



APPENDIX A

ICAEW – PROBATE REGULATIONS

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Chapter 1 - General

The Legal Services Act 2007 permits two methods by which a firm may undertake probate work:

- as an authorised firm in which case all of the principals (and shareholders in the case of a company) have to be individually authorised to undertake probate work;
- as a licensed firm if all the principals (and shareholders in the case of a company) are not individually authorised to undertake probate work. Additional requirements then apply.

Authorisation is by an approved regulator, licensing is by a licensing authority and ICAEW is both. Once a firm is authorised or licensed under these regulations it is an 'accredited probate firm' and it has to comply with these regulations. Some regulations may only apply to a licensed firm, such as the requirement to appoint a Head of Finance and Administration and a Head of Legal Practice.

In addition to the regulatory requirements for probate work, a number of important regulatory provisions are applied to estate administration when carried out by a firm conducting probate work. 'Authorised work' for the purposes of these regulations, includes estate administration.

As a licensing authority ICAEW has statutory powers to intervene in the business of firms which it has licensed. These powers and the types of default by a licensed firm (such as breaches of licence conditions or insolvency events) which trigger them are set out in schedule 14 of the Act. ICAEW uses similar powers and applies similar principles as an approved regulator in the case of authorised firms.

It is a requirement of the Act that in discharging its regulatory functions, ICAEW, as an approved regulator, must act in a way which is compatible with the regulatory objectives set out in section 1 of the Act, and in the way which it considers most appropriate for the purpose of meeting those objectives.

All individuals who are in charge of, or control the undertaking of, probate work in an accredited probate firm must be individually authorised to do so under the Act. That authorisation may have been granted by ICAEW or another approved regulator.

ICAEW must be given full details of any non-authorised person who holds or is expected to hold a material interest (see regulation 6.2) in a licensed firm or a firm which applies to be licensed, or of any change in the holding of such an interest. Such a holding is subject to approval by ICAEW which may be granted unconditionally or subject to conditions.

In these regulations, regulations are in bold type with definitions in *italics*. Guidance, to assist firms, is in light type.

1.1 These *regulations* are made by *ICAEW's Council*, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They come into force on [Date].

1.2 These *regulations* only apply to the grant of probate or letters of administration in England and Wales.

The definition of probate work, and therefore the work that can be authorised by accreditation under these regulations, consists only of preparing papers to apply for a grant of probate or letters of administration. If a firm is asked to prepare papers to oppose a grant of probate, then the client should be requested to seek advice from a suitably authorised person.

There are different arrangements in Northern Ireland and Scotland (in the latter case probate is known as 'confirmation'). Thus a firm cannot undertake probate (or confirmation) work in Northern Ireland and Scotland unless specifically permitted to do so under the law of those countries.

1.3 These *regulations* apply to *firms* seeking *accreditation* and to *accredited probate firms* authorised or licensed under these *regulations*. The *regulations* also apply to *principals and employees* of the *firm*. In certain instances the *regulations* continue to apply even if *accreditation* has ceased.

1.4 Any notice or document may be served on *ICAEW* by sending it to:

Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard,
Milton Keynes
MK9 2FZ ~~UK~~

1.5 Any notice, decision, order or other document which needs to be served on a *firm*, *member*, *affiliate* or other person under these *regulations* will be delivered by hand, or sent by email, fax or post:

- a if it is delivered by hand to the addressee, service will take effect immediately;
- b if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
- c if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
- d if sent by post, it will be sent to the latest address given by the addressee and service will take effect two *business days* after posting.

Definitions and interpretation

1.6 The words listed below shall have the meanings given:

- Accountancy body***
- *ICAEW*;
 - Institute of Chartered Accountants of Scotland;
 - Chartered Accountants Ireland;
 - Institute of Chartered Accountants in Australia;
 - New Zealand Institute of Chartered Accountants;
 - South African Institute of Chartered Accountants;
 - Institute of Chartered Accountants of Zimbabwe; or
 - Canadian Institute of Chartered Accountants.

Accreditation The process by which *ICAEW* authorises or licenses persons to undertake *probate work*.

