

PCRT Group of Professional Bodies

HMRC

**Raising standards in the tax advice market:
professional indemnity insurance and defining tax
advice**

Response from the PCRT professional bodies

14 June 2021

Produced by:



Introduction

1. The following professional bodies are the author bodies of PCRT (Professional Conduct in Relation to Taxation):
 - Association of Accounting Technicians (AAT)
 - Association of Chartered Certified Accountants (ACCA)
 - Association of Taxation Technicians (ATT)
 - Chartered Institute of Taxation (CIOT)
 - Institute of Chartered Accountants in England and Wales (ICAEW)
 - Institute of Chartered Accountants of Scotland (ICAS)
 - The Society of Trust and Estate Practitioners (STEP)
2. Compliance with the PCRT Fundamental Principles and Standards for Tax Planning is mandatory for each of the body's members.
3. The PCRT professional bodies (PCRT PBs) have a public interest remit that is a duty to act not solely for their members but for the wider good. They also set and maintain the standards of their members in the provision of tax services. The bodies are clear with their members that a failure to comply with PCRT is a serious matter and could put their membership of the professional body at risk. Ethical behaviour in the tax profession is critical. The work carried out by a member needs to be trusted by society at large as well as by clients and other stakeholders. What a member does reflects not just on themselves but on the profession as a whole.
4. The PCRT PBs have common professional conduct requirements; they agree that standards are a vital part of the tax service market.
5. The PCRT PBs welcome initiatives to raise standards in the tax advice market. Each PCRT PB has Professional Indemnity Insurance (PII) requirements for members in practice and considers PII a fundamental requirement for all firms providing tax services. We are therefore pleased to provide a joint submission from the PCRT PBs in response to the Consultation on raising standards in the tax advice market: professional indemnity insurance and defining tax advice. The PCRT body representatives were also pleased to have the opportunity to meet with HMRC to discuss this on 21 May 2021.
6. This joint submission discusses PII and sets out the advantages of PII and the challenges which we consider HMRC will need to address in order to raise standards through the introduction of mandatory PII for tax advisers. It also discusses a number of points in relation to defining tax advice.
7. The bodies will in addition make their own responses to the Consultation covering a wider range of matters highlighted by the Consultation.

General principles – PII and raising standards

8. The Consultation's foreword refers to PII as "a valuable first step towards improving standards in the market" through protection of consumers and incentives for poor performing advisers to improve standards. This response addresses both of these areas.
9. We would note at the outset that the immediate effect of PII is to provide cover for the adviser for potential claims from their clients (the taxpayers) rather than being aimed directly at the taxpayer. However, we agree that appropriate PII can protect consumers, both by incentivising the adviser to pursue quality in order to be able to obtain such cover as economically as possible, and to ensure that the adviser will have the wherewithal to pay out on valid claims.

10. The PII market is complex and there are a number of areas which will need to be adequately addressed in the requirements to ensure that PII cover provides the recourse envisaged. We consider there are key questions for HMRC to address with insurance providers including:
- a. Whether the insurance market has the capacity to provide PII to all firms providing tax advice (although we note that firms outside professional body regulation and therefore currently without PII represent a small proportion of the business undertaken in the tax market and that in turn the tax market represents a small part of the insurance market, so it would be surprising if capacity was not available).
 - b. Whether the insurance market is willing to provide cover particularly in relation to tax-only firms (particularly those in specialist/niche firms) where the PCRT PBs have seen challenges for members in obtaining cover.
 - c. How the system will ensure minimum standards are enforced to guard against unscrupulous insurance providers entering the market and providing inadequate cover to firms resulting in a failure to provide full consumer protection. (This would limit the good that the proposal would do but overall we would still expect there to be a benefit for consumers insofar as at least some claims were covered).
11. The foreword also notes that PII can help create better market incentives for poor performing advisers to improve standards. The PII requirements will require effective monitoring and enforcement with sanctions for non-compliance, in order to meet this policy objective.

