or enquire about this consultation:	Tax advice call for evidence document, Agent Policy, CIDD, HM Revenue & Customs, 9th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU, email taxadvicecallforevidence@hmrc.gov.uk
Additional ways to be involved:	HMRC will be holding a limited number of roundtable discussions with interested parties. Please email taxadvicecallforevidence@hmrc.gov.uk if you would like to be involved.
After the consultation:	Responses to the call for evidence will be used to inform any further policy design, which would be subject to a full consultation.
Getting to this stage:	HMRC held informal discussions with interested stakeholders during 2018 and 2019 about ways to raise standards in the market for tax advice and services. The government announced its intention to launch this call for evidence in its response to the independent loan charge review, published in December 2019.

Previous engagement: The government first published its strategy for tax agents in 2014. The latest version can be accessed here <https://www.gov.uk/government/publications/agents-strategy-an-overview>

The government published research into the role of professional bodies in the regulation of tax agents on 28 May 2019, available at <https://www.gov.uk/government/publications/role-of-professional-bodies-in-the-regulation-of-tax-agents>

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Foreword

At the Budget in March the government announced that it would be launching a consultation into raising standards in the tax advice market, as foreshadowed in its response to the independent review into the loan charge published in December 2019.

Many tax advisers are technically competent and adhere to high professional standards, and are a very useful source of advice and support to taxpayers. But as the loan charge review highlighted, the market for tax advice is not working as well as it should be. Some advisers are incompetent, some unprofessional, a few actively corrupt.

In the case of the loan charge, many of the taxpayers involved claimed that they had acted on advice from their tax agents, and now find themselves with no effective remedy against that bad advice.

As the government recognises, this is a complex market, and any set of remedies will need careful consideration. This call for evidence therefore sets out evidence of the problem, and discusses a range of options to improve this market. It seeks views from across the profession, and from clients, as to what steps can be taken in order to raise standards and provide taxpayers with the reassurance that the tax advice they receive is competent, professional and trustworthy.

The Rt Hon Jesse Norman

Financial Secretary to the Treasury

1. Introduction

1. The market for tax services is diverse. As well as accountants, many other professions and organisations provide advice to customers on tax, such as legal professionals, pension providers and voluntary organisations. Bookkeepers, payroll companies and even software providers play a wider role in providing services relating to tax. This market is explored further in chapter 3.
2. The majority of good advisers add value, both for their clients and for compliance. As recognised in HMRC's Charter¹, HMRC respects that customers may wish to have someone else deal with their tax affairs on their behalf, such as an accountant or relative. Tax advisers provide tax advice, complete returns and interact with HMRC on their clients' behalf.
3. However, there are a minority of tax advisers who do not provide a good value service to their clients. Some do not have the required expertise, and some do not adhere to the high standards their professional bodies expect of them. Some of this small group have a significant negative impact on their clients.
4. A partial regulatory regime operates in this market. Tax advisers who belong to a professional body are required to maintain professional competency and sign up to codes of conduct, most notably the Professional Conduct in Relation to Taxation (PCRT), although not all professional bodies incorporate the PCRT in their standards. Similarly, HMRC expects agents to adhere to the standards set out in its *Standard for Agents*² and is taking steps to ensure compliance.
5. However, anyone can set up as a tax adviser. And while they must be supervised for anti-money laundering purposes, there is no market-wide competence requirement or code of ethics except the HMRC *Standard for Agents*. HMRC has been discussing ways to raise standards with the profession for some time, but the issues that arise from not meeting those standards have been highlighted recently by the findings of the independent review into the loan charge.
6. The review found that many of the people who were affected by the loan charge were introduced to schemes by tax advisers, and recommended that the government should improve the market in tax advice and tackle the people who continue to promote the use of loan schemes³.
7. In response, the government announced that it would launch a call for evidence on what steps it could take to raise standards in the tax advice market.

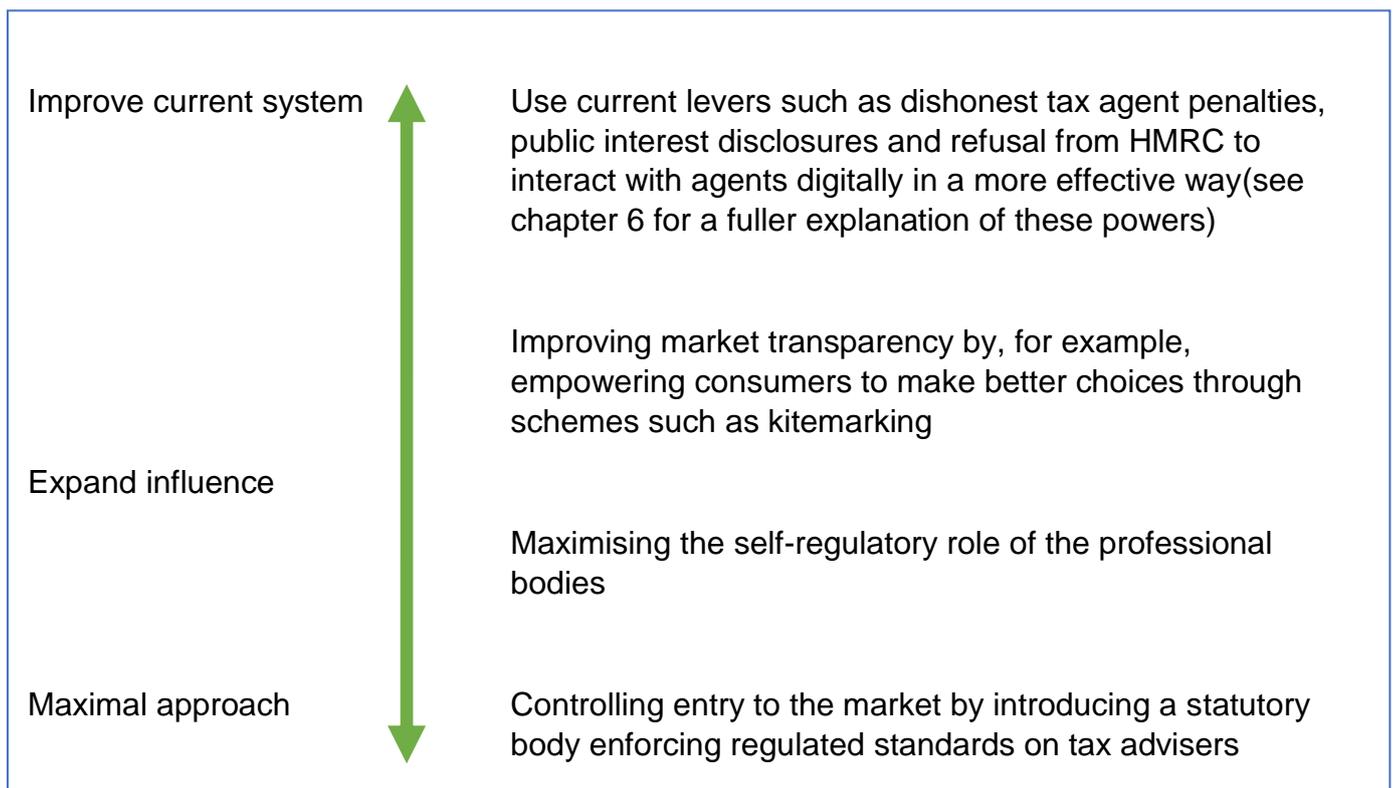
¹ The HMRC Charter can be accessed at <https://www.gov.uk/government/publications/your-charter/your-charter>

² HMRC *standard for agents* is available at <https://www.gov.uk/government/publications/hmrc-the-standard-for-agents/hmrc-the-standard-for-agents>

³ The Government response to the independent review of the loan charge https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/854490/20191219_Government_response.pdf

8. Given that the market is diverse and any action has the potential to impact customers and the wider economy, this call for evidence seeks evidence on the case for intervention and on potential steps that could be taken to raise standards in both the tax advice and wider tax services market⁴ and give taxpayers confidence in the quality of the advice they receive.
9. The government is asking for **views on a range of potential approaches to tackling issues of poor performance in the tax advice and wider tax services market**. These approaches vary from improving HMRC interventions to full regulation of the market as shown in figure 1.

Figure 1: the spectrum of potential approaches⁵



How to get involved

10. The government intends to use this call for evidence to understand the issues and explore options for raising standards.
11. **This call for evidence asks a series of questions but the government is also interested in general responses on the themes explored in this document.** HMRC will be contacting a range of stakeholders who are likely to be affected by any reform in this area.