<i>Accredited probate firm</i>	A firm accredited under these regulations to conduct probate work.
<i>Act</i>	Legal Services Act 2007.
<i>Approved Regulator</i>	A body designated under Schedule 4 of the Act in respect of one or more reserved legal <u>activities</u>services.
<i>Associate</i>	An associate is defined by regulation 6.3.
<i>Authorised firm</i>	A firm authorised under these regulations to conduct probate work.
<i>Authorised individual</i>	A principal or employee of an accredited probate firm who is designated under chapter 4 of these regulations.
<i>Authorised person</i>	A person or firm authorised or licensed by ICAEW or another approved regulator in relation to probate work.
<i>Authorised work</i>	<ul style="list-style-type: none"> • Probate work • Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
<i>Business day</i>	A day when banks are generally open for business (excluding weekends) in England or Wales (as appropriate).
<i>Contact partner</i>	<p>An individual appointed by a firm to:</p> <ul style="list-style-type: none"> • ensure that it has procedures and practices that enable it to comply with its obligations under these regulations. • correspond with ICAEW in relation to the activities governed by these regulations; • give an annual declaration of the firm's compliance with its responsibilities under these regulations in the form from time to time determined by ICAEW; • from time to time supply ICAEW or its agents with information as required; <u>and</u> • ensure that an annual compliance review is undertaken as required under regulation 3.11.

The role of the contact partner is to be responsible for ensuring that the firm complies with these regulations. The contact partner should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions.

Where one of more of the principals of the firm is an individual, one of those individuals should be the contact partner and it is recommended that they also be an authorised individual.

If the firm is a sole practice, the sole practitioner is the contact partner. The Head of Legal Practice is the contact partner in a licensed firm.

<i>Disciplinary Committee</i>	The <i>Disciplinary Committee</i> appointed by <i>ICAEW</i> under the Schedule to its Disciplinary Bye-laws.
<i>Employee</i>	Anyone who carries out work for an <i>accredited probate firm</i>, but excluding a <i>principal</i>, sub-contractor or a consultant.
<i>Firm</i>	A <i>firm</i> includes an individual, a partnership, a limited liability partnership or any other body corporate which is or seeks to be <i>accredited</i> under these <i>regulations</i> to conduct <i>probate work</i>.
<i>First-tier Tribunal</i>	The independent public body established under the Tribunals, Courts and Enforcement Act 2007 with responsibility for hearing appeals against decisions of the <i>Review Committee</i> and <i>Disciplinary Committee</i>.
<i>Head of Finance and Administration</i>	The individual appointed by a <i>licensed firm</i> and who is responsible for taking all reasonable steps to ensure that the <i>firm</i> complies with the requirements in <i>regulation 3.8</i> (clients' assets) and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Finance and Administration</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable.

The Head of Finance and Administration (HoFA) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. Where one of more of the principals of the firm is an individual, one of those individuals should be the HoFA. The HoFA should hold an appropriate qualification to enable the discharge of his duties with competence and skill.

<i>Head of Legal Practice</i>	The <i>authorised individual</i> appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that: <ul style="list-style-type: none">• the <i>licensed firm</i> and its <i>principals</i> and <i>employees</i> comply with their duties under these <i>regulations</i> (other than <i>regulation 3.8</i>); and• non-<i>authorised persons</i> do not do anything which causes or substantially contributes to any breach of these <i>regulations</i> by the <i>firm</i> or by any <i>authorised person</i> who is a <i>principal</i> or <i>employee</i> of the <i>firm</i>;
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and who is not disqualified under the *Act* from acting as a *Head of Legal Practice* and who must report any breach of those requirements to *ICAEW* as soon as reasonably practicable.

The Head of Legal Practice (HoLP) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. They should also have sufficient independence to be

able to report matters freely if necessary. Where one of more of the principals of the firm is an authorised individual, one of those individuals should be the HoLP. The HoLP in a licensed firm is also the contact partner.

ICAEW	The Institute of Chartered Accountants in England and Wales.
Investigation Committee	The <i>Investigation Committee</i> appointed by <i>ICAEW</i> under the Schedule to its Disciplinary Bye-laws.
Legal Ombudsman	The body appointed by the Office of Legal Complaints under Part 6 of the <i>Act</i> to assist with resolving complaints.
Legal Services Board	The body established under Part 2 of the <i>Act</i>.
Licensing authority	A body designated under Part 1 of Schedule 10 of the <i>Act</i> in respect of one or more <i>reserved legal <u>activities</u>services</i>.
Licensed firm	A <i>firm</i> licensed under these <i>regulations</i> to conduct <i>probate work</i>.
Material interest	A <i>material interest</i> is defined by <i>regulation 6.2</i>.
Member	A <i>member</i> of <i>ICAEW</i> but not including a <i>probate affiliate</i>.
Principal	<ul style="list-style-type: none">• an individual in sole practice (where the <i>firm</i> is a sole practice);• a person who is a partner (including both salaried and equity partners) (where the <i>firm</i> is a partnership);• a member of a limited liability partnership (where the <i>firm</i> is a limited liability partnership);• a director (where the <i>firm</i> is a company);• a member of the governing body (where the <i>firm</i> is an unincorporated body, other than a partnership); or• any individual or person who is held out as being a director, partner, member, or member of the governing body.
	Corporate practices or limited liability partnerships may be principals in a firm.
Probate affiliate	A person granted <i>probate affiliate</i> status by <i>ICAEW</i> for the purpose of these <i>regulations</i>.
Probate Committee	The <i>ICAEW</i> committee responsible for discharging <i>ICAEW</i>'s functions as set out in these <i>regulations</i> or any sub-committee of that committee.
Probate Compensation Scheme	The scheme for the payment of grants made in accordance with the <i>Probate Compensation Scheme</i> regulations.

Probate work The preparation of papers to apply for a grant of probate or letters of administration.

Register The *register of licensed firms* held by ICAEW in accordance with section 87 of the *Act*.

Regulations These Probate Regulations, as modified or amended from time to time.

Regulatory penalty An amount paid by an *accredited probate firm* by agreement for a breach of these *regulations* which the *accredited probate firm* agrees has been committed.

Relevant person

- an *authorised individual*;
- a *Head of Finance and Administration*;
- a *Head of Legal Practice*; or
- any other *principal* or *employee* of an *accredited probate firm*.

Reserved legal activities

- the exercise of a right of audience;
- the conduct of litigation;
- reserved instrument activities;
- probate activities;
- notarial activities;
- the administration of oaths;

as defined in section 12(1) and Schedule 2 of the *Act*.

Review Committee The committee appointed under ICAEW's Bye-laws with responsibility for reviewing decisions made by ICAEW as specified in these *regulations*.

1.7 Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined above. The definitions in these *regulations* take precedence.

1.8 In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of these *regulations*. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

1.9 Any references to legislation, regulations, requirements, bye-laws, rules or other documents, will apply to any re-enactment, re-issue or amendment.

Chapter 2 - Eligibility, application, continuing obligations and cessation

Applications

- 2.1 A *firm* that wishes to be *accredited* under these *regulations* must apply in the manner decided by *ICAEW*, on a prescribed form. The application must include the following:
- a any information that *ICAEW* may require to assess the ability of the *firm* to carry out *authorised work*;
 - b a statement by the *firm* of how its *accreditation* will promote the objective of improving access to justice;
 - c information on the *firm's* arrangements for diversity monitoring in relation to its *principals* and *employees* and existing data derived from diversity monitoring;
 - d a declaration by the *firm* that it agrees to be bound by these *regulations* and will ensure that it complies with them at all times;
 - e a declaration by the *firm* that it will deal with *ICAEW* in an open and co-operative manner and inform *ICAEW* promptly about anything concerning the *firm* as required by these *regulations*;
 - f an acknowledgement by the *firm* that none of *ICAEW*, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the *firm* in damages for any act or omission arising out of the performance of any of their functions under the *Act*, or connected with the granting of authorisation or a licence, the enforcement of these *regulations* or the monitoring of compliance with these *regulations* in any respect, unless the act or omission is shown to have been in bad faith;
 - g an acknowledgement that *ICAEW* may make enquiries of or about the *firm* as *ICAEW* deems necessary;
 - h an acknowledgement that *ICAEW* may publish, in such manner as it may determine, information about the *firm's* status under these *regulations*; and
 - i an acknowledgement that *ICAEW* may disclose information about the *firm* as set out in *regulation 2.26*.