General principles – the advantages of PII and the proposals for mandatory PII

12. All of the PCRT PBs have Professional Indemnity Insurance (PII) requirements in relation to members in practice and monitor compliance with this requirement. We note the examples of professional body PII requirements set out in Annexe B of the Consultation and attach an updated Annexe B setting out information which corrects some of the details included in the Consultation, provides more detail on relevant requirements, and provides additional information of key importance in relation to monitoring and sanctions.
13. The reasons why the PCRT PBs consider PII essential for our members in practice is because of the advantages it provides as follows:
- a. **Consumer protection.** If there is PII in place:
 - i. the client may claim for loss from their adviser who has made mistakes or is found to be negligent and this claim will be met if substantiated.
 - ii. it provides a clear process and mechanism for bringing claims.
 - iii. it should give confidence that claims for loss (and complaints) will be dealt with thoroughly and appropriately.
 - b. **Supports the provision of quality providers of advice in the market place.** PII is an essential part of the cost base of PCRT PB firms.

PII comes at a cost. The cost is in direct measure to the risk profile of a firm and, hence, the firms that manage risk (for example by being well qualified) and give sound advice will have lower PII premiums. Firms that have claims made against them for poor advice will find their PII premiums rise – much like a no claims policy for car insurance. In this way, PII costs indirectly drive the quality of the firms and their quality of service.

Firms will seek to avoid claims as this may result in an inability to get future cover. Individuals/firms cannot remain a PCRT PB member without PII and therefore they are incentivised to ensure internal procedures seek to provide high quality advice and to minimise mistakes to ensure cover can be maintained. In many cases firms will exclude riskier areas of work to minimise premiums and to reduce exposure to claims.

- c. **Protection of clients through ensuring the survival of firms.** Protection of the adviser is an added advantage from the PCRT PB viewpoint. All the bodies expect members to adhere to the high standards set out in PCRT but mistakes do happen and clients do sometimes make vexatious claims. Policies include cover for extensive legal costs of claims enabling firms to continue to provide a service to the public. There can be negative impacts on both clients and general availability of advice in the market place where advisers are forced out of business.

14. The PCRT PBs see advantages in extending PII to all providers of tax advice as follows:

- a. It will ensure a remedy is open to protection for clients currently dealt with by individuals and firms who are not currently within PB regulation and supervision and do not hold PII.
- b. Consumers do not always appreciate the fact that tax advisers do not have to belong to PBs and that tax advice is not a reserved activity. The introduction of PII will be a starting point to bring firms outside PB membership into line with firms within PBs. Once PII is in place throughout the market further measures can be taken in relation to standards building on this initial step.
- c. Firms that are newly required to have PII may need to reconsider the areas of work provided and the standard of their work to ensure they could secure cover. In order to ensure the survival of their business, risks would need to be minimised and in turn standards would be improved.
- d. Ultimately, if PII could not be obtained by firms because they provide advice which is too risky for the insurers to agree to cover or because they have poor internal procedures or claims history then, as long as there is enforcement action by HMRC these firms could be forced out of the market. This may mean some limited capacity reduction in the tax advice market and some clients left without advice. However, we think that the market is sufficiently large and flexible to absorb such clients – and they will also be better advised by firms with good procedures and PII cover.

General principles – Challenges in introducing mandatory PII requirements

- 15. Set out below are some of the challenges in relation to mandatory PII which need to be carefully considered to ensure policy objectives are met. However, not all of these are downsides to the proposal or would prevent the introduction of PII: it is more a case of ensuring the proposal will be as effective and beneficial as possible.
- 16. PII is complex and the introduction of mandatory PII requirements would need to ensure appropriate requirements were put in place. Poor quality insurance will not provide all the consumer protection desired.
- 17. PBs have spent a number of years developing the PII requirements set out in Annexe B. A number of elements will need to be looked at by HMRC and requirements set out in some detail to provide adequate protection for consumers. In particular:
 - a. Who should be covered?
 - b. Territorial coverage – both in terms of location of firms and insurance coverage of work relating to tax for, say, international clients.
 - c. How to help firms find the required insurance – recommended brokers or compliant insurance policy lists assist firms.
 - d. What minimum levels of cover are required?
 - e. Are levels of indemnity per claim or aggregate?
 - f. What levels of self-insured excess are permitted and how do you ensure firms can fund those excess amounts if required?
 - g. How is cover for defence costs dealt with?
 - h. Are there minimum terms and conditions to the cover and a limit on exclusions?
 - i. What run-off is required on retirement or cessation of practice?
 - j. How is compliance monitored?
 - k. Notification of problems in obtaining cover and how will these be resolved?
 - l. How will enforcement action be undertaken?

18. Minimum standards of PII cover vary across the professional bodies, largely because each professional body may have a different membership profile (e.g., tax focused or general accountancy practice) and governance and supervisory arrangements (in terms of levels of member firm inspection requirements and oversight). There would therefore need to be careful consideration given to what the mandatory PII cover should be. It should not enable a low, and inadequate, cover to firms.
19. Whilst insurers are best placed to comment on the willingness of the market to provide cover for those outside the current PB requirements our understanding is that the PII market for tax advisers has hardened over the last two years. A number of our members have reported difficulties in securing cover.
20. There need to be safeguards in the system to ensure that where insurance companies withdraw from the market firms are not left without cover. This can be particularly difficult for those in run-off where the insurer at the time of cessation is generally the only firm who will provide ongoing cover and if they cease to offer insurance there is no alternative option.
21. The PCRT PBs are aware of the difficulties for members where online tools are available to obtain insurance quotes as these often do not provide quotes for those providing tax advice (but generally do when accountancy is referred to instead). There is some indication that these tools provide reasonably priced cover but that it does not provide the levels of consumer and firm protection PBs would require.
22. There may be an incentive for lower quality insurance offerings to become available from firms who would not stay in the market over time.
23. PII is a considerable cost to a business so there are dangers in firms seeking to go “under the radar”. They may prepare calculations or advice letters but ask clients to deal directly with HMRC and submit the calculations they have prepared in order to avoid HMRC enforcement powers. In turn other regulation in the future could lead to a similar response from firms. The system of enforcement for PII will provide a model that can be used for other regulatory requirements in the future.
24. Enforcement is a key issue and without effective monitoring of the requirements for all firms and enforcement for non-compliance then mandatory PII will not meet the policy aims of protecting consumers and raising standards. You will note from Annexe B that all PCRT PBs have monitoring procedures in place and sanctions for failure to have PII in place. There is also the issue of which agency would be responsible for such enforcement.
25. The introduction of mandatory PII is a good first step but will always be limited. It will stop people who have established valid claims from being frustrated by the defendant's/adviser's lack of assets. It should drive quality upwards as advisers try to keep premiums down, but people let down by their advisers may face a difficult job of establishing a valid claim (and indeed, advisers are of course entitled to defend themselves against vexatious claims). PII is a start, achieves some things but is not everything and needs to be built on.

General principles- defining tax advice

26. In order to identify who should hold PII, it will be necessary to define what constitutes ‘tax advice’. HMRC’s suggested approach is to adopt a definition as wide as possible (encompassing all tax work undertaken in the UK or related to UK taxation) but with some exemptions.
27. In general, the starting point for ‘tax advice’ and the related professional indemnity insurance is that there needs to be a contractual relationship between the taxpayer and the adviser. However, if consumer protection is important then it may be that not all pro-bono work should be excluded from the definition. There is a distinction between people, say, helping their parents with their tax returns and voluntary groups/advice agencies who help people but may provide poor advice and leave unrepresented taxpayers worse off and unprotected. If pro bono work is to be left out of the definition those advisers could be dealt with by making it clear volunteer advisers are uninsured etc.

28. Annexe C of the consultation document sets out some examples of activities and professionals who may be providing tax advice for these purposes. This is a useful starting point for consideration of whether the activities highlighted should be included, and highlights some of the problem areas which might require further consideration.
29. For example, should the definition include those providing only processing and submission services, such as payroll bureaux. Likewise, there should be detailed consideration given to whether tax software providers are providing 'tax advice'. This is going to be a critical area for the future, especially given the Making Tax Digital proposals, some of which include 'nudges', and sophisticated AI that can direct actions.
30. Consideration should be given to whether any proposed definition would separate out between, say, the following types of software:
 - a. Processing of data and transmission.
 - b. Prompts and nudges – and whether these are tax advice.
 - c. Sophisticated AI that can direct behaviours dependent on given answers (such as the CEST tool).
31. In general, if the provision of tax software is sold as a product to a person/ a firm to enable them to undertake tax work, then we think there is a strong argument that this is 'tax advice' (as in effect the tax software is telling the person/firm what to do and therefore advising on how to treat transactions for tax purposes).
32. In relation to submission services or bridging software, where someone is simply submitting data then it is unlikely to be tax advice. If calculation software is used, i.e. a product that calculates say payroll (and hence PAYE/NICs) there is less clarity; the software does work out the tax but some may not view this as 'tax advice', whilst others may do so.
33. We consider that the distinction in Financial Services between 'advice' and 'guidance' (information) is not helpful when applied to tax services. It may be difficult in tax to draw a clear dividing line between the two and, for instance, where types of tax guidance, or elements of it, fit in.
34. In terms of 'guidance' there are different levels, some of which may constitute 'tax advice'. Three levels of guidance come to mind:
 - a. Paid-for technical material such as Tolleys online.
 - b. General guidance that is specifically about tax such as HMRC's own.
 - c. Totally general material ('Alexa – what is corporation tax?').

General principles - high risk areas, including promoters and boutiques

35. The approach of those who have been promoting tax avoidance schemes and aggressive tax planning arrangements appears to be based on arguing that they are not providing tax advice and this is often stated in any contractual arrangements. Any definition adopted needs to ensure that higher risk activities are within scope regardless of the precise contractual arrangements.
36. It may be that there are certain niche areas of tax advice, such as with R & D claim services, or umbrella companies, that would provide a test scheme for whether a proposed definition of 'tax advice' encompasses the 'tax advisers' that HMRC wishes to include in mandatory PII requirements. In our view, R&D firms (whether claims service or advisory) are giving tax advice – they are advising on how much R&D to claim in accordance with the tax law. Umbrella companies may be more difficult, however, as it may be a question of whether wider tax advice is given or it's simply setting up a company.

General principles - should the AML or dishonest tax agent definitions be used?

37. There are attractions in using an existing statutory definition of 'tax advice' because it is already there, it would not add another different set of boundaries, and hence should provide certainty and less scope for disputes. However, it should be noted that the definition needs to be right for these purposes, and not to be constrained to use something because it is there.

38. The AML or 'dishonest tax agent' definitions are brief, principles-based definitions and the advantages of using such an approach include:

- a. If the definition is a principle that is drawn widely, it should include most if not all providers, and encompass those that HMRC wish to include.
- b. There is no detail which can be used both to include and exclude – the more detailed, often the easier it is to work around.
- c. These already exist in statute.
- d. People are accustomed to working with these definitions, particularly the AML definition.

39. However, the disadvantages of using the AML or 'dishonest tax agent' definitions include:

- a. While the breadth of the existing definition in the money laundering regulations is useful, it may require further explanation and examples of which services are within scope for PII purposes and which are outside, for example, if there is a desire for this to encompass software provision.
- b. There may be costly, time consuming test cases if the boundaries are litigated to decide what is included in the definition.

40. One starting point might be with an existing definition and add to it as necessary, whether 'for the avoidance of doubt' or more generally.

41. Another potential approach could be to use a principles-based definition so that the appropriate types of work are caught, and then HMRC could issue supplementary guidance to clarify their interpretation of the principles. This would also mean the principles could remain a constant but the specific interpretation of who they apply to could be refined over time as needed. It might however encourage litigation over the guidance.

42. We note that the CCAB has produced guidance on AML (see [CCAB Document](#)), with paragraphs 1.2.3 to 1.2.5 talking about tax advice, and the provision of software. Note, however, that this is a slightly different context in that it looks at whether an accountant providing software would be providing a defined service for AML purposes, rather than whether external software providers are providing tax advice per se.

General principles - points to consider in any definition of tax advice

43. There are advantages in having a wide definition of 'tax advice' which include:

- a. In theory, a wide definition should encompass all those that HMRC wish to include in this regime including those who do not require agent authorisation.
- b. Principles can be set out which can be built on over time to bring within scope new areas of tax advice etc identified in the future.
- c. It should be easier for the taxpayer to understand if all aspects of their 'tax' services are covered by the tax adviser's PII rather than if there was a narrow definition, say, based on tax compliance but omitting other wider tax advisory services.

44. However, there are also disadvantages of having a wide definition of 'tax advice' which include:

- a. It may be difficult to identify all those who are giving tax advice if there is a wide definition that is simply tied to 'advising on tax matters' rather than something easier to identify such as an agent authorisation (because there may be no direct link between them and HMRC or any other regulatory body).
- b. A wider definition might in theory result in overlap with other regulatory regimes (eg lawyers, financial services advisers). However, we note that a number of these other areas are already subject to PII requirements and where these are already in place for relevant firms no additional requirements may need to be imposed or additional requirements may only relate to a small part of the overall business.
- c. As discussed in paragraphs 33 and 34 above, there may be a need to distinguish between 'advice' and 'guidance' (information) which is not always helpful for the consumer.

45. A narrower definition of 'tax advice' could be adopted, say, based on those providing tax compliance services (the submission of tax returns by an agent on behalf of a taxpayer to HMRC).

46. The advantages of a narrow definition based on tax return compliance/agents includes:
- a. It would be easier to define – any agent authorised via a 64-8 (or its digital equivalent) to act on behalf of a taxpayer.
 - b. It would be easier to police because HMRC would have direct knowledge of who should be within the requirement via the 64-8 (or its digital equivalent).
47. On the other hand, the disadvantages of a narrow definition include:
- a. It would not include as many involved in assisting taxpayers as the Government may wish; in particular, it would be unlikely to include the promoters of tax schemes or disguised remuneration schemes, who tend to operate at one removed from the agent.
 - b. Many niche area advisers, such as R&D advisers, would also argue they were not within the definition as many of them do not actually submit the claims, have an agent code etc.
48. We would note, however, that whilst the narrower definition may be easier to adopt and operate, we consider it would not address the Government's aim of consumer protection (by way of PII) for all tax advisers. Those who offer 'tax advice' in our view form a wider cohort than those undertaking compliance activities.
49. It is important that the definition is sufficiently clear so that it provides certainty to both advisers and consumers on whether a particular activity falls within the need for PII.

Background

Professional Conduct in Relation to Taxation (PCRT) sets out the Fundamental Principles and Standards of Tax Planning behaviours that all members, affiliates and students of our organisations must follow. Our ethical guidance was introduced in 1995 and has been regularly reviewed and revised since then. The latest revision of content incorporated the Standards for Tax Planning which went live on 1 March 2017. Two years later saw a major structural revision following feedback from users.

The Professional Bodies that subscribe to PCRT each have a suite of standards, of which PCRT is a part.

PCRT does not stand in isolation, and members who are in breach of it are also likely to be in breach of other regulatory requirements.

All the professional bodies have made it clear to their memberships that compliance with the PCRT Fundamental Principles and Standards for Tax Planning is mandatory.

PCRT is intended to guide members in their behaviour, to assist them and to ensure that they undertake work effectively and appropriately.

Our members operate in a complex business and financial environment and a core purpose of the tax system is to fund public services and to ensure the good health of our economy and society. All members thus have a responsibility to serve their clients' interests whilst upholding the profession's reputation and the need to take account of the wider public interest. PCRT can therefore provide a powerful tool in retaining public confidence in the work that our members undertake.

Members of our organisations are encouraged to place ethical leadership at the heart of their professional responsibilities, to shape the culture and values of their organisations, and to have ethics at the core of business and tax practices.

The role of PCRT

PCRT supports our members by describing the standards of behaviour that clients can expect when seeking advice on their tax affairs.

The professional bodies also use the guidance if concerns are raised about members. When deciding whether to investigate a complaint or act on information received, the professional bodies will consider the PCRT Fundamental Principles and Standards of Tax Planning to assess whether the professional practice has been appropriate, and whether disciplinary action needs to be taken. We are clear with our members that a failure to comply with PCRT is a serious matter and could put their membership of the professional body at risk.

PCRT is jointly produced by:

- Association of Accounting Technicians (AAT)
- Association of Chartered Certified Accountants (ACCA)
- Association of Taxation Technicians (ATT)
- Chartered Institute of Taxation (CIOT)
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Institute of Chartered Accountants of Scotland (ICAS)
- The Society of Trust and Estate Practitioners (STEP)



Annexe B: Examples of professional and regulatory body professional insurance requirements

Regulatory or professional body	Who must be insured	Cover required	Excess	Run-off Cover	Monitoring	Sanctions
Association of Accounting Technicians	All members in practice (licence holders).	A minimum of at least £50,000 with there being various claims limits based on varying levels of the firm's annual total income with maximum level of cover required of £1 million.	Amount not specified but firms must ensure they are able to meet the costs of an excess.	Cover must be maintained for a period of no less than 6 years from cessation.	Details of cover must be provided in relation to licence applications and renewals and details are also checked during practice assurance monitoring visits.	Disciplinary action and a range of sanctions can be applied.
Association of Taxation Technicians	Members in practice.	Annual minimum limit of £1 million for each and every claim if firms gross fee income is over £400,000. Where firm's gross fee income is below this then the greater of 2.5 times gross fee income or £100,000.	Up to £20,000 per principal but firm must be able to meet the cost of the excess element of any claims which might arise.	Cover must be maintained for a period of no less than 6 years from ceasing public practice.	Through annual membership return and requests to members for information.	Disciplinary action and the Taxation Disciplinary Board can impose sanctions.
Association of Chartered Certified Accountants (ACCA)	All members in practice (practicing certificate holders).	A minimum of at least £50,000 with there being various claims limits based on varying levels of the firms annual total income.	Restricted to the lower of: - 2% of the limit of indemnity in respect of each and every claim; or - £20,000 per principal in respect of each and every claim.	Cover must be maintained for a period of no less than 6 years from cessation.	Practitioners required to provide details of PII and FGI policies when applying for, or renewing, certificates and licences. Policies and records of insurance claims made under PII policies may be inspected by ACCA and the Admissions and Licensing Committee.	Disciplinary action and a range of sanctions can be applied.
Chartered Institute of Taxation (CIOT)	Members in practice.	Annual minimum limit of £1 million for each and every claim if firms gross fee income is over £400,000.	Up to £20,000 per principal but firm must be able to meet the cost of the	Cover must be maintained for a period of no less than 6 years from ceasing public practice.	Through annual membership return and requests to members for information.	Disciplinary action and the Taxation Disciplinary Board can impose sanctions.

Regulatory or professional body	Who must be insured	Cover required	Excess	Run-off Cover	Monitoring	Sanctions
		Where firm's gross fee income is below this then the greater of 2.5 times gross fee income or £100,000.	excess element of any claims which might arise.			
Institute of Chartered Accountants in England and Wales (ICAEW). Requirements also apply to Institute of Chartered Accountants Scotland (ICAS) and Institute of Chartered Accountants Ireland (ICAI)	Those in public practice. Also those who carry on activity regulated by the bodies under statute.	At least £1.5 million for any one claim and in total when firms gross fee income is over £600,000. If gross income fee is below this then the minimum cover will be the greater of 2.5 times gross fee income or £100,000.	£30,000 per principal in the aggregate as part of the sum insured.	Cover must be maintained for 2 years after ceasing to hold a practising certificate, plus a recommendation to maintain cover for a further 4 years.	Annual return declaration reviews by monitoring departments.	Disciplinary action. The starting point for sanction for a serious failure to hold PII is exclusion from membership and a financial penalty (for the most serious breaches).
The Society of Estate and Trust Practitioners	Members are multi-disciplinary and therefore likely required to hold PII as part of their primary regulatory body. Members must ensure they are covered for any work undertaken on a consultancy or freelance basis.	Any cover obtained must be sufficient to cover the majority of claims that could arise and the breadth of work undertaken.	Not specified.	Required but not explicit on duration.	Annual member declaration.	Disciplinary action Full range of sanctions available – Reprimand, Suspension, Exclusion, Fine, Conditions on membership.