⁴ All references to the tax advice market include tax advice and tax services

⁵ Figure one is illustrative only and does not represent the full range of approaches: these could be implemented singly or in conjunction

12. If you would like to be involved or contribute written views please contact HMRC at taxadvicecallforevidence@hmrc.gov.uk. HMRC would welcome comments by 28 May.
13. If the government decides to proceed with any reform in this area it will be subject to further consultation. The detail and timetable for consultation will depend on the outcome of discussions HMRC will have with stakeholders following publication of this call for evidence.

2. The scope of this call for evidence

14. The government recognises the complexity and variety of the tax advice market, and that these services extend beyond the UK tax system to advice provided outside the UK. It also recognises that within the wider tax services market there are complex ecosystems and supply chains, and it may be hard to clearly differentiate between tax service and tax advice. Accordingly, this call for evidence covers both tax advice and wider tax services.
15. The current approach to maintaining standards in the tax advice market is based on a system of professional bodies, although membership of a professional body is not obligatory. This approach has been in its current form for many years without significant intervention but the government believes there is evidence that this is no longer sustainable.
16. HMRC has also published standards (see Annex B) that set out what it requires of agents. These standards are intended to mirror the PCRT, and cover:
 - integrity
 - professional competence and due care
 - professional behaviour
 - tax planning, which includes that agents:
 - must act lawfully,
 - should represent all relevant facts clearly in any disclosure
 - must not create, encourage or promote tax planning arrangements that set out to achieve results contrary to the intention of Parliament or that are highly artificial
 - professional judgement and appropriate documentation.
17. The government considers that the HMRC *Standard for Agents* covers the right areas in relation to the standards expected of all tax advisers, in line with the principles set out in the PCRT. The government would welcome views **on any areas of ambiguity around the current standards and any issues that they do not address.**
18. In order to ensure the problems and potential solutions are fully understood this call for evidence will explore the following:
 - defining tax advice and tax services
 - the value added by good tax advisers
 - the impact of poor practice
 - consumer protection
 - the impact of government interventions in the market

- domestic and international examples of regulation
- approaches to raising standards.

19. The outcomes the government is seeking from any intervention in the market are:

- market transparency, so that taxpayers have the information they need to choose an adviser that meets their need, and are able to steer clear of unsuitable providers
- that customers who want to engage a tax adviser are able to access reliable advice from an appropriately competent professional who maintains high ethical standards
- market access is preserved so that customer can continue to get reliable advice should they wish to
- to enhance tax compliance.

20. The government will also be publishing a call for evidence on the future approach to tackling disguised remuneration tax avoidance schemes.

Question about the HMRC standard for agents

1. Is the HMRC *Standard for agents* comprehensive enough to provide a baseline standard for all tax advisers?

3. Defining tax advice and tax services

21. This call for evidence covers both advisers who provide advice and those that provide tax services.
22. There is no standard definition of tax advice or tax services. There are some legal definitions of those who provide advice on tax; these generally apply to specific functions or legislation, as detailed in figure 2.

Figure 2: definitions of tax agent or adviser in legislation

Finance Act 2012 Schedule 38, part 1, 2 (1) to (5)⁶ defines a tax agent as an individual who in the course of business assists other persons with their tax affairs. This related to dishonest tax agent penalties.

There are also definitions relating to anti-money laundering.

The **Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017** state that: 'a tax adviser means a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services'⁷

The **fifth Anti-Money Laundering Directive** defines a tax adviser as a firm or sole practitioner who by way of business provides material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party, when providing such services

The diversity of the market

23. The tax advice market is diverse and includes a variety of different professions, in addition to advice provided by HMRC. As well as accountancy firms and agents for whom providing tax advice market is their primary function, there is a significant market in tax advice that exists in a more informal way or as an addition or complement to other services or functions.
24. HMRC has good data and insight on those tax advisers it interacts with. Professional bodies also hold data on those tax professionals who interact with and work to professional standards.
25. However, both government and the profession also know that there is a significant market in tax advice that does not interact directly with HMRC and is not part of a professional body. This includes:

⁶ Link to Schedule 38 of Finance Act 2012 <http://www.legislation.gov.uk/ukpga/2012/14/schedule/38/enacted>

⁷ Link to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 <http://www.legislation.gov.uk/uksi/2017/692/contents>

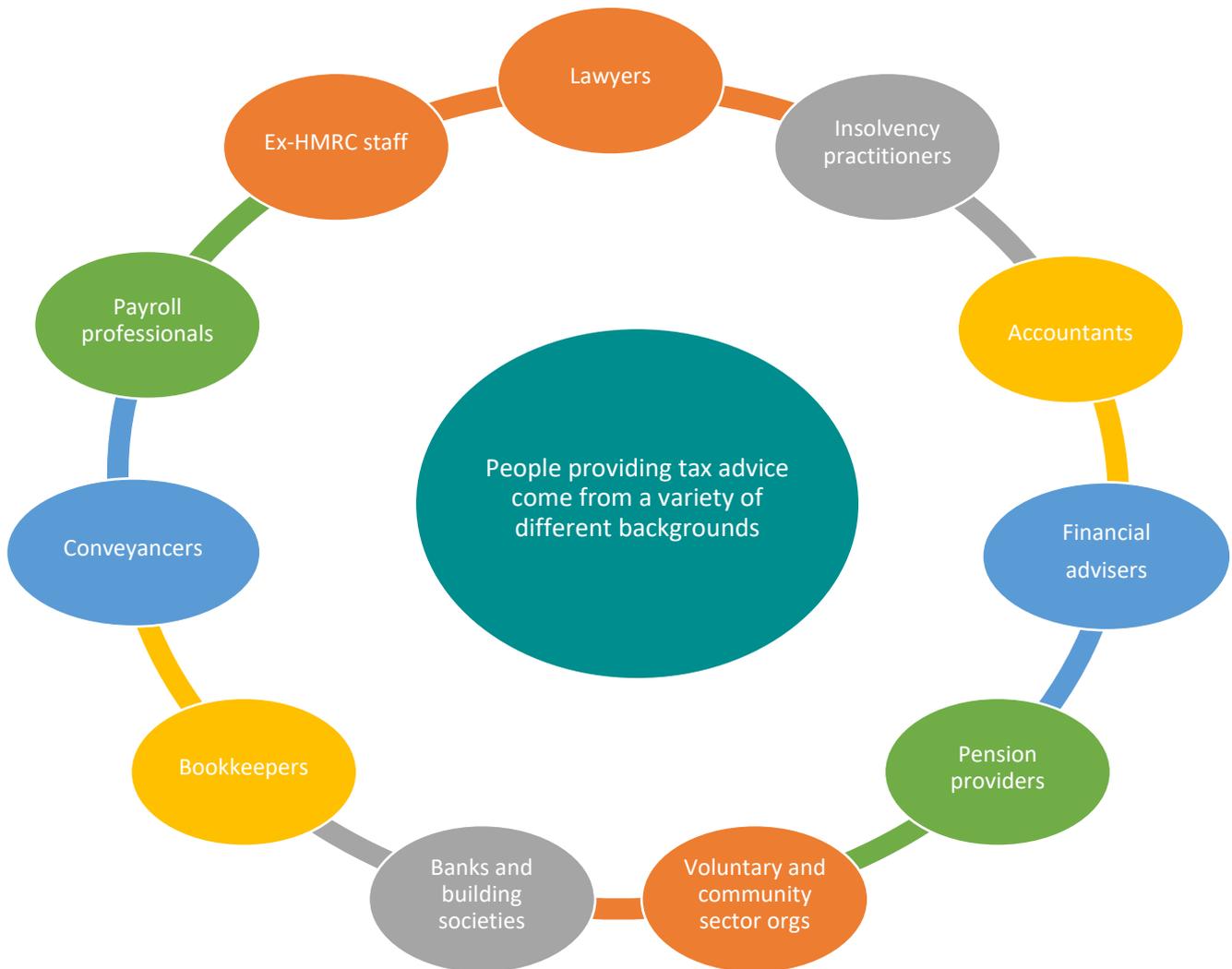
- an employer’s payroll team providing advice to an employee on a tax code
- an employer taking advice from a friend on a certain legal structure to recruit new staff
- money saving websites which link to adverts promising to secure users a higher proportion of their take home pay
- the voluntary and community sector
- boutique financial advice.

26. Some advisers provide advice in-house, for example in large companies. Some tax advisers are paid and some are unpaid, for example friends and family providing informal advice and agents working pro bono.

27. Further examples of tax-related services include bookkeeping, and provision of financial services or products that have tax implications.

28. Figure 3 provides a non-exhaustive illustration of the many different types of occupations who can be involved in providing advice on tax such as lawyers, accountants, financial advisers, payroll professionals and pension providers.

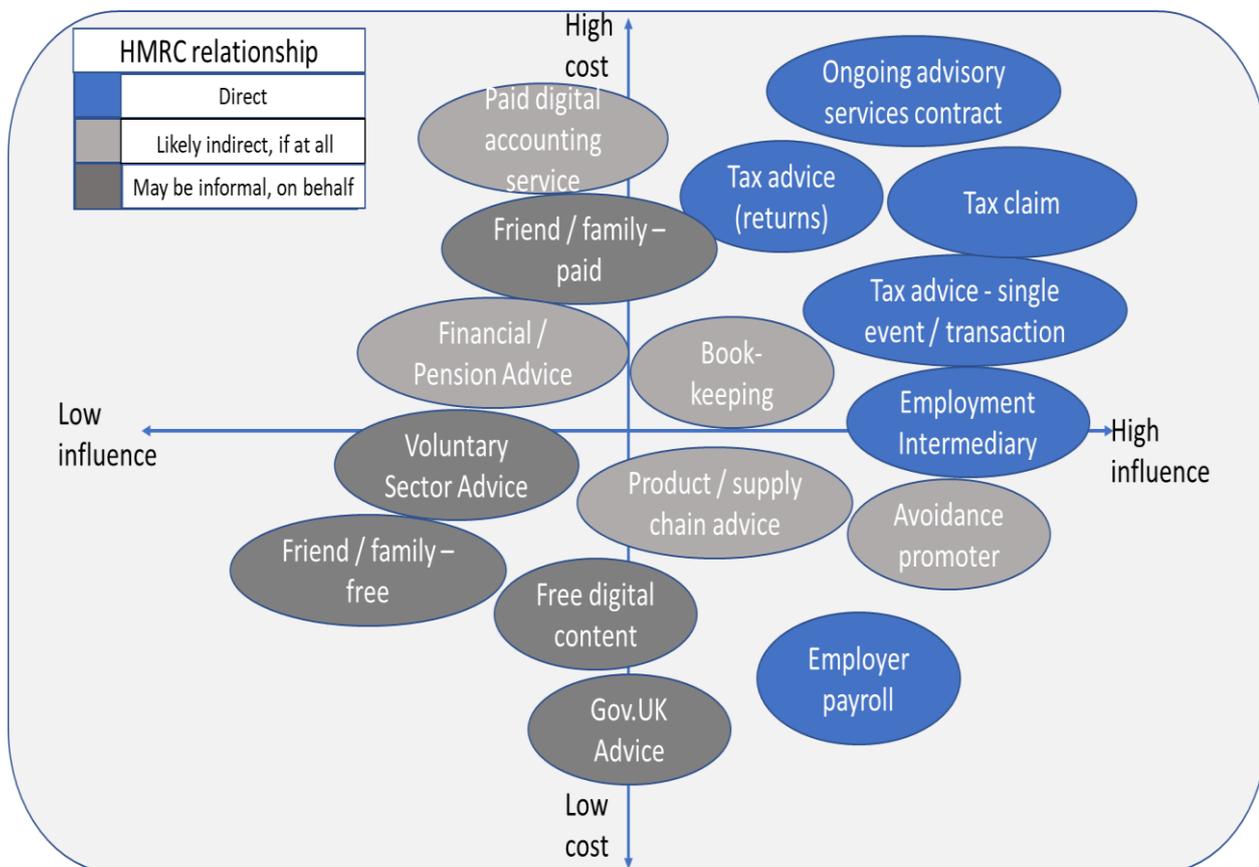
Figure 3: illustration of the diversity of the tax advice market



The work carried out by tax advisers

29. There is a difference between the type of work that tax advisers carry out, with some advisers seeing a distinction between those that provide advice but do not transact directly with HMRC, and those that provide services and interact with HMRC systems on behalf of their clients.
30. For example, an adviser compiling a return, calculating liabilities and filing that return has a direct relationship with HMRC; they would see themselves as providing both tax advice and tax services.
31. Whereas an employment agency guiding a contractor to work through a particular company structure not only does not have a direct touchpoint with HMRC but also may not see themselves as providing tax advice, instead just making arrangements about how individuals are paid. Similarly, the individuals may not see that they are receiving tax advice.
32. Advice or services can also be provided on a one-off or on an ongoing basis.
33. Figure 4 provides a representation of the types of work carried out and the relationship with HMRC. The diagram shows the various types of tax advisers categorised by their costs, influence and relationship with HMRC.

Figure 4: advice and services and their relationship with HMRC



Offshore advisers

34. Some customers use advisers who are based outside the United Kingdom. This call for evidence covers the market for advice and services in respect of advisers both on and offshore.

Conclusion

35. Given the differences outlined in this chapter, it is likely that there is no 'one-size-fits-all solution' and it will be crucial to assess any options to ensure that they do not adversely impact on the majority of tax advisers who already provide a high standards of service. Therefore the government would welcome answers to the following questions to help us understand the scope and interlinkages of this market.

Questions about the tax advice and services market

2. What clear distinction can be drawn between tax advice and tax services?

3. From your professional point of view, how do standards differ between different types of tax advice? Could you provide examples?

4. Please share any data which would help develop assumptions on the market share, volumes or impact or on the value added by different sectors of the market?

4. Good tax advisers add value

36. Competent tax advisers with high standards help customers access reliable tax advice and ensure that they pay the right amount of tax at the right time. Many have expertise and not only carry out tax services such as filing returns but also provide high quality advice to their clients helping them navigate the tax system, for example promoting take-up of the reliefs that government wants customers to use.
37. Many agents adhere to the high ethical standards outlined in the Professional Conduct in Relation to Taxation (PCRT), developed by seven professional bodies⁸. This includes standards in relation to agent integrity, objectivity, professional competence and due care, confidentiality, professional behaviour and tax planning. This has played an important role in raising standards for those agents who are required to follow its principles.
38. HMRC has long recognised the value of good tax advisers in helping their clients to get their tax affairs right. HMRC's *Agents Strategy* published in July 2017⁹ states:

We welcome the use of agents to represent customers where they add value in helping their clients to get their affairs right.

Agents can play a key role in helping people meet their obligations, while also supporting us in our 'one to many' relationship with customers.

39. Good advisers are vital to an efficient tax system. They help customers to:

- keep good tax records, either through keeping those records themselves or providing guidance on suitable systems and processes
- carry out tax calculations
- file returns and organise payments.

40. As well as providing general tax advice, advisers also play a role in mediating between HMRC and customers, acting on behalf of the client and helping to explain changes in the tax system to their clients such as Making Tax Digital. This intermediary role helps customers avoid errors in their tax affairs and therefore improves compliance.

41. This is shown by the data: HMRC statistics show that an estimated 72,000 agents represent at least 12 million of HMRC's customers, providing tax advice, completing returns, and interacting with HMRC on their behalf. Agents are used by 72% of small¹⁰ 88% of mid-sized,¹¹ and 98% of large businesses.¹² Around 47% of individuals paying through self-assessment and about 58% of self-employed individuals use an agent.¹³

42. HMRC's customer insight work shows that its customers want to use agents because they want to concentrate on running their businesses rather than engaging with HMRC: customers rely on their agent to provide reassurance that their tax affairs are correct. At

⁸ The PCRT bodies are AAT, ACCA, ATT, CIOT, ICAS, ICAEW and STEP

⁹ Link to the HMRC strategy <https://www.gov.uk/government/publications/hmrc-strategy/our-strategy>

¹⁰ HMRC Individuals, Small Businesses and Agents Customer Survey 2018

¹¹ HMRC Mid-size business survey 2018

¹² HMRC Large business survey 2017

¹³ HMRC Individuals, Small Businesses and Agents Customer Survey 2018

the same time, HMRC relies on feedback from agents to help shape delivery of policy changes and smooth running of processes.

43. Overall, the expertise of competent tax advisers is essential in ensuring that customers access good tax advice and that they pay the right amount of tax at the right time. It also benefits HMRC by helping to reduce error rates and unnecessary customer contact.
44. In developing ideas around intervention in the market, the government wants to ensure that good advisers are able to continue to operate in the market and build on this positive contribution, and that government is able to promote this. This will bring positive impacts for consumers, HMRC and tax compliance, and help maintain a good reputation across the profession.
45. Recognising customer preferences to deal with advisers the government is also interested in **exploring with professional bodies whether there is scope for advisers to undertake more pro bono work in order to help consumers who need extra support.**

Questions about good advisers

- 5. What more could the government do to promote the work of good advisers?**
- 6. Where else do good agents add value - for customers, HMRC and the wider economy? How could this be extended further?**
- 7. What are the general characteristics of good and bad advisers?**

5. Evidence of the impact of poor practice in the tax advice market

46. There are some advisers who do not provide a good quality service to their clients. This may be because they lack competency or have not kept up with technical changes, are dishonest, or do not hold relevant specialist expertise. Some tax advisers do not adhere to the high ethical standards that their professional bodies require of them, especially when providing advice on models such as disguised remuneration or other avoidance vehicles.
47. HMRC is determined to continue to tackle promoters and avoidance schemes. As part of the loan charge response the government announced further measures to tackle promoters of avoidance schemes that will reduce the scope for promoters to market tax avoidance schemes.
48. HMRC has also seen evidence of poor adviser behaviour impacting on clients in other parts of the tax system. This covers the spectrum from advisers who fail to register to submit their own returns, those who make calculation errors, to those who submit entirely false returns or who defraud clients and HMRC. HMRC has also seen advisers who have:
- taken a large cut of the money due (sometimes over 40%) to mediate expense claims the customer could easily make themselves for free, and then provided no help to the client if HMRC questions the claim. This is contrary to HMRC Standard 2.3: *'work to prevent errors in their clients' tax calculations or claims, taking particular care not to include figures in returns or claims which are not sustainable and advise their clients to take steps to set matters right where they find errors in their tax affairs'*
 - charged high fees to sell avoidance schemes, insisted that the client signs a contract to confirm they will not sue the adviser if there are problems with HMRC, and then disappeared. This has left customers unsure where they stand, facing large tax bills potentially with interest and penalties and unable to access any support or documentation to help them resolve their tax position. The only recourse they have is to pursue the promoter through the courts. This behaviour breaches the HMRC Standards on tax planning and Standard 2.3 which, as set out above, requires the agent to advise their clients to set matters right
 - advertised an avoidance scheme using the HMRC logo, claiming HMRC had known about the scheme for over 20 years and claiming it was not tax avoidance. This breaches Standard 2.1: *'not suggesting or implying that HMRC endorses or regulates their role as an agent'* as well as the tax planning Standards.

Figure 5: Illustrative examples of breaches of the HMRC Standard for Agents

Example 1: an agent advertised they could submit repayment claims for clients on a 'no win no fee' basis for flat rate expenses via P87 claims. The agent did not check whether the claims were allowable or if the individual was entitled to a repayment then issued numerous claims to HMRC where the individual was not paying tax and therefore was not entitled to a repayment claim. This resulted in clients being required to pay back the tax owed that had been incorrectly paid. This is contrary to HMRC Standard 2.2 *'work to prevent errors in their*

clients' tax calculations or claims, taking particular care not to include figures in returns or claims which are not sustainable.'

Example 2: an agent submitted their clients' VAT returns claiming the flat rate scheme. The agent knowingly did not apply the rules as intended which resulted in the clients being allocated to the incorrect flat rate scheme resulting in the VAT paid being understated. This resulted in the clients being charged interest and penalties on the additional tax that was due. This breached HMRC Standard 2.3 '*comply fully with tax law and regulations relating to their professional activity, including registering under, and adhering to, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017*'.

Example 3: the agent asked their clients to sign a deed of assignment that covered several tax years and all repayments but did not make it clear to the client that it covered any repayment they may receive from HMRC in the future. The agent correctly received the repayment claim for the flat rate expenses and they subsequently paid the repayment to the client less the agreed agent's fee. The client subsequently made an SA return that resulted in a repayment claim. As the client had signed a deed of assignment the repayment was issued to the agent who deducted their firm's fee and VAT and paid the balance to the client. The client, who was left out of pocket, complained to HMRC to state that they understood the deed of assignment to be in respect of the flat rate expense claim only. This is contrary to HMRC Standard 2.3 '*have clear terms of engagement with their clients.*'

Example 4: a company that offered film advisory services to investors had one of its investment products challenged by HMRC and litigated. The courts decided that the investment product was a tax avoidance scheme and ruled in HMRC's favour. The promoter terminated all its existing customer services agreements and would only provide services to customers who were willing to contribute to the costs of future litigation. Other clients were left unsupported, facing substantial tax liabilities and potentially unable to exit the avoidance scheme. This example breaches HMRC Standards relating to tax planning and 2.2 '*advise their clients to take steps to set matters right where they find errors in their tax affairs (if the client is unwilling to correct matters, the agent should consider ceasing to act for them - if the agent continues to act for them, this could risk enabling tax evasion that may be subject to criminal investigation)*'.

Example 5: a firm of conveyancing solicitors, engaged in arrangements involving contrived steps on behalf of their clients, which sought to artificially change the nature of the land transaction from a normal, chargeable transaction into an exempt transfer. The Solicitor's Regulation Authority (SRA) has issued warnings that solicitors must, when handling client transactions which involve the implementation of tax avoidance schemes, make it clear that that the arrangements might not deliver the tax outcomes that were envisaged and may be challenged. The firm submitted Stamp Duty Land Tax (SDLT) returns to HMRC which reflected the purported effect of these transactions and, when challenged, sought to argue that the use of a scheme was a matter between their client and their tax advisers and was specifically excluded from the retainer. The clients were left with unexpected tax bills as a result. This example breaches HMRC Standards relating to tax planning.

Example 6: the agent was involved in marketing schemes to contractors and agencies in which workers were placed into managed service companies (MSC) administered by the promoter of the scheme, but without the anti-avoidance legislation being operated. The marketing material promised contractors significant tax savings without explaining the pitfalls. HMRC put out advice not to use the scheme but people were still sold MSCs. Some

contractors complained to the press that they had been misled by the agent. This is contrary to the tax planning Standards.

49. As can be seen from these examples, poor behaviour and poor expertise by advisers directly impacts clients. It also has an impact on HMRC resources and reduces compliance.

Questions on the impact of poor advisers

8. Are there any parts of the tax advice market where there are particular problems? Please share any evidence you have.

9. Do you have any evidence about the impacts of unqualified agents or agents that don't meet standards?

10. How could HMRC and the professional agent community work together to identify poor practice at an early stage?

6. The impact of government-supported interventions in the market

50. HMRC already plays a role in setting standards through managing the compliance of those tax advisers it interacts directly with via software, IT systems and statutory returns.
51. HMRC first published its *Standard for Agents*¹⁴ in February 2016. This sets out HMRC's expectations of agents and was updated in January 2018 to include requirements for providing advice on tax planning and make clear that HMRC expects agents to comply fully with anti-money laundering regulations. The Standard applies to all individuals and businesses involved in professionally representing or advising taxpayers, both those who transact with HMRC and any professional who advises or acts on behalf of others in relation to their tax affairs, located both on - and offshore.
52. The professional bodies set their own standards, most notably the PCRT. Other regulated professions such as legal professionals also have their own standards of conduct and ethics.
53. HMRC carries out direct compliance interventions that target poor adviser behaviour and competence. For example:
- a) (i) Since working with the accountancy profession to strengthen their code of conduct (Professional Conduct in Relation to Taxation) and the banking sector, the vast majority of major accountancy, legal and banking firms and others who are members of the professional bodies no longer design or sell mass marketed avoidance schemes. This leaves a smaller pool of promoters who are mainly unregulated, unlike other providers of financial services and advice.

(ii) HMRC is always looking for opportunities to disrupt promoters business model and dissuade customers from buying their schemes. Its strategy is to stop promoters from selling tax avoidance. Activity includes:
 - the proportionate use of our powers (such as DOTAS and POTAS) to penalise those who enable avoidance
 - the disruption of the supply channels that promoters use to sell their products
 - proactive interventions and contact with promoters and their intermediaries
 - collaborative work with agents and intermediaries so that they help their clients to not fall into the avoidance trap
 - the mounting of criminal prosecutions where appropriate.
 - b) HMRC works with tax advisers to address taxes at risk by providing educational support to help ensure the agent and their clients get their taxation affairs right first time. Where errors are identified, HMRC works with the adviser to amend clients'

¹⁴ See Annex B for the text of the HMRC *Standard for Agents*

previous returns thereby reducing the burden on the agent's customers, the agent and HMRC.

- c) Where HMRC identifies poor adviser behaviour, it aims to work in partnership with the adviser to improve standards. As part of this process, where necessary HMRC will consider a range of available powers and sanctions¹⁵ including Schedule 38 of the Finance Act 2012 (Tax Agents: dishonest conduct) and Section 20 of the Commissioners of Revenue and Customs Act 2005 (public interest disclosures for members of professional bodies).
- d) Where HMRC has engaged with advisers to improve standards and those standards do not improve, it will consider removal or suspension of the agent code (this allows the adviser access to HMRC online services).
- e) Compliance with the Money Laundering, Terrorist Finance and Transfer of Funds Regulations is one of the standards HMRC expects tax agents to meet. These regulations require tax advisers (among others) to carry out risk assessments of their business, identity checks on their customers (included ultimate beneficial owners of corporate entities) and ongoing reviews of transactions in order to spot suspicious activity. Any suspicious activity should be reported to the National Crime Agency.
- f) HMRC is one of 14 UK anti-money laundering supervisors whose supervised population includes paid tax agents. Its role is to ensure that all the businesses it regulates are complying with this legislation. HMRC does this by carrying out a range of interventions to test compliance. Where HMRC finds non-compliance it draws on a wide range of enforcement options to either encourage better compliance standards or hold rule-breakers to account. These options include fines, suspensions, prohibitions and prosecution. HMRC also works to ensure that all tax agents are registered for supervision with either HMRC or a professional body supervisor, and with professional body supervisors of tax agents to share best practice, align standards and ensure there is a joined-up approach to UK anti-money laundering.
- g) HMRC has identified a number of tax advisers who submit high levels of claims that have no merit. It is working closely with them to reduce the levels of these claims through education and the review of claim forms and advertising.
- h) From 1 October 2019 HMRC launched its Business Risk Review+ (BRR+) which requires the HMRC customer compliance manager (CCM) of a large tax adviser to monitor and assess whether HMRC's *Standard for Agents* is being met.
- i) HMRC carries out activity to look at charity agents and representatives suspected of abusing the Gift Aid repayment scheme. These activities have identified a range of inaccuracies with some relating to the agent acting dishonestly and some due to lack of due diligence or professionalism. HMRC provides education to agents on the standards it expects. HMRC works with the Charity Commission to inform charity trustees of HMRC's agent standard so that the trustees can be better informed when choosing an agent.

¹⁵ Some of the powers and sanctions HMRC has available to deal with poor behaviour by agents are described in section I.

- j) HMRC has introduced new procedures for agents making research and development claims in amended returns with the aim of protecting companies from costly errors by low quality agents. This has restricted the ability of 'specialist' agents, often working on a 'no win no fee' basis, to submit poor claims without the knowledge of the company or authorised corporation tax agent.
- k) Access to HMRC digital systems is only permitted for agents who can demonstrate that they fulfil certain criteria such as that they are supervised for anti-money laundering purposes, have a UK address, and an HMRC agent reference number.
- l) Other interventions that HMRC has available include:
 - for the most extreme cases, usually when a criminal prosecution has taken place, the power to **refuse to deal** with an adviser at all. The agent will have engaged in persistent unacceptable behaviour, or behaviour which is a significant threat to the Exchequer
 - **dishonest tax agent penalties**, imposed on an agent who has engaged in dishonest behaviour. This can mean a penalty of up to £50,000
 - where an agent is a member of a professional body and their behaviour breaches professional body misconduct rules, HMRC can make a **public interest disclosure** to the professional body for that body to carry out its disciplinary process as appropriate
 - **promoters of tax avoidance schemes legislation**, which allows HMRC to deal with promoters by firstly issuing a conduct notice. If that is breached HMRC can apply to a tribunal for a monitoring notice. This means the adviser is monitored and is subject to extra reporting requirements, penalties and their name may be made public
 - the use of existing **criminal offences** such as being knowingly involved in fraud or evasion of tax, including aiding and abetting, as well as the use of money laundering offences, against both individuals and companies where there is evidence to do so.

54. Other parts of government and local authorities also play a role in maintaining and improving standards. For example:

- Advertising Standards Authority (ASA). HMRC will refer tax advisers to the ASA who are suspected of false advertising
- Trading Standards. Consumers are able to refer poor advisers to their local trading standards authority in certain circumstances, such as if there are unfair trading practices
- Some accountancy professional bodies have agreed to be overseen for accountancy by the Financial Reporting Council. If a consumer is unhappy with one of these professional body's handling of a complaint they can complain to the FRC who can review the handling of the complaint. The FRC cannot overturn the result, however in circumstances which meet a high public

interest and misconduct threshold the FRC can undertake its own investigation. The FRC is due to be replaced by a new regulator the Audit, Reporting and Governance Authority (ARGA).

Questions on interventions

11. How effective are HMRC's interventions? Are there other interventions that the government should be using to tackle poor practice?

12. Is there more that HMRC could do to manage agent performance through its transactional services (such as IT systems)?

7. Consumer protection

55. The government believes that there is a case for intervention in the market for tax advice in order to protect consumers. With over 12 million customers represented by tax advisers it is a significant population with diverse needs. Most regulated advisers will hold professional indemnity insurance but there is little in place to support consumers, especially when dealing with unregulated advisers. Where consumers are employing an adviser who does not belong to a professional body, generally the only recourse they will have is the ability to instigate a claim on the basis of negligence: this is dependent on the adviser still being in business and the consumer having the funds to pursue legal action.
56. HMRC's insight work has shown us that consumers are generally unaware that some sections of the market are self-regulating or that there is no requirement for their adviser to have specific expertise in order to provide advice.
57. HMRC research¹⁶ also shows that most consumers when choosing a tax adviser went by recommendation, typically by word of mouth from people in the business network or friends and family. Clients thought that going by recommendation meant the adviser could be trusted to do a good job because other people had a good experience with them.
58. The same research found that businesses thought relevant qualifications important but tended not to ask as they assumed all advisers had them and belonged to a professional body. Customer insight also tells us that cost is frequently the leading factor in how consumers select an adviser.
59. HMRC is also aware that consumers are seeking tax advice online by searching for words such as 'contractor' or 'umbrella company' where frequently the top search results lead them to promoters of avoidance and not to HMRC guidance.
60. As some consumers are choosing advisers in this way, there is a risk that they will be unprotected in the event that something goes wrong if they opt for an adviser that (unknown to them) has no qualifications or does not belong to a professional body.
61. The tax system is designed so that the taxpayer remains responsible for their actions and tax due. However, if a taxpayer has employed a tax adviser to act on their behalf who then makes an error or provides poor advice, the taxpayer as a consumer should be able to access a robust complaints process to put right any problems. This is possible where the tax adviser is a member of a reputable professional body with a robust complaints and disciplinary process, but a substantial minority (around one-third of agents) are not.
62. The government is mindful that increased protection for consumers should not erode the principle that the taxpayer remains accountable for their own tax affairs and welcomes **views about how this balance can be maintained**.
63. Whilst it is clear that there is a case to take forward to improve consumer protection, it is important to fully understand the failure in the market we are seeking to address.

¹⁶ Link to HMRC research about how small and mid-sized businesses choose a tax agent https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/443794/ChoiceTaxAgents_Report373.pdf

Consumer protection could take many forms and could be provided by different organisations as well as the government.

64. The government welcomes views on **how it may be possible to provide better support to consumers, and where that support should come from.** The government is also interested in views on **how better to support consumers who need extra support.**

Questions about consumer protection

13. How might increasing consumer protection affect individuals taking responsibility for their own tax affairs, and what behavioural changes might you anticipate?

14. Who should take the primary role in improving consumer protection, government, the profession, or another third party?

15. What do professional bodies currently do in respect of customers who need extra support?

8. Other market interventions

Government-led regulatory interventions

65. There are also lessons to be learned from other interventions in the market. The box below provides some examples of different regulatory interventions undertaken by government bodies.

Financial advisers: following a review into raising standards and improving public confidence in financial advice, the Financial Services Authority (now **Financial Conduct Authority**) introduced strengthened regulation of the financial advice market. All financial advisers must now sign up to a code of ethics, be qualified (to level 4) and have up to date knowledge (which is accredited).

The Charity Commission: the Charity commission has powers to: issue official warnings, actively disqualify people from serving as trustees, and remove a trustee who is disqualified from office without the need to open an inquiry.

The Fundraising Regulator: Launched in 2006, this is an independent, non-statutory body aimed at building public confidence and ensuring consistent fundraising standards. Opt-in regulations (with reserved ability in legislation for government to establish a statutory body).

Security Industry Authority (SIA): A non-departmental public body of the Home Office established in 2003 to regulate the private security industry. It regulates the compulsory licencing of individuals in some areas of the security sector, alongside a voluntary Approved Contractor Scheme. To be licenced individuals must prove they are properly qualified.

The Insolvency Service: in October 2015, the government introduced regulatory objectives for the insolvency practitioner profession, alongside new powers of sanction for the Secretary of State. These powers are exercised via the Insolvency Service, which acts as oversight regulator on behalf of the Secretary of State. The regulatory objectives were designed to provide insolvency regulators with a clearer, enhanced framework within which to carry out their functions of authorising and regulating the insolvency profession. The overall aim of the regulatory objectives was to improve confidence in the regulation of insolvency practitioners.

66. Government regulation is only one in a range of interventions that could be made.

Questions on other market interventions

16. Is there anything the government can learn from other examples of market intervention, including those led by industry?

17. Are there other enforcement or regulatory agencies that you think should have a role in this area, and what are the advantages, disadvantages, benefits or risks of any of these organisations taking on a regulatory role?

International models

67. Some countries require tax advisers to register with a statutory regulator which sets qualification requirements, runs a complaints and disciplinary process and has some form of fit and proper person test, as described below.
68. The government is interested in views from stakeholders on the **pros and cons** of how international models could work in the UK.

International models

Australia requires all paid tax practitioners to register with the Tax Practitioners Board. Australian tax practitioners must satisfy a fit and proper person test, have relevant qualifications and experience and have appropriate professional indemnity insurance cover to protect consumers.

In **Germany** all tax advisers and tax adviser companies are mandatory members of one of the 21 regional tax adviser chambers. All tax advisers are required to be professionally qualified and to take part in continuing professional development.

Similarly in the **Czech Republic** all tax advisers are mandatory members of the Czech Chamber of Tax Advisers. There is a minimum qualification by law before an individual can use the title tax adviser or undertake any work as a tax adviser – they must have a university degree and pass an exam set by the Czech Chamber.

In **Norway**, accountants and accounting firms must be authorised by the Financial Supervisory Authority of Norway. To be eligible for authorisation, accountants need to hold a bachelor's degree in business economics and administration with concentrations in specific subjects, as well as two years of relevant job experience within the past five years. An authorised accountant also has to submit proof of completion of at least 77 continuing education hours over the course of three calendar years.

In **Portugal**, the tax authority does not have a professional standard for agents. However, all certified accountants have to belong to a single professional body, the Certified Accountants Association. This applies standards to its members and takes disciplinary action if an agent breaches the code. The tax authority will refuse to deal with any agent who has been subject to suspension of three years or more, or who has been expelled.

Question on international models

18. Do you know of examples of effective law, or enforcement, from other countries or jurisdictions?

9. Approaches to raising standards

Framework for considering approaches for reform

69. It is important to note that, in looking at potential areas to explore, the government wants to raise standards and improve accountability in the tax adviser profession but does not want to remove responsibility from taxpayers for their own tax affairs. Neither does it want to adversely impact the majority of advisers who already demonstrate the highest standards.
70. Any proposal should work towards reinforcing a healthy and efficient tax system, the key elements of which are: improving taxpayer experience, enhancing compliance, lowering customer costs and costs to HMRC, and strengthening fairness and trust in tax advice. It should also meet the specific objectives set out in paragraph 19 of this call for evidence.

Looking ahead

71. The market for tax advice is evolving, particularly with the growing influence of artificial intelligence and machine learning. This may especially impact the more transactional parts of the tax adviser profession as software takes the place of traditional accountancy practice such as calculations or return filling and filing. Any intervention in this market will require future-proofing to take account of these changes.

Question about the future

19. What future changes do you consider will most impact the standards expected of the tax advice profession?

Areas to explore

72. There are a number of potential approaches which could be considered and these are described below. These approaches are not mutually exclusive and could each potentially be considered in conjunction with any of the others.
73. The government does not endorse any particular approach and welcomes views on the impacts and benefits of each approach outlined below as well as information on any other approaches not listed here.

Option A: Better use of HMRC's or government's current powers

74. Chapter 6 provides a list of HMRC's current powers and interventions.

Questions on Option A

20. What other examples are there of existing powers (HMRC or other government powers) that could be used to tackle poor tax adviser behaviour?

21. What is your view of the effectiveness of HMRC's current powers?

Option B: improve rights of recourse for consumers

75. Customers could be better empowered to deal with problems with their tax adviser by ensuring they have robust rights of recourse when something goes wrong.

76. Clients of agents who belong to a professional body or who are part of a regulated profession usually have a right of recourse. Clients can complain to the regulator or body and rely on a robust investigation and disciplinary process. The professional bodies usually require that their member holds an appropriate level of professional indemnity insurance to cover potential claims from unhappy clients.

77. Clients of advisers who are in the unsupervised sector of the market, however, are unable to benefit from these processes. They may not have any means of redress if the agent proves to be incompetent or dishonest unless they can afford to sue for negligence. Similarly, taxpayers are able to rely on the adjudicator if they have an issue with HMRC but there is no similar route of complaint if a taxpayer has an issue with their agent.

78. To mitigate this, consideration could be given to setting up an independent complaints or arbitration process such as a tax advice ombudsman. Clients could have confidence that in the event of problems they would have an independent body to which to complain and seek redress. Another way of ensuring consumers have access to redress would be to require all tax advisers to have professional indemnity insurance before they could operate.

Question on Option B

22. What evidence do you have of problems clients have experienced due to lack of redress and what solutions would you propose?

Option C: Improving transparency - helping consumers to make better choices

79. For this option standards would be raised through consumer choice. As described above, many consumers choose an adviser through personal recommendation. There is perhaps little information in the public domain that assists customers in making an informed choice. Providing them with that information so that they can choose a trustworthy adviser would help to improve the overall market through removing business from poor advisers.

80. There are choices about how this could be provided. For example, many markets now have independent web-based rating services such as Trip Advisor or Trustpilot which

enable people to benefit from the experiences of others. There are also government endorsed schemes such as Trustmark, or a method of 'kitemarking' good agents could be developed as is carried out in Australia and New Zealand.

Question on Option C

23. How could consumers be helped to make better choices?

Option D: Penalties for tax advisers

81. The tax system is designed so that accountability lies with the taxpayer, whether or not an adviser has been used. If there are errors or avoidance, even solely by the adviser, responsibility almost always remains with the taxpayer¹⁷. As they are not held to account for such errors or avoidance, some advisers may feel they are less answerable for their work. Consequently they may take less care or feel more empowered to sell avoidance.

82. The government **would welcome views about** whether there is a case for levying penalties on the adviser instead or, or in addition to, the client. Case studies or examples of where there is a perception that liability should lie with the agent and not the taxpayer would help examining the case for change.

83. Some countries allow for a degree of shared or transferred liability as summarised below.

Canada

Third-party civil penalties came into force on June 29, 2000. This penalty applies to those who counsel others to file their returns based on false or misleading information, or who turn a blind eye to false information provided by their clients for tax purposes. However, there is also a high onus of proof in these cases.

Portugal

The taxpayer is always responsible for the accuracy of tax returns, but the tax agent can be accountable for the fines and debts generated by the delivered tax returns if he or she violates his or her professional duties when delivering them.

Question on Option D

24. Are there any circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client?

Option E: maximising the regulatory/supervisory role of current professional bodies

84. Recognising the good work that many professional bodies do to maintain standards, one option which would meet the objectives for reform would be to introduce a legal

¹⁷ Examples where the liability may not sit with the taxpayer are PAYE directions relating from employer error, where the employer may be asked to make good under-deductions, and off-payroll where the engager can be liable for an erroneous decision.

requirement for anyone who want to provide tax advice on a commercial basis to belong to a recognised professional body.

85. In order to ensure high standards, the government could set out the criteria by which a professional body would be recognised as providing the necessary high standards for inclusion.

86. Criteria for recognition could include:

- the organisation has an independent regulatory disciplinary process
- the organisation has a public interest function
- the organisation carries out assurance of the fitness to practise of its members
- there is appropriate governance, so that regulatory functions and representative functions are separate
- members must be required to demonstrate professional competence either through a relevant qualification or through many years experience
- all members in practice must have professional indemnity insurance
- all members in practice are required to undergo continuing professional development (CPD)
- the professional body is an anti-money laundering supervisor.

In **New Zealand**, if an adviser is a member of a recognised adviser group, they can claim the right of non-disclosure on behalf of their client. In order to be recognised the adviser group must: have a significant function of giving advice on the operation and effect of tax laws; be subject to a professional code of conduct in giving that advice; and be subject to a disciplinary process that enforces compliance with the code of conduct.

Question on Option E

25. What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money laundering (AML) supervision? (where some professional bodies supervise their members and the professional body in turn is supervised by the Office for Professional body AML Supervision (or OPBAS) within the Financial Conduct Authority)

Option F: External regulation

87. One option would be to require anyone who wanted to provide tax advice by way of business to register with a government regulator before they could operate in the market. Before any regulator was set up, further consultation would be required to resolve questions such as how it should be funded, the extent of its powers, and its status as an independent or arms-length body.

88. Advisers could be required to satisfy a fit and proper person test in order to register, and this test could include provisions such as:

- possessing relevant qualifications or length of professional practice
- having professional indemnity insurance
- being registered for AML supervision
- not having been subject to a penalty for promoting or enabling tax avoidance
- up to date with their own tax affairs
- up to date with responsibilities as a company director i.e. was not an undischarged bankrupt or a disqualified director
- not having been expelled by a professional body for misconduct.

89. Advisers who were admitted to the register could be subject to regular reviews of their continuing fitness and propriety, with appropriate enforcement action taken against those that breach standards.

90. This test could be applied to all agents who represented a client subject to UK taxation, including any adviser based outside the UK.

Questions on Option F

26. What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards?

27. Are there any existing bodies that might be well-placed to act as regulator? What potential conflicts of interest could you see?

General questions about the options

28. The government is particularly interested in views on the following questions:

(28a) the benefits of the options set out above

(28b) whether there are sectors or types of tax advisers which would face particular challenges, and what those challenges would be

(28c) views on the impacts of each option, for example:

- costs for customers, advisers or other costs

- impacts on any particular groups effects on competition and the paid tax advice market

- how any impacts could be mitigated behavioural effects – what might advisers or customers do in response?

(28d) alternative options which meet the objectives outlined above.

10. Next steps

91. The government recognises that this is a complex market and any intervention will need to be based on good evidence and a thorough understanding of the potential impacts.
92. A 2018 report prepared by the Financial Conduct Authority and the Competition and Markets Authority outlines the optimal approach in understanding remedies to address market problems.
93. In the light of this approach, and in addition to the specific questions asked in the previous chapters the government would welcome evidence on whether:
- **there is a shared view of the market failures that need to be addressed**
 - **there is enough evidence to sufficiently understand customer and agent behaviour, and likely responses to any intervention.**
94. In line with this best practice, the government will establish a data bank/source to which all stakeholders can contribute evidence, as an agreed source from which discussion can proceed, and which will inform decisions.

Question on next steps

29. Can you suggest or support any other activities which should be considered?

30. What market failures need to be addressed?

31. What evidence is there that will enable understanding of customer and agent behaviour and likely responses to any intervention?

11. Assessment of Impacts

Summary of Impacts

Exchequer impact (£m)	2019 -20	2020 -21	2021 -22	2022 -23	2023 - 2024
	+/-	+/-	+/-	+/-	+/-
Economic impact	This is not expected to have a fiscal impact at this stage.				
Impact on individuals, households and families	Any impacts on individuals, households and families arising from this will be fully identified and outlined in due course.				
Equalities impacts	No equalities impacts have been demonstrated at this stage. These will be considered as part of the consultation process.				
Impact on businesses and Civil Society Organisations	Any impacts on businesses or civil society organisations arising from this will be fully identified and outlined in due course.				
Impact on HMRC or other public sector delivery organisations	No operational impacts have been identified at this stage. These will be considered as part of the consultation process.				
Other impacts	Other impacts will be considered as part of the consultation process.				

12. Summary of questions

Question about the HMRC Standard for Agents

Is the HMRC *Standard for agents* comprehensive enough to provide a baseline standard for all tax advisers?

Questions about the tax advice and services market

2. What clear distinction can be drawn between tax advice and tax services?
3. From your professional point of view, how do standards differ between different types of tax advice? Could you provide examples?
4. Please share any data which would help develop assumptions on the market share, volumes or impact or on the value added by different sectors of the market?

Questions about good advisers

5. What more could the government do to promote the work of good advisers?
6. Where else do good agents add value - for customers, HMRC and the wider economy? How could this be extended further?
7. What are the general characteristics of good and bad advisers?

Questions on the impact of poor advisers

8. Are there any parts of the tax advice market where there are particular problems? Please share any evidence you have.
9. Do you have any evidence about the impacts of unqualified agents or agents that don't meet standards?
10. How could HMRC and the professional agent community work together to identify poor practice at an early stage?
Questions on interventions
11. How effective are HMRC's recent interventions? Are there other interventions that the government should be using to tackle poor practice?
12. Is there more that HMRC could do to manage agent performance through its transactional services (such as IT systems)?

Questions about consumer protection

13. How might increasing consumer protection affect individuals taking responsibility for their own tax affairs, and what behavioural changes might you anticipate?

14. Who should take the primary role in improving consumer protection, government, the profession, or another third party?

15. What do professional bodies currently do in respect of customers who need extra support?

Questions on other market interventions

16. Is there anything useful the government can learn from other examples of market intervention, including those led by industry?

17. Are there other enforcement or regulatory agencies that you think should have a role in this area, and what are the advantages, disadvantages, benefits or risks of any of these organisations taking on a regulatory role?

Question on international models

18. Do you know of examples of effective law, or enforcement, from other countries or jurisdictions?

Question about the future

19. What future changes do you consider will most impact the standards expected of the tax advice profession?

Questions on Option A

20. What other examples are there of existing powers (HMRC or other government powers) that could be used to tackle poor tax adviser behaviour?

21. What is your view of the effectiveness of HMRC's current powers?

Question on Option B

22. What evidence do you have of problems clients have experienced due to lack of redress and what solutions would you propose?

Question on Option C

23. How could consumers be helped to make better choices?

Question on Option D

24. Are there any circumstances where a penalty should be levied on the adviser instead of, or in addition to, the client?

Question on Option E

25. What scope is there for the professional bodies to take on a greater regulatory role in a similar way to anti-money laundering (AML) supervision? (where some professional bodies

supervise their members and the professional body in turn is supervised by the Office for Professional body AML Supervision (or OPBAS) within the Financial Conduct Authority)

Questions on Option F

26. What would the impacts be of introducing external regulation, particularly on clients and on those agents already meeting high standards?

27. Are there any existing bodies that might be well-placed to act as regulator? What potential conflicts of interest could you see?

General questions about the options

28. The government is particularly interested in views on the following questions:

(28a) the benefits of the options set out above

(28b) whether there are sectors or types of tax advisers which would face particular challenges, and what those challenges would be

(28c) views on the impacts of each option, for example:

- costs for customers, advisers or other costs
- impacts on any particular groups effects on competition and the paid tax advice market
- how any impacts could be mitigated behavioural effects – what might advisers or customers do in response?

(28d) alternative options which meet the objectives outlined above.

Question on next steps

29. Can you suggest or support any other activities which should be considered?

30. What market failures need to be addressed?

31. What evidence is there that will enable understanding of customer and agent behaviour and likely responses to any intervention?

13. The Consultation Process

This call for evidence is being conducted in line with the Tax Consultation Framework. There are 5 stages to tax policy development:

- Stage 1 Setting out objectives and identifying options.
- Stage 2 Determining the best option and developing a framework for implementation including detailed policy design.
- Stage 3 Drafting legislation to effect the proposed change.
- Stage 4 Implementing and monitoring the change.
- Stage 5 Reviewing and evaluating the change.

This call for evidence is taking place during stage 1 of the process. The purpose of the call for evidence is to seek views on the policy design and any suitable possible alternatives, before consulting later on a specific proposal for reform.

How to respond

A summary of the questions in this call for evidence is included at chapter 12.

Responses should be sent by 28 May 2020, by e-mail to taxadvicecallforevidence@hmrc.gov.uk or by post to: Tax advice call for evidence document, Agent Policy, CIDD, HM Revenue & Customs, 9th Floor, 10 South Colonnade, Canary Wharf, London E14 4PU

Please do not send responses to the Consultation Coordinator.

Paper copies of this document or copies in Welsh and alternative formats (large print, audio and Braille) may be obtained free of charge from the above address. This document can also be accessed from [HMRC's GOV.UK pages](#). All responses will be acknowledged, but it will not be possible to give substantive replies to individual representations.

When responding please say if you are a business, individual or representative body. In the case of representative bodies please provide information on the number and nature of people you represent.

Confidentiality

Information provided in response to this call for evidence, including personal information, may be published or disclosed in accordance with the access to information regimes. These are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018, General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004.

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public

authorities must comply and which deals with, amongst other things, obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on HM Revenue and Customs.

Consultation Privacy Notice

This notice sets out how we will use your personal data, and your rights. It is made under Articles 13 and/or 14 of the General Data Protection Regulation.

Your Data

The data

We will process the following personal data:

Name

Email address

Postal address

Phone number

Job title

Purpose

The purpose(s) for which we are processing your personal data is: *Raising standards in the tax advice market*

Legal basis of processing

The legal basis for processing your personal data is that the processing is necessary for the exercise of a function of a government department.

Recipients

Your personal data will be shared by us with *HM Treasury*.

Retention

Your personal data will be kept by us for six years and will then be deleted.

Your Rights

- You have the right to request information about how your personal data are processed, and to request a copy of that personal data.
- You have the right to request that any inaccuracies in your personal data are rectified without delay.

- You have the right to request that any incomplete personal data are completed, including by means of a supplementary statement.
- You have the right to request that your personal data are erased if there is no longer a justification for them to be processed.
- You have the right in certain circumstances (for example, where accuracy is contested) to request that the processing of your personal data is restricted.

Complaints

If you consider that your personal data has been misused or mishandled, you may make a complaint to the Information Commissioner, who is an independent regulator. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
0303 123 1113
casework@ico.org.uk

Any complaint to the Information Commissioner is without prejudice to your right to seek redress through the courts.

Contact details

The data controller for your personal data is HM Revenue and Customs. The contact details for the data controller are:

HMRC
100 Parliament Street
Westminster
London SW1A 2BQ

The contact details for HMRC's Data Protection Officer are:

The Data Protection Officer
HM Revenue and Customs
7th Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
advice.dpa@hmrc.gsi.gov.uk

Consultation Principles

This call for evidence is being run in accordance with the government's Consultation Principles.

The Consultation Principles are available on the Cabinet Office website:
<http://www.cabinetoffice.gov.uk/resource-library/consultation-principles-guidance>

If you have any comments or complaints about the consultation process please contact:

John Pay, Consultation Coordinator, Budget Team, HM Revenue and Customs, 100
Parliament Street, London, SW1A 2BQ.

Please do not send responses to the call for evidence to this address.

Annex A: Relevant (current) Government Legislation

Relevant (current) legislation

Finance Act 2012 Schedule 38, part 1, 2 (1) to (5)

Tax agent

2 (1) A “tax agent” is an individual who, in the course of business, assists other persons (“clients”) with their tax affairs.

(2) Individuals can be tax agents even if they (or the organisations for which they work) are appointed —

(a) indirectly, or

(b) at the request of someone other than the client.

(3) Assistance with a client’s tax affairs includes—

(a) advising a client in relation to tax, and

(b) acting or purporting to act as agent on behalf of a client in relation to tax.

(4) Assistance with a client’s tax affairs also includes assistance with any document that is likely to be relied on by HMRC to determine a client’s tax position.

(5) Assistance given for non-tax purposes counts as assistance with a client’s tax affairs if it is given in the knowledge that it will be, or is likely to be, used by a client in connection with the client’s tax affairs.

Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017

11 Auditors and others

In these Regulations

- (a) 'auditor' means any firm or individual who is
- (i) a statutory auditor within the meaning of Part 42 of the Companies Act 2006 (statutory auditors), when carrying out statutory audit work within the meaning of section 1210 of that Act (meaning of statutory auditor), or
 - (ii) a local auditor within the meaning of section 4(1) of the Local Audit and Accountability Act 2014 (general requirements for audit), when carrying out an audit required by that Act.
- (b) 'insolvency practitioner' means any firm or individual who acts as an insolvency practitioner within the meaning of section 388 of the Insolvency Act 1986 or article 3 of the Insolvency (Northern Ireland) Order 1989 (meaning of act as insolvency practitioner).
- (c) 'external accountant' means a firm or sole practitioner who by way of business provides accountancy services to other persons, when providing such services.
- (d) 'tax adviser' means a firm or sole practitioner who by way of business provides [material aid, or assistance or advice, in connection with the tax affairs of other persons, whether provided directly or through a third party], when providing such services.

Annex B: The HMRC Standard for Agents (January 2018)

1. Overview

HMRC recognises the value of having professional agents help taxpayers comply with their tax obligations.

The standard for agents is not new. HMRC first published a standard that sets out what it expects of agents in February 2016.

This updated standard includes requirements for providing advice on tax planning. It also makes clear that HMRC expects agents to comply fully with money laundering regulations.

1.1 Who the standard is for

These are HMRC's expectations of all individuals and businesses involved in professionally representing or advising taxpayers. The standard applies to all tax agents who transact with HMRC and to any professional who advises or acts on behalf of others in relation to their tax affairs.

HMRC's aim is to clarify what is expected of agents, particularly those who are not members of professional bodies.

1.2 What you can expect from us

If a customer wants an agent to deal with us on their behalf, we will deal with that agent courteously and professionally. We want to provide them with a service that is fair, accurate and based on mutual trust and respect. We also want to make it as easy as possible for agents to get things right. HMRC's [Your Charter](#) explains what all customers, including agents, can expect from us.

1.3 What we expect from you

We expect all agents who want to interact with HMRC to meet the HMRC standard set out on this page.

Most tax agents are members of professional bodies that set standards for behaviour such as Professional Conduct in Relation to Taxation (PCRT). HMRC has endorsed PCRT and encourages all agents to meet this standard. HMRC is working with the profession to agree a single common standard for all agents.

2. The standard

HMRC requires all tax agents to maintain high standards that promote tax compliance.

2.1 Integrity

We expect agents to be straightforward and honest with HMRC, for example, by:

- disclosing all relevant information
- not suggesting or implying that HMRC endorses or regulates their role as an agent.

2.2 Professional competence and due care

We expect agents to:

- maintain correct and up-to-date knowledge of the areas of tax that they deal with
- work to prevent errors in their clients' tax calculations or claims, taking particular care not to include figures in returns or claims which are not sustainable
- advise their clients to take steps to set matters right where they find errors in their tax affairs (if the client is unwilling to correct matters, the agent should consider ceasing to act for them - if the agent continues to act for them, this could risk enabling tax evasion that may be subject to criminal investigation)
- comply fully with data protection law and regulations, including keeping [online access credentials](#) safe from unauthorised use at all times
- maintain the security of their systems and their HMRC account credentials against current threats.

2.3 Professional behaviour

We expect agents to:

- comply fully with tax law and regulations relating to their professional activity, including registering under, and adhering to, the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017
- ensure that their own tax affairs are correct and up to date
- deal courteously and professionally with HMRC staff
- have clear terms of engagement with their clients.

3. Standards for tax planning

In addition to the above, HMRC expects agents to follow these principles when advising on tax planning.

3.1 Lawful

Agents must act lawfully and with integrity at all times, and expect the same from their clients.

Tax planning should be based on a realistic assessment of the facts and a credible view of the law.

Agents should advise their clients where there is a material uncertainty in the law, for example, if it is known that HMRC's view differs or is unknown. The risk and costs of challenge by HMRC, and any resultant court case, should be made clear to clients

3.2 Disclosure and transparency

HMRC expects any disclosure by agents to represent all relevant facts fairly.

3.3 Advising on tax planning arrangements

Agents must not create, encourage or promote tax planning arrangements or structures that:

- set out to achieve results that are contrary to the clear intention of Parliament in enacting relevant legislation
- are highly artificial or highly contrived and seek to exploit shortcomings in the relevant legislation.

3.4 Professional judgement and appropriate documentation

HMRC expects agents to exercise professional judgement in applying these standards to particular client advisory situations.

Agents should keep timely notes of the rationale for judgements exercised in seeking to keep to these requirements.

4. Monitoring and breaches

4.1 How HMRC monitors standards

HMRC collects evidence of any sub-standard agent behaviour in the course of its day-to-day compliance activity. The standard for agents will guide agent behaviour and make clearer the case for HMRC interventions relating to agents.

We are developing the way we work with agents as part of HMRC's Agents Strategy with the intention of better differentiating between agents according to the value they add or risks they present to compliance. As we use our data more effectively in this way, we will improve our ability to identify instances of poor tax agent standards.

4.2 What happens when the standard is breached

HMRC has several powers to address poor agent practice:

- we can disclose cases of suspected agent misconduct to professional bodies for them to investigate further and consider disciplinary action
- we can refuse to deal with a tax agent, pursue criminal cases, apply civil penalties where tax agents are found to have been dishonest, or suspend access to certain online services for tax agents
- HMRC's Agent Compliance Team regularly holds constructive conversations with agents where there are potential concerns about their practices.

We expect all agents who interact with HMRC to keep to our standards, regardless of whether they are a member of a professional body, or which professional body they belong to.

5. Standards established by professional bodies

HMRC does not regulate agents. The commercial tax services market is self-regulating.

It is estimated that around 70% of agents are members of professional bodies, many of which set out standards expected of their members.

5.1 Professional Conduct in Relation to Taxation

The largest accountancy and tax professional bodies share a standard known as 'Professional Conduct in Relation to Taxation' (PCRT).

If agents meet the PCRT standard, HMRC does not envisage that our, much briefer, summary of certain important principles will place further requirements on them.

HMRC will continue to work with professional bodies to agree a single common standard for all agents.

5.2 The PCRT's fundamental principles

Three of the five fundamental principles in PCRT are repeated in HMRC's standard. These are:

- integrity
- professional competence
- due care and professional behaviour.

The maintenance of these is essential to the relationship between agents and HMRC.

The 2 principles not included are objectivity and confidentiality. These principles are fundamental to the agent-client relationship and it is the responsibility of the client to ensure they enter into contracts with agents covering these.

HMRC does not set expectations or regulate agent-client relationships - that is the domain of professional bodies.