Eligibility

- 2.2 *ICAEW* may authorise a *firm* only if:
- a each *principal* in the *firm* is an *authorised person* (or becomes an *authorised person* by decision of *ICAEW* at the same time as granting authorisation to the *firm*) and if another body is a *principal* in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body; and
 - b in the case of a corporate body (other than a limited liability partnership) each person who has an interest in the *firm* is an *authorised person* (authorised by *ICAEW* under these *regulations* or by another *approved regulator*) and if another body has an

interest in the *firm*, *non-authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body.

The above sets out who is required to be an authorised person under these regulations. Generally the principals and shareholders in the case of a company must all be authorised persons but certain *de-minimis* holdings by non-authorised persons are allowed. A firm applying for authorisation may at the same time apply for approval of designation of its principals as authorised individuals ~~as set out in chapter 4 under regulation 4.4~~. If a firm is unsure of its eligibility to be authorised or licensed it should contact ICAEW. A person has an interest in a firm if the person holds shares in the body or is entitled to exercise, or control the exercise of, voting rights in the firm.

2.3 If a *firm* does not meet the requirements of regulation 2.2 ICAEW may license the *firm* only if at least one *principal* in the *firm* is:

- a an *authorised individual*; or
- b authorised by ICAEW under regulation 2.2 or authorised by another *approved regulator* in relation to *probate work*;

but in either case is not a *licensed firm*.

2.4 ICAEW, having taken account of the objective of improving access to justice, may *accredit* a *firm* only if it is satisfied that:

- a the *firm* is fit and proper to be *accredited*;
- b each individual who will undertake, or control the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual* and is fit and proper;
- c the *firm* has appointed a *contact partner* whose name has been given to ICAEW;
- d in the case of a *firm* applying to be licensed, the *firm* has appointed a *Head of Finance and Administration* and a *Head of Legal Practice* who have consented to act in these roles and whose appointment has been approved by ICAEW;
- e the *firm* has at least one office in England and Wales from which it undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- f each *principal* who is not an *accredited probate firm*, a registered auditor, a DPB-licensed firm, a *member* of ICAEW, a member of the Institute of Chartered Accountants of Scotland, a member of Chartered Accountants Ireland or another *approved regulator* holds *affiliate* status under these *regulations*, ICAEW's Audit Regulations, ICAEW's DPB Handbook, ICAEW's Insolvency Regulations or ICAEW's regulations governing the use of the description 'Chartered Accountants' and general affiliates;
- g in the case of a *firm* applying to be licensed, any *non-authorised person* who holds a *material interest* in the *firm* is approved by ICAEW under chapter 6;
- h in the case of a *firm* applying to be licensed, the *firm* has:
 - informed all *principals*, *employees* and shareholders who are *non-authorised persons* of the duties imposed on them by sections 90 and 176 of the *Act*; and

- **put in place procedures to prevent such persons from improperly influencing the independence and integrity of *probate work*; and**
- i **the *firm* has professional indemnity insurance under ICAEW's PII Regulations with a minimum level of indemnity of £500,000 per claim.**

Section 28 of the Act requires ICAEW to act in a way which is compatible with the regulatory objectives and which it considers most appropriate for the purpose of meeting those objectives. Under section 1 of the Act the regulatory objectives include the objective of improving access to justice. The application form contains guidance to firms on how their application may promote this objective.

2.5 ICAEW may:

- a grant the application;**
- b reject the application;**
- c grant the application subject to restrictions or conditions; or**
- d postpone consideration of the application.**

Under the Act, ICAEW has a period of 6 months (beginning when all the information required on the application form is received) to make a decision on an application. However, under regulation 2.5d, ICAEW may decide that it can only properly consider a firm's application after it has additional information about the firm. ICAEW may decide this is best achieved by a visit to the firm and a charge may be made for this. If it is necessary to seek additional information, ICAEW may, before the expiry of 6 months, issue an extension notice to the applicant extending the period of time taken to reach a decision to 9 months. The extension notice must set out the reasons for the extension.

If ICAEW rejects or grants the application subject to restrictions or conditions, it must explain in writing to the applicant the reasons for its decision. ~~Decisions Orders~~ will come into effect as set out in chapter 10.

A firm can apply for a review of a decision to reject accreditation or to grant it subject to restrictions or conditions. Details of the review process are in chapter 11.

2.6 ICAEW may at any time vary or end a restriction or condition made under regulation 2.5.

Continuing obligations

2.7 An accredited probate firm and its principals and employees must at all times:

- a comply with these regulations, with any condition of the firm's accreditation and with any other relevant regulatory arrangements (and be able to satisfy ICAEW as to such compliance on request);**
- b not do or permit anything which causes or substantially contributes to any breach of these regulations by the firm or by any authorised individual who is a principal or employee of the firm;**
- c comply with ICAEW's PII regulations;**
- d deal with ICAEW in an open and cooperative manner;**

- e if an *authorised firm*, have a *contact partner* (in the case of a sole practitioner, that person will be the *contact partner*);
- f if a *licensed firm* have a *Head of Legal Practice* who is also the *contact partner*;
- g if a *licensed firm* have a *Head of Finance and Administration*;
- h ensure that each individual who undertakes, or controls the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual*;
- i have at least one office in England and Wales from which the *firm* undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- j inform *ICAEW* as soon as practicable but not later than 10 *business days* after any change to the:
 - 1 *accredited probate firm's* registered address;
 - 2 name or trading names of the *accredited probate firm*;
 - 3 address(es) of the *accredited probate firm's* offices;
 - 4 *accredited probate firm's* principals;
 - 5 name or principal business address of any of the *accredited probate firm's* principals;
 - 6 name of the *contact partner*;
 - 7 name of the *Head of Finance and Administration* who must be approved in that capacity by *ICAEW*;
 - 8 name of the *Head of Legal Practice* who must be approved in that capacity by *ICAEW*; or
 - 9 in the case of a body corporate (but excluding a limited liability partnership):
 - the name or address of any shareholder or anyone with any interest in the shares; and
 - the number of shares held by a shareholder or in the number of shares in which anyone has an interest.
- k inform *ICAEW* as soon as practicable but not later than 10 *business days* after any event affecting the *firm's* eligibility to be *accredited*;
- l in the case of a *licensed firm*, inform *ICAEW* as soon as practicable but not later than 10 *business days* after any non-*authorised person* acquires or ceases to hold, or increases or decreases a holding of, any interest in the *firm* which, either before or after the change, qualifies as a *material interest*;
- m pay any of the charges required by *ICAEW* as set out in *regulations* 2.14, 2.15 and 2.16. Such charges may be levied at any time, including after the termination of *accreditation* provided they relate to a period before the date of termination;

- n respond, when required, to enquiries made by *ICAEW* (whether by writing, visiting the *accredited probate firm's* offices or by any other method) about the *firm's* application or its activities as an *accredited probate firm*;
- o arrange for the provision of any information about the *firm* or its clients (and to allow access to the *firm's* systems and personnel) that *ICAEW* may request about the activities as an *accredited probate firm*, whether that information is held by:
 - 1 the *accredited probate firm*;
 - 2 any *principal* or *employee* (or former *principal* or former *employee*) of the *accredited probate firm*;
 - 3 any non-*authorised person* who holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*.
 - 4 any non-*authorised person* who is entitled to exercise, or control the exercise of, at least 10% of the voting rights in 'A', where A is a *principal* of the *accredited probate firm* or holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*;
- p provide *ICAEW* with a periodic return in relation to its activities as an *accredited probate firm*;
- q subject itself and all its *principals* to any monitoring, inspection or review process specified by *ICAEW*, including its Practice Assurance scheme;
- r send any notice or other document to be served on *ICAEW* in the manner set out in *regulation* 1.4, or as last notified to the *accredited probate firm*; and
- s monitor the diversity of the *accredited probate firm's principals* and *employees*, and publish the findings of the monitoring, in the manner and format prescribed by *ICAEW* from time to time.

2.8 An *accredited probate firm* may not have as a *principal* or *employee* a person who is disqualified pursuant to section 99 of the *Act* from being a *principal* or *employee* of a body licensed under Part 5 of the *Act*.

As is reflected in *regulation* 5.5, the Legal Services Board maintains a list of persons who have been disqualified from working in licensed firms by the approved regulators under section 99 of the *Act*. Firms are advised to refer to this list, which can be accessed on the LSB's website before submitting their application for accreditation.

2.9 If an *accredited probate firm* ceases to have any *principal* or *employee* who is an *authorised individual* the *firm* will immediately cease to undertake *probate work* until it has notified *ICAEW* of the name of another *principal* or *employee* who meets the requirements of chapter 4.

Professional Indemnity Insurance and compensation

2.10 An *accredited probate firm* shall only carry out *authorised work* if it has professional indemnity insurance under *ICAEW's* PII Regulations with a minimum level of indemnity of £500,000 per claim.

If a firm is conducting authorised work and the value of the estate is likely to exceed the level of the firm's own PII, firms must notify their clients in writing at the beginning of the engagement that their PII is capped and the level of cover.

2.11 An accredited probate firm or firm that was previously accredited must comply with the regulations of ICAEW's Probate Compensation Scheme.

Modification

2.12 An accredited probate firm that wishes to modify the terms of its accreditation must apply in the manner decided by ICAEW. The application must include the following:

- a the terms of the proposed modification;**
- b the reasons for proposing the modification; and**
- c any information that ICAEW may require in connection with the application.**

2.13 ICAEW may:

- a modify the accreditation in the terms of the application;**
- b modify the accreditation in such other terms as it considers appropriate;**
- c reject the application; or**
- d postpone consideration of the application.**

If ICAEW rejects the application for modification, it will inform the accredited probate firm of its reasons in writing within 10 business days. A firm can apply for a review of a decision to reject modification or to grant it subject to restrictions or conditions. Details of the review process are in chapter 11. A charge may be made for dealing with such an application.

Fees

2.14 An accredited probate firm must pay such registration fees (to include any costs that ICAEW is required or has agreed to pay to any other person or body exercising a regulatory or supervisory role in relation to it) as ICAEW determines, at the times and at the rates set by it. The first registration fee is due when a firm applies to be accredited under these regulations to conduct probate work. An application fee is also payable with this first fee.

If a firm's application is not accepted, the first registration fee will be refunded.

2.15 ICAEW may charge a firm or an accredited probate firm a fee if ICAEW has performed additional work. The Probate Committee will decide how much the fee will be.

Additional work may be performed, for example in:

- obtaining information for or about the firm or accredited probate firm;
- collecting any charges due under these regulations;
- responding to enquiries or complaints regarding the accredited probate firm;

- reviewing the continuation of the firm's accreditation;
- visiting the accredited probate firm where ICAEW has had to make a second or subsequent visit to the accredited probate firm as a result of an earlier visit; or
- considering an application for modification under regulations 2.12 and 2.13.

- 2.16** An *accredited probate firm* must pay any levy for *ICAEW's Probate Compensation Scheme* (whether a periodic contribution or special levy) as *ICAEW* may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.
- 2.17** If an *accredited probate firm* has not paid any amounts due under *regulations 2.14, 2.15 or 2.16* within 60 days of the invoice date, *ICAEW* may withdraw its *accreditation*.
- 2.18** Any amounts unpaid under *regulations 2.14, 2.15 or 2.16* may be recovered as a debt to *ICAEW*.

Dispensations

- 2.19** The *accredited probate firm* must inform *ICAEW* in writing within 10 *business days* of a situation arising that may indicate that the *accredited probate firm* cannot, or expects not to be able to, comply with any of these *regulations*. The notification must state what has happened and the action that the *accredited probate firm* proposes to take.
- 2.20** *ICAEW* may grant the *accredited probate firm* a dispensation, of no more than 90 days, from the requirement to comply with a *regulation* where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any client.
- 2.21** If *ICAEW* rejects the application for a dispensation, it will inform the *accredited probate firm* of its reasons in writing within 10 *business days*. The *accredited probate firm* will then be entitled to apply for a review of the decision in accordance with the procedures set out in chapter 11.

It is not expected that dispensations will be readily granted and any firm applying for a dispensation must show clearly state why the dispensation is needed and what it is doing to remedy the situation.

Cessation of accreditation

- 2.22** A *firm* will cease to be an *accredited probate firm* if:
- ICAEW* accepts an application from the *firm* to cancel its *accreditation*;
 - the *firm* becomes licensed by another *licensing authority*;
 - the *firm* ceases to exist; or
 - ICAEW* withdraws *accreditation* under regulation 10.3.

If a firm's accreditation is to be withdrawn, the firm may ask for a review of the decision under the procedures in chapter 11. Withdrawal at the firm's request, because the firm no longer exists or it

becomes licensed by another licensing authority, cannot lead to a review. If a firm which is no longer accredited wishes to apply again it can do so in the normal manner.

2.23 If a firm is no longer an accredited probate firm:

- a it must still respond to enquiries (made in writing or by visiting a firm's office or offices) from ICAEW in connection with any circumstance that relates to these regulations during the time that the firm was accredited and must co-operate with the work of the Legal Ombudsman, including the provision of papers and the payment of any remedies ordered;**
- b disciplinary action (including a regulatory penalty) may still be taken for:**
 - 1 any failure to comply with these regulations during the time it was accredited;**
 - 2 any failure to comply with any regulation continuing to have effect notwithstanding that accreditation has ceased;**
 - 3 any failure to keep confidential any information received in the course of authorised work.**

2.24 ICAEW's right to recover any amounts due from a firm under these regulations does not end when a firm is no longer accredited.

The effect of regulation 2.23 is that a firm cannot escape disciplinary action by applying to have its accreditation withdrawn. If, in the process of withdrawing accreditation, ICAEW places a condition on a firm and that condition is broken then disciplinary action can be taken. There is a continuing obligation to deal with ICAEW's enquiries and requests for information under regulation 2.23. Finally, under regulation 2.24 applying to have accreditation withdrawn does not remove the firm's obligation to pay outstanding fees.

Regulatory conflicts

2.25 If an accredited probate firm is of the view that any other regulatory requirement to which it or an authorised individual is subject, including the requirements of another approved regulator, may cause it to cease complying with these regulations, it must inform ICAEW within 10 business days of becoming aware of the conflict.

Firms should note that section 176 of the Act requires individuals conducting probate work to comply with the regulatory arrangements of the approved regulator by whom they are regulated. For example, in the case of a solicitor working within an accredited probate firm this will be the Solicitors Regulation Authority (SRA).

2.26 ICAEW reserves the right to pass information (directly or indirectly) about an accredited probate firm to any ICAEW committee or person or body undertaking regulatory, disciplinary, redress or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

Chapter 3 - Conduct of authorised work

3.1 An accredited probate firm must act in accordance with the fundamental principles set out in the Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its *principals* and *employees* comply with these *regulations* and the professional principles set out in the *Act* to:

- a act with independence and integrity;**
- b maintain proper standards of work;**
- c act in the best interests of their clients; and**
- d keep the affairs of clients confidential.**

Firms of different sizes and with different types of clients will adopt different procedures to comply with these regulations and to act in accordance with the fundamental principles set out in the Code of Ethics. However, all firms will be aiming to provide a high quality and cost effective service, which complies with these regulations. For most firms this means having procedures for doing probate and authorised work, and checks to make sure that the procedures are followed.

3.2 An accredited probate firm shall only carry out *authorised work* which it is competent to perform.

3.3 An accredited probate firm must make sure that only *authorised individuals* undertake, or control the undertaking of, *probate work* on behalf of the *firm*.

3.4 An accredited probate firm must make sure that all *principals* and *employees* undertaking *authorised work* are, and continue to be, competent to carry out the *authorised work* for which they are responsible.

The above places the responsibility on the firm to ensure that its principals and employees who undertake authorised work are suitably competent in doing this work and are up to date with current developments.

3.5 An accredited probate firm must make arrangements to prevent anyone who is not an *authorised individual* in the *firm*, or working under the supervision of that person, from having any influence which would be likely to affect the independence or integrity of *probate work*.

These arrangements need to include informing new principals, employees or shareholders who are non-authorised persons of the duties imposed on them by sections 90 and 176 of the Act.

3.6 An accredited probate firm shall ensure that it is in full agreement with its clients as to the nature, scope and terms of the *authorised work* which is or may be provided and that it retains evidence of this agreement.

The best way to obtain and record this agreement is by using an engagement letter. This could also deal with a firm's obligations under section 240 of the Code of Ethics to notify clients of the basis for charging fees. It could draw the client's attention to the arrangements for continuing the provision of probate services (see regulation 3.12) and the complaints procedures established under chapter 7.

As a matter of best practice and in order to reduce the likelihood of future confusion and complaints, firms should also outline clearly for clients at the beginning of the engagement what

is likely to occur and the nature and scope of the work that will be carried out, as well as the costs involved. They should also provide information to enable their clients actively to manage their costs, including being prepared to explain to clients aspects of their work as it progresses and provide them with revised choices and costs estimates if the original estimates are likely to be exceeded.

The client should not be put under pressure by the firm to accept terms of engagement that may not be in accordance with their wishes.

3.7 The *accredited probate firm* shall ensure that clients are advised in writing of the compensation arrangements at the beginning of the engagement and the time scales for making applications to the *Probate Compensation Scheme*.

It is recommended that firms use the following paragraph:

'In the unlikely event that we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Probate Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you became aware, or reasonably ought to have become aware, of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: www.icaew.com/probate.'

3.8 If an *accredited probate firm* receives any property in connection with *authorised work*, details of the property received should be recorded. The *firm* should take all reasonable steps to ensure that such property is kept safely. Where the property is money this should be dealt with in accordance with *ICAEW's* clients' money regulations, except that monies received in connection with *authorised work* must be kept separate from other clients' monies.

3.9 Any property held by an *accredited probate firm* must only be released on the client's written instructions and a receipt obtained.

Firms should consider carefully whether to hold property in connection with authorised work. It is often the case that the value of such property may be unclear but to safeguard it properly a firm should check that it has appropriate insurance cover. A receipt should be given when any property is received and transferred to a third party.

3.10 An *accredited probate firm* shall ensure that it has appropriate records of *authorised work* undertaken on behalf of clients.

Records should evidence the work undertaken on behalf of clients under these regulations, plus any specific instructions from the client. The records do not have to be on paper but could be held on microfilm or on computers. Whatever method of storage is used, the firm must keep a mechanism for gaining access to those records.

It is likely that ICAEW will only be satisfied if the firm keeps records relating to work performed under these requirements for at least 6 years. Firms should bear in mind that some legislation requires records to be retained for longer.

3.11 An *accredited probate firm* must:

- a confirm on request that it meets the requirements of these *regulations* and supply such evidence as *ICAEW* may require to support such confirmation; and**
- b ensure that it conducts a review, at least annually, to consider whether systems it has maintained have been adequate to enable it to:**

- 1 comply with these *regulations* and to confirm its compliance with these *regulations* when requested by *ICAEW*; and
- 2 prepare any return required under *regulation 2.7p*.

The annual compliance review checks whether a firm has complied with these regulations.

3.12 If an *accredited probate firm* ceases to undertake *authorised work* then there must be arrangements in place to protect the interests of those clients for whom it is undertaking such work.

~~The Act requires that a~~ arrangements must be in place in case a firm ceases to undertake authorised work. These arrangements are to protect the interests of clients and the firm may need to make some arrangements on a contingency basis.

Where a firm is ceasing to conduct authorised work, