



HMRC

**Raising Standards in the tax advice market:
call for evidence**

Evidence from ICAS

27 August 2020

Introduction

1. The Institute of Chartered Accountants of Scotland ('ICAS') is the world's oldest professional body of accountants; we represent over 22,000 members working across the UK and internationally. Our members work in all fields, predominantly across the private and not for profit sectors.
2. The ICAS Tax Board, with its five technical Committees, is responsible for putting forward the views of the ICAS tax community, which consists of Chartered Accountants and ICAS Tax Professionals working across the UK and beyond, and it does this with the active input and support of over 60 board and committee members.
3. The ICAS Regulation Board is the body appointed by Council to be responsible for regulatory policy at ICAS and for maintaining professional standards amongst Members, CA Student Members, Affiliates and Firms. The Regulation Board is also a strategic body, discussing developments in regulation and closely monitoring ICAS' relationships with its oversight regulators.
4. ICAS has a public interest remit, a duty to act not solely for its members but for the wider good. From a public interest perspective, our role is to share insights from ICAS members into the many complex issues and decisions involved in tax and regulatory system design, and to point out operational practicalities.

General comments

5. ICAS welcomes the opportunity to give its views and to respond to 'Raising standards in the tax advice market: call for evidence', published by HMRC on 19 March 2020. We have contributed to the joint submission from the PCRT professional bodies and we were also pleased to have the opportunity to meet with HMRC to discuss the call for evidence.
6. This submission expands upon the general principles discussed in the joint PCRT submission; it also discusses our views in relation to the 31 questions in the call for evidence.
7. Paragraph 11 in the call for evidence asks for comments in relation to the general themes in the consultation document, which we provide in this section.
8. We understand that there are three key concerns about the current tax advice market:
 - promoters and their networks of enablers who continue to promote/sell aggressive tax avoidance schemes
 - addressing the recommendations made by Sir Amyas Morse in his report on the Loan Charge, and
 - addressing some elements of the tax gap which HMRC believe are linked to poor standards in the tax advice market.
9. We believe that these three concerns should be addressed in different ways. We agree with the conclusion in paragraph 35 of the call for evidence, which says '...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 standard of service'.
10. In recent years governments have been unwilling or unable to increase the tax rates of the main revenue-raising taxes but have still needed to raise revenue; the result has been opaque tax changes and a lack of transparency about revenue raising. This has contributed to increasingly complex and lengthy tax legislation, which makes it harder for taxpayers (particularly unrepresented ones) to understand and comply with their tax obligations.

11. Paying the right amount of tax, being observant of taxpayer duties, and choosing the right agent would all be assisted by a more transparent public presentation of tax and its role in funding public services.
12. HMRC and agents need a good working relationship to facilitate taxpayer compliance. Trust and respect between agents and HMRC staff are vital, as is respect for the different relationships between the three parties: taxpayer, agent and HMRC.
13. Relationships between the three parties may not always have cut and dried boundaries. Some taxpayers may feel comfortable dealing directly with HMRC and will never use an agent or will only use one occasionally to deal with particular transactions; others will want an agent to handle all their tax affairs and to deal with HMRC on their behalf. Agents who are being paid to act for taxpayers will have contractual terms in place, governing the relationship with their clients.
14. Tax agents also have a relationship with, and responsibilities to, HMRC. They should conduct themselves in a professional manner, but their duty of care is to their client, the taxpayer. HMRC needs to recognise this and understand that whilst agents support compliance, they do not have a contractual relationship with HMRC. For those agents who are members of professional bodies, certain standards of conduct are required; in relation to tax these standards are set out in Professional Conduct in Relation to Taxation (PCRT).
15. In the UK there is currently no restriction on the provision of tax services – anyone can offer them. Members of the main professional bodies must meet certain standards (including having adequate professional indemnity insurance and undertaking continuous professional development); if they fall short a client can complain to the relevant body and disciplinary action can be taken where appropriate. HMRC can also report members to their professional body but currently only makes limited use of this power.
16. Whilst unqualified agents should comply with HMRC's '[standard for agents](#)' this does not fully replicate professional body standards; HMRC should also enforce these more limited standards by imposing sanctions on those who fail to comply. In the worst cases HMRC should fully utilise its existing powers to exclude agents from access to HMRC systems.
17. We note with interest the [independent report](#) published in June 2020 by Prof. Stephen Mayson regarding regulation of legal services in England and Wales. This report focuses on how to bring unregulated legal service providers into a regulatory framework; it examines this against a three-tier risk model. Furthermore, Prof. Mayson discusses his proposals for regulating legal services, including tax advice (see pages 165/6 in the report). In our view, this suggests potential duplication, and no doubt consumer confusion, if some regulation covers tax services (as suggested by Prof. Mayson) – but other tax regulation is based around the service provider (for example, via professional body regulation of the individual or firm). Arguably, service regulation is based primarily around technical competence whereas service provider regulation is based around conduct, ethics and technical competence. Our preference is for service provider regulation.
18. It is also worth noting that the proposals in Prof. Mayson's report are relevant to England and Wales. The tax advice market is UK wide and it would not be helpful to have tax regulation based on different jurisdictional regimes within the UK. The ICAS membership of over 22,000 includes approximately 10,000 members based in Scotland and 10,000 members in England.
19. It would be helpful to have a clear decision on whether some form of regulation of the tax profession is to be introduced or not; it is very difficult, if not impossible, to enforce standards when anyone is permitted to act as a tax agent or tax adviser. We recommend that the long-term aim should be to require that all tax agents should be qualified and should belong to one of the main professional bodies. There should be a transitional period, perhaps involving some form of affiliated status, to allow existing agents to adapt to the change.

SPECIFIC QUESTIONS

Question about the HMRC Standard for Agents

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

20. The HMRC Standard for Agents has three principles (i) integrity, (ii) professional competence and due care, and (iii) professional behaviour. These same principles are found in PCRT, however, PCRT also contains two other principles which are confidentiality (an obligation owed to a client); and objectivity (to not allow bias, conflict of interest or undue influence of others to override professional or business judgements). Broadly, therefore, what is omitted from the HMRC Standard are principles directed at protecting the consumer of the tax services rather than at protecting the public revenue.
21. The HMRC Standard for Agents is closer to a standard of **expected** behaviour because, in the view of ICAS, it is not effectively enforced. Whilst we recognise that it is not easy to police behaviours, we believe HMRC should be doing more to enforce its Standard for Agents.
22. The standard that is directed towards tax planning will always be difficult to enforce because there cannot be a clear line around what is acceptable or unacceptable if the actions are lawful, i.e. they are not illegal. The test of legality rests with the courts. The difficulty of dealing with distasteful tax planning, which remains within the law, was recognised in the Loan Charge Review.
23. As well as standards of behaviours for tax agents, there should also be standards for HMRC staff and for other stakeholders who should have an interest in the health of the tax system. For example, ambiguity can be created if some politicians are perceived as promoting a view that tax should be minimised.

Questions about the tax advice and services market

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

24. We do not believe there is a clear distinction. Broadly, differences can be identified between (i) those tax advisers who are agents and undertake compliance activities on behalf of the taxpayer such as completing and filing tax returns; and (ii) those who offer tax planning, which will often be around certain events, such as the sale of a business or estate planning, or relate to specialist areas such as EIS or R&D. This broad distinction revolves around whether or not the agent is submitting a tax return on behalf of the taxpayer.
25. Tax services may also include other types of support, such as technological assistance (e.g. compliance software) or compliance processing (e.g. payroll support including operation of PAYE), or a transactional service (e.g. a bank providing an ISA).
26. If certain services are to be restricted, by the imposition of regulatory boundaries, there will need to be clarity in establishing those boundaries. Examples of where this might be challenging include:
 - financial services third party administrators who are fundamental to operating clients' tax affairs but whose service level agreements specifically state that they do not provide tax advice
 - actuaries working with pension schemes are knowledgeable regarding the taxation of pensions, but might not be, or want to be, 'tax advisers'.

27. It is also the case that some non-tax services can have tax implications; for instance, in computing taxable business profits the starting point is accounts prepared in accordance with UK GAAP. This begs the question of whether those preparing the accounts are providing tax services.
28. As we discuss in paragraph 17 above, there needs to be consideration across the professional services sector of whether any regulation should be based primarily on the service line (eg tax advice or tax services) or around the service provider (eg the individual or the firm).

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

29. Paid tax advisers are in business and there are different pricing models which may influence the advice provided; these range from a basic service filing tax returns through to more proactive tax planning advice.
30. Nevertheless, for those members of ICAS who are in practice offering any type of tax services and those who work in industry, in in-house tax functions, there are no differences in the fundamental standards. What may differ is the processes, procedures and controls in place to ensure compliance; for example, where someone is working in a payroll processing company the approach will not be identical to that adopted in a Big 4 firm advising on a complex cross-border financing structure.
31. All ICAS members are bound by the same fundamental standards i.e. they are all bound by PCRT and the Code of Ethics.

Question 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?

32. ICAS has a membership of over 22,000 of which approximately 40% of the working members work in practice; it regulates over 1,000 practices providing tax, accountancy and businesses services across the UK and beyond.
33. There is huge variety; our members work in firms that range in size from the 'Big 4', international firms, major independents to smaller local practices. Each accountancy firm is a commercial practice; they are engaged by the taxpayer to provide services for a fee, and good agents provide value to their clients.

Questions about good advisers

Question 5. What more could the government do to promote the work of good advisers?

34. There are several areas where the government could look to change current practices if it wants to promote the work of good agents and the value that they add.
35. The current version of the HMRC Charter says that HMRC 'Accept that someone else can represent you... We'll respect your wish to have someone else deal with us on your behalf, such as an accountant or a relative.'
36. However, this is not consistently reflected in HMRC practice. Agent access needs to be properly designed and built into all new HMRC online forms and systems from the beginning, not added as an afterthought. The ongoing failure of HMRC to do this appears to have been behind the refusal to give agents access to the COVID-19 SEISS system, which was justified on the basis that it would have taken too long to build a system with agent access. This would not have been an issue if the default position was to give agents access, in line with the Charter – rather than treating agent access as an optional extra, which inevitably means it requires extra work (and does not always function properly at the outset).

37. The draft version of the new HMRC Charter has relegated this important commitment to part of a line; we have already commented (in our response to the consultation on the draft Charter) that this should be changed so that the new Charter continues to include a similar commitment to the one in the current Charter, ie explicitly recognising a taxpayer's right to appoint an agent and to have HMRC deal with that agent (once the agent is appropriately authorised).
38. It would assist good advisers if this meant that HMRC consistently ensured that agents are able to see and do what their clients can see and do, so that they can act effectively on their behalf. As noted in paragraph 16 above, we believe that HMRC should make more use of its powers to exclude very poor agents from accessing its systems.
39. The government/tax authorities could also point taxpayers towards using an agent who meets appropriate criteria. We appreciate that it would be anti-competitive for the government or HMRC to promote tax advisers who are members of certain professional bodies but the government/HMRC could issue a list of criteria to consider when looking to appoint a tax adviser, including being appropriately qualified, having PII, and a means of redress should problems arise.
40. It appears that there may be a reluctance, on the part of HMRC and the government, to admit that the tax system is as complex as it is, which means that they give mixed messages about the usefulness of agents. 'Self-Assessment' or the short lived 'Making Tax Easier' message imply that tax compliance is straightforward but, with the possible exception of a taxpayer with a single employment dealt with under PAYE (and no other income), this is frequently not the case. Tax compliance is challenging for many citizens to deal with and the tax system is complex - so they may need advice. This should be acknowledged by HMRC. Furthermore, HMRC should not generally seek to bypass agents, which can disrupt the agent/client relationship.
41. Tax agents are vital to the effective operation of the UK tax system; this should be properly recognised within HMRC and reflected in HMRC practice. Agents support tax compliance by helping taxpayers to get their tax affairs right; they make complex tax systems workable for businesses and individuals and reduce the risk of unexpected tax costs for all taxpayers.

Question 6. Where else do good agents add value - for customers, HMRC and the wider economy? How could this be extended further?

42. Good advisers clearly add value to their clients, the taxpayers, because if they did not, they would not continue to be engaged. The relationship between taxpayer and agent is a contract in which the client pays the agent to act on their behalf and/or provide advice. A client will not do this unless it is perceived to be worthwhile, whether this is in saving money (in its broadest sense by freeing up time to devote to business or making sure tax complexity does not lead to overpayment of tax) and/or in removing an unwanted compliance burden.
43. It should be remembered too, that tax agents are in practice in order to run a business – they need to run an efficient business, to offer value for money, and to make money. Without this, their practice/business will not succeed. Many practices offer pro-bono work, but the government should not expect all practices to offer free services – this is simply not commercial, nor is it the role of a tax practice. If pro-bono provision is needed for taxpayers who, for whatever reason, need extra support this should be provided by the state or by state funded charities – it is the state that is requiring the payment of taxes so it is the state that should enable and facilitate payment.
44. Good advisers add value to HMRC and the wider economy by making sure that their clients pay the right amount of tax at the right time. Good advisers also reduce HMRC enforcement costs.

45. The Professional Bodies and HMRC have worked together closely in the last few months on the coronavirus support schemes; the input of tax advisers has been extremely valuable in developing both the CJRS and SEISS schemes. We believe that this cooperative approach to working together could be extended to cover standards, for example as discussed below in our response to question 10.

Question 7. What are the general characteristics of good and bad advisers?

46. Good advisers will act in a professional manner in representing their clients' interests. Good advisers will be mindful of the requirements of PCRT, or HMRC's Standards for Tax Advisers; they will also maintain appropriate continuing professional development (CPD), have suitable office procedures, and will have professional indemnity insurance.
47. We suggest that bad advisers tend to be the opposite of good advisers and, broadly, they fall into two categories.
48. Firstly, those advisers who are incompetent resulting in poor work. This could be because they have become out of date due to lack of CPD or are advising in areas that they do not realise are outwith their expertise; or they may be sole practitioners unable to manage their workload or suffering from ill health. Such advisers need support; ICAS has a Practice Support service and looks to assist such members in either raising their standards or selling their practice.
49. Secondly, those advisers whose behaviour is bad, rather than incompetent; they do not intend to help their clients to fulfil compliance obligations and their tax advice is very aggressive, or simply fraudulent.
50. Both these categories of bad adviser will not provide a good service to their clients but may need to be tackled in different ways. With support, many of those in the first category could return to providing an acceptable service. Many of those in the second category may ultimately need to be excluded from providing tax services.

Questions on the impact of poor advisers

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

51. Anecdotal feedback from ICAS members would suggest that the parts of the market where there may be particular problems in relation to tax advice are:
- Advice to the low paid: those who cannot afford to pay much for tax advice will go to the cheapest adviser. Whilst the price paid for tax advice does not always determine the quality of advice, it is often a factor. Advisers who do not have to pay for regulatory requirements, do not undertake CPD or pay for PII, can clearly offer a cheaper service – but with none of the safeguards. Some of these advisers may have competency issues. It should also be noted that often those on low incomes can have complicated tax affairs (multiple sources of income; numerous allowances; interaction with benefits, etc).
 - Volume operations: for example, claiming employee expenses, or submitting R&D and tax depreciation claims. These seem to attract those who wish to take a percentage of any tax savings. Arguably, however, it is the underlying policy offering tax reductions and repayments which drive the problem behaviours.
 - Those who are high net worth – because their wealth will be attractive to those advisers who are driven by charging high fees, or fees tied to tax savings.
52. The evidence can be seen in reports such as the Loan Charge Review.

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

53. Again, we have anecdotal evidence from our members that unqualified agents can undercut our members. Our members report that they face competition on two fronts: one being the fees that may be charged and the other being the quality of the advice provided. It can be difficult to obtain or retain a client if other advisers are cold calling and offering lower fees or claiming that they can achieve greater tax savings (where our members do not think such savings can legitimately be claimed). This can be seen in mass market areas such as setting up personal service companies/ 'IR35' situations, or in claiming R&D relief for companies.
54. In the SME tax advice market, our members report matters such as the following examples:

As a practice that works with small businesses, it is a struggle to provide a high-quality service to this sector profitably.... I would like to provide you with an illustration how the presence of unregulated accountants has a corrosive effect on what we are trying to do. Here are some of my observations:

Most business owners do not understand the regulatory landscape. The fact that there are 7 "official" accounting bodies plus a number of others does not help. Everyone I speak to is surprised that you do not need to have a qualification to practice an accountant. In this landscape the only "good" accountants are the ones who save the most tax. I am pretty certain that only the smallest proportion of our clients have chosen us because we are regulated, because we have PI or because we have AML processes. These questions are simply not asked.

There is also a sense that the risk of HMRC picking up errors is very low. This provides fertile ground for unqualified accountants to operate.

On a regular basis we pick up clients who have previously been handled by an unregulated accountant. Frequently, the errors in the previous accountant's work are astonishing. Recent examples include:

- A sole trader whose income was reported on a cash basis, but expenses on an accruals basis.*
- A limited company where the accountant has reported the single largest asset as a liability.*
- A limited company where the director's salary reported in the accounts, bore no relation to what was reported in the director's self-assessment. Worse, the company was never registered for PAYE. (This example came from a former HMRC inspector described by the client as a "very good" accountant.)*
- I have seen examples where sole trader drawings were reported as salaries, expense claims made on a random basis. The worst example I have seen is where the fees were charged as a percentage of CIS claim recovered.*

Our position is made worse because when we spot these errors, we are the bearer of bad news: more fees, more taxes, more hassle. That makes us a "very bad" accountant.

You might have detected my frustration. Having spoken to hundreds of small business owners, I know there is a desperate requirement for good advice. The level of awareness in the small business community of tax and accounting matters community is low. Much of the information business owners use comes from the internet or from associates and lacks context. Therefore, we are often in a role as educators. I am trying to build a business by giving business owners sound advice and be compliant, but I can only do that in a level playing field.

To be fair, there a lot of good and able accountants, who are not regulated and they shouldn't be penalised.

On unregulated advisers:

"In our market we see clients leaving us to take advice from non CAs / CIOT members and will take a punt on likes of R&D claims/ CAs / claims for spend as being revenue when it's clearly capital. These behaviours need to be clamped down and for there to be a level playing field. The powers against "tax advisers" who work in this space but are unregulated should be the top priority in my view, also clients assert pressure on our firm to submit claims in our name on their behalf and we waste a lot of time disengaging/ explaining why we can't do as they request."

On R&D agents:

"We are regularly contacted by clients who have been approached by R&D agents who are aggressively selling their services where it looks very unlikely that real R&D is being undertaken. The rise in the number of these types of agent is the biggest risk to the long term viability of the UK's R&D regime in my opinion. For example, we're aware of a number of restaurants being approached to make R&D claims and being told that their competitors are making successful claims. These are small restaurants with a single premises (not big chains), which are simply experimenting with new recipes and menu combinations during downtime in the kitchen. We would not make a claim for companies like these and do not believe they are advancing scientific knowledge and capability or facing scientific/ technological uncertainties within the meanings of the BEIS Guidelines. But there are agents out there targeting them and the assumption is that these claims are going through successfully, presumably due to a lack of scrutiny, perhaps as they are low value. It makes it more difficult for us too, when we tell companies they cannot claim for something, and then other agents successfully submit claims for others in respect of the same ineligible activities. Often these agents are not members of CIOT, ICAS etc and not subject to the same ethical / professional standards. There is nothing stopping someone opening a website tomorrow to claim that they are an R&D tax credits expert and selling contingent fee services."

"We do still have situations where we receive a claim for an existing CT compliance client which has been prepared by a poor "specialist" [R&D] agent and that we think has no merit.....It puts us in a terrible position from a client relationship perspective. We end up spending hours trying to convince the client that they should believe us over the "specialist" who is telling them the opposite. In [one case] the client is refusing to discuss the details with us because they have already engaged a specialist and we have refused to submit the CT return with the claim absent a discussion on their activities, as what's described in the report is clearly not eligible. It's not been resolved yet and may end with us having to disengage with the client completely. They think we are being completely unreasonable and have threatened to report us to HMRC."

It's frustrating for many reasons – including the amount of non-chargeable time that it ties up for our specialists and we are often painted by the "specialist" as the trouble maker / unreasonable party."

And highlighting a specific area of concern around R&D offerings:

"It's to do with the use of R&D claim software that automatically generates claims, including preparing project summaries using a set bank of catchwords. We've seen a few and they've all been wrong, but to someone who didn't know better they could look "legitimate". The concern is also around the risk shifted to the company's whose claims are prepared using this software, as they are not aware."

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

55. HMRC and the professional bodies involved in developing and implementing the measures to ease the economic impact of coronavirus have instigated closer and stronger collaboration. We hope this will continue beyond the coronavirus crisis because we believe it has been beneficial for both our members and the authorities.

56. It is in everyone's interests to have high standards across the tax advice market – and the professional bodies would like to work with HMRC to achieve this. Mechanisms could be put in place for HMRC to report to the professional bodies:
 - emerging schemes that cause concern, which HMRC is, or will be, challenging, and/or
 - emerging poor practice/trends.
57. The professional bodies could put in place a process to cascade such messages to their members, for example, through CPD, member communications, and Practice Review teams – where they broadly agree that the schemes or practices highlighted by HMRC are unacceptable. Members would be expected to take note and act accordingly. If a two-way process could be introduced HMRC could also share information with its staff about areas of concern raised by professional bodies.
58. HMRC has in place memoranda of understanding through which it can report those agents who have unacceptable standards to their professional body, with a view to the professional body investigating and potentially disciplining the member. This reporting channel has not been used much to date; it is not clear whether this is because there are few professional body members with poor standards or whether there may be obstacles to HMRC's reporting due to (i) issues of taxpayer confidentiality, and (ii) concerns that any complaint about an agent's standards needs to be sufficiently robust to prove that a referral should be made. We would be pleased to discuss this with HMRC; we would like to understand why greater use is not made of the memorandum of understanding.

Questions on interventions

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

59. If one is examining standards around the provision of tax 'advice' or tax planning, HMRC and HMRC interventions have been very successful. The professional bodies have also played their part – with the introduction of the revised PRCT which includes Standard 4 on tax planning. There has been significant change over the last decade or so: both in the environment in which tax advisers operate and the approach they take to providing advice. Because the aftermath of historical tax avoidance is still being dealt with in the courts, and one or two specific issues such as the loan charge, there is a temptation to overlook this radical change in both behaviours and the legislative framework. The version of PCRT in place since 2017 makes clear that any advice given on tax planning should be in line with the spirit of the legislation and should not seek to exploit loopholes. The legislative framework is also radically different; the introduction of DOTAS, followed by various targeted anti-avoidance rules, the general anti-abuse rule, the enablers legislation the banking code and many other measures have had a significant impact.
60. The legislative response has had its desired effect: there have been very great strides in improving behaviours over the last 10 years or so. However, this has come at some cost, in the shape of increasing amounts of legislation and increased complexity. It is important for new legislation to be allowed to settle down and for HMRC to make use of any new powers – and for the impact to be assessed – before introducing more legislation. We discuss this further in our response to Question 21 below.
61. Beyond this, there is a need to recognise that there will always be a range of views to tax compliance, with some adopting a more aggressive approach than others. However, if the behaviours are lawful then it is very difficult to challenge them. If the behaviours are deemed to be unacceptable it sits with the policy makers to:
 - discuss the issue with the public
 - communicate effectively, and
 - change the law.
62. It is very difficult for HMRC or the professional bodies to police conduct, which whilst it may be distasteful to many, remains lawful.

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

63. Yes, but there is a need for the IT systems to be more integrated and modernised. No doubt, this is much of the driver behind the Making Tax Digital programme, which in broad terms ICAS supports. However, we anticipate that MTD will be much more effective when all the main taxes are on a single platform and when statistical analysis to identify outliers can be conducted not only on taxpayers, but also on tax agents and their clients' taxpaying profiles.
64. As discussed in paragraphs 36-38 above there is also the need to build in agent access from the beginning to all of HMRC's IT systems, so that agents can act effectively on behalf of their clients. Beyond this, consideration could also be given to allowing agents to perform certain actions currently reserved to HMRC, for example, amending PAYE codes for their clients. This has been much discussed with the professional bodies, but HMRC to date has (understandably) been reluctant to permit all agents to make changes on behalf of clients. If only certain 'trusted' agents are to be permitted, this will need robust, objective, criteria for establishing who is allowed this level of access; alternatively, if the poor agents are removed from the market all remaining agents could become 'trusted' agents with the ability to make such changes.

Questions about consumer protection

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

65. In relation to individual taxpayer responsibility, there have long been mixed messages in the UK. The PAYE system is designed to 'pluck the goose with as little hissing as possible'; citizens are not encouraged to take much interest in their tax affairs. Although individuals have a responsibility to ensure that sources of income are reported and that PAYE codes are correct, it is questionable whether many citizens take an active interest or understand these responsibilities. In view of the complexity of the tax system many may find it challenging to check their PAYE coding and will assume that HMRC and their employer will get it right.
66. For those who use an agent, there needs to be clarity and visibility in the different roles of taxpayer and tax adviser. There also needs to be a clear understanding of the different roles in the taxpayer- agent relationship and the taxpayer – HMRC relationship.
67. We note that paragraph 62 of the call for evidence says that the principle of increased protections for consumers should not erode the principle that the taxpayer remains accountable for their own tax affairs. We agree with this where the tax adviser is acting as agent. On this basis, any consumer protections would need to be in place in relation to the taxpayer/agent relationship – which is provided for under the law of contract. We do not accept that the taxpayer can escape responsibility by appointing a poor agent.
68. When, in 2015, ICAS carried out a public poll through Ipsos MORI:
- 50% thought all accountants are professionally qualified; and
 - Over nine out of 10 thought all accountants in the UK **should** be regulated and be professionally qualified (92% and 93% respectively).

That poll clearly demonstrated that consumers have an expectation of regulation that was not being met, and we sought to open a public debate on how this could be achieved.

69. Admittedly, that debate related to accountancy work in its broadest sense, and perhaps that was just too much of an initial jump. However, in recent years, there has been a growing demand for consistent standards among tax agents, starting with the revision of Professional Conduct in Relation to Taxation (PCRT) and culminating in the present consultation.

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

70. We believe that the professional bodies already play a significant role in consumer protection. Our members abide by professional standards - see the [practising certificate](#) regime. Any perceived failure will be [investigated](#) and, if necessary, the member will be disciplined. Members are required to undertake regular, ongoing continual professional development and to have professional indemnity insurance.
71. Beyond this, if there are some tax advisers who do not offer good or appropriate services the question needs to be asked as to who these advisers are. It is our understanding that the poor agents feature disproportionately in the unregulated sector so we recommend that all tax advisers should be required to belong to one of the recognised professional bodies – it rests with the government to put this requirement in place.
72. It would also be much easier to improve consumer protection if there was a single, simple message such as 'ensure your tax adviser is a member of a professional body', together with a list of relevant bodies.

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

73. ICAS encourages its members to consider volunteering and many members help taxpayers who need support, either as family and friends, through pro bono work and/or volunteering for charities and other not for profit bodies which assist citizens who need help with their tax affairs.

Questions on other market interventions

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

74. Market interventions should be based on evidence and a proportionate risk-based approach should be adopted. Interventions should be properly targeted at the problem areas and should not merely impose further burdens and costs on those who are compliant.

Question 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?

75. We do not believe that HMRC should have any role in regulating the tax profession. A regulator needs to be, and be seen to be, acting independently. Given that the care and management of the tax system is vested in HMRC there would be a clear conflict of interest between these roles. A combined role of managing the tax system and acting as regulator would bring unacceptable risks.

Question on international models

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

76. There are various international examples of oversight, some of which are highlighted in the call for evidence. From speaking to some overseas accountancy bodies about their tax systems, they do not appear to be faced with the problems caused by unscrupulous promoters that we seem to see in the UK. More work is needed to understand why this is so, as this may provide a key to addressing some of the problems. Most of the jurisdictions mentioned in the call for evidence require all tax advisers to be professionally qualified/registered – unlike the position in the UK. There may also be something about attitudes to paying tax in the UK, and to the supply and demand in the UK tax market, that encourages poor behaviours, but research would be required to identify whether this is the case.

Question about the future

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

77. The tax advice profession is likely to be impacted by a number of factors, including the move towards making tax digital, the reaction to the coronavirus crisis and society's attitude towards paying taxes.
78. Making Tax Digital, when fully implemented, will remove the middle market from the tax profession – and the tax advice profession will have less of a role in preparing and submitting tax returns. We anticipate that the advice market for our members will move towards the higher value-added end which focuses on tax advice rather than tax compliance. It remains to be seen if this will impact on standards, although we believe that it should not do so.
79. The coronavirus crisis, and the government response to it, with the associated costs, will impact on attitudes towards tax compliance and tax standards. It will affect taxpayers because some of the taxpaying population may have less income and a reduced ability to pay taxes - it remains to be seen how this will affect their attitude towards tax compliance; the government will need revenues and so will bear down relentlessly on any poor standards.
80. Society's view of its willingness to pay tax may also have an impact. If companies (such as some of the multi-national digital service providers) and high net worth individuals are not seen as paying their fair share and opposition to this becomes even stronger, the tax profession will need to be clearer on what is and is not acceptable. Arguments around, say, a precise, legal definition of 'avoidance' will be unacceptable when compared to a more subjective sense of fairness.

Questions on Option A

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

81. HMRC could intensify its compliance activities against agents who are considered to be poor. It would be helpful to know why existing powers are not used to their full extent, as discussed above in paragraph 58.

82. There is also a need for the government to maintain a well-resourced tax authority; this is essential for the smooth running of tax administration, both to provide appropriate service levels and support for taxpayers and their agents, and to tackle compliance issues.

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

83. As discussed in our response to question 11, the legislative response and the effectiveness of HMRC's current powers in relation to tax avoidance have produced great strides in improving behaviours over the last decade or so. However, this has come at some cost, in the shape of increasing amounts of legislation and increased complexity.
84. In relation to more recently introduced powers, new regimes have not been given time to settle down and there has not been an opportunity for their effectiveness to be assessed. We also have concerns about how some of the measures have been communicated by HMRC to those who might be affected by them. Any new penalties and compliance measures will only be effective if taxpayers are aware of them and understand what action they need to take.
85. A further problem with the introduction of so many new powers is that HMRC does not appear to be able to use some of them effectively. For example, the POTAS (Promoters of Tax Avoidance) regime allows HMRC to impose monitoring notices on promoters of avoidance schemes who breach a conduct notice. The imposition of a monitoring notice would mean that HMRC could publish information about the promoter and would require the promoter to tell clients that it is a monitored promoter. This would act as a clear warning to compliant taxpayers and agents – which would be welcomed by many. We understand that HMRC has issued a very small number of conduct notices, but no monitoring notices have so far been imposed.
86. Whilst we appreciate that in some cases the issue of a conduct notice may have caused a change of behaviour by the promoter, the recent independent loan charge review noted ongoing promotion of loan schemes (with approximately 3,000 first time users in the first half of the 2019-20 tax year). It is hard to see why HMRC has not imposed monitoring notices on some of these promoters already. However, we note that the consultation 'Tackling Promoters of Tax Avoidance' published on 21 July does set out some of the difficulties HMRC has encountered in using the POTAS regime, which may explain the lack of conduct notices. This illustrates the importance of assessing the effectiveness of measures, once they have been introduced – and making changes where necessary – rather than simply adding new powers on top of those which have not proved to be effective.
87. We welcome – and are contributing to – the current review into Powers and Safeguards, which is examining HMRC's use of its powers introduced since 2012. This should be very helpful in assessing the effectiveness of the current powers – and in identifying ways of ensuring that future changes are effective.

Question on Option B

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

88. As a professional body, our members who practice in tax must have adequate PI cover in place under our professional rules and comply with our regulatory and disciplinary rules. These include a Practice Review system and a requirement to complete CPD. These provide a strong system of redress.

89. Taxpayers who meet with problems can find these arise due to lack of understanding of the different duties that the taxpayer, the agent and HMRC may have. To address this, it would be helpful to have:
- Better taxpayer education
 - Simpler rules, and
 - Adequate service levels and support from HMRC.
90. However, without some means of enforcement in Option B, which suggests improving rights of recourse for consumers, it is not clear how the proposals would work. For example, how can the government ensure an unregulated adviser has PI cover or that a complaints body has any bite. The only solution to this is to prevent the unregulated adviser from providing advice in the first place.

Question on Option C

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

91. Consumers could be helped to make better choices by having a better understanding of tax and their obligations as taxpayers.
92. Lack of understanding of an overly complex system, combined with a perception that there has been widespread abuse, has contributed to a sense of unfairness amongst the public which undermines voluntary compliance. As found in studies, such as [The Tax Education Gap](#), there is a clear interaction between understanding and perceptions of fairness. Educating people on tax affairs can help to inform them in order to ensure a UK tax system in which people understand how much they pay, and why, and that has broad support.
93. A kitemark system may also assist by showing that the provider has committed to certain standards. The professional bodies might argue that, say, 'Chartered Accountant' is in effect already a kitemark. Some might suggest that introducing a new, separate kitemark would add to the general clutter (and hence confusion) in a diverse market.

Question on Option D

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

94. Penalties can already be levied on an adviser under the dishonest conduct rules, the enablers rules and the promoters' regime. However, all these penalty provisions are relatively new and to date we have no real evidence of penalties being levied in any of these regimes. It would be helpful to have more information on their use and effectiveness before any consideration was given to expanding the penalty provisions.
95. More broadly, if a client engages the tax adviser to be their agent then any remedies for poor standards or advice rest with the law of contract. Where penalties are levied on the taxpayer it is for the taxpayer to take issue with their agent if they believe it was due to the agent's poor standards. It is not appropriate for HMRC to be levying penalties on the agent.
96. We understand the difficulties that can arise where compliance penalties are levied on the taxpayer and this is due in part to the poor standards of the agent. We find that the issue of tax penalties to any client is a 'red rag' in terms of agent/client relationships – the threat of taxpayer penalties is an effective incentive to any good agent. The solution to this problem lies in removing agents with poor standards – where there is no prospect of them improving to an acceptable level. As set out in our response to Question 7 there may be cases where an agent can be successfully supported in raising their standards.

Question on Option E

Question 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)

97. We recommend that the long-term aim should be to require that all tax agents should be qualified and should belong to one of the main professional bodies. There should be a transitional period, perhaps involving some form of affiliated status, to allow existing agents to adapt to the change.
98. ICAS already provides oversight of its members in practice and supports this model as a proposed means of moving forward on this issue.
99. Using this option could build upon the existing regulatory activities that the professional bodies already carry out: the practising certificate regime, mandatory PII, CPD requirements, a practice review process and a complaints process.
100. We agree that the criteria for recognition of a professional body could include the list detailed in paragraph 86 of the call for evidence.

Questions on Option F

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

101. External regulation is likely to result in compliance costs; there is a risk that such costs would not provide value if those who are already practising are at the right level.
102. External regulation may have its advantages and disadvantages. The advantages include:
 - Only those who are satisfactorily regulated could be tax agents.
 - A level of consumer protection would be prescribed.
 - There would be a level playing field for tax advisers – all would have equal costs of regulation.
103. There may be disadvantages, including:
 - External regulation may lead not only to duplication with the professional bodies, but there is the further potential impact and costs for professional body members who have dual membership (for example, of both an accountancy and a tax professional body). There would need to be consideration of how any tax advice regulatory model would sit in relation to existing regulation.
 - It may be costly (relative to the benefits) as 70% of the market already meets appropriate standards under existing self-regulatory schemes of professional bodies.
 - A regulatory scheme might not address the problem of promoters (who we understand are typically not professional body members; and often do not hold themselves out as 'tax advisers').

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

104. We have no comments on this question.

General questions about the options

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

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

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

Question (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?

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

105. We have commented on the various options above, so have not revisited this here.

106. We are not convinced on the evidence we have seen that the entire tax market is in need of fundamental overhaul, particularly not after the upheaval and damage to businesses and tax receipts that have been caused by coronavirus. A more incremental approach and a combination of parts of the different options may be helpful, such as enhancing some consumer information, and working towards elements of option E to maximise the self-regulatory role of the professional bodies.

Question on next steps

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

107. Simplifying the tax system would help to support most citizens with relatively straightforward affairs, who should be able to understand how their tax is calculated but currently find this very challenging.

Question 30. What market failures need to be addressed?

108. Market failures are around the issue of choice and are perhaps philosophical as much as anything else. If there is a range of choices, then it can be confusing for uninformed customers to decide where to go and some may regret their choice – due for example to questions of fees, or competency standards, or the outcome of aggressive tax planning. It may not be clear which tax adviser to go to, leading in some cases to poor choices.

109. The other type of market failure is where there is a lack of choice. We do not believe this is the case in the tax advice market.

110. Good advisers add value to HMRC and the wider economy by making sure that their clients pay the right amount of tax at the right time. They explain tax responsibilities to their clients and support tax compliance - making complex tax systems workable for businesses and individuals. Good advisers also reduce HMRC enforcement costs.

111. To protect consumers, or overcome the market failures, we believe that consumers should be encouraged to buy from an 'approved' adviser; 'approved' meaning that they meet certain practice criteria such as those required by the professional bodies.

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

112. HMRC needs to build its digital tax systems to provide this type of information, thus enabling policy and resourcing decisions to be based on evidence and extensive risk analysis across sectors and agents. Without such information, decisions may be flawed or lead to unexpected behavioural changes which could reduce rather than improve tax compliance and standards in the tax services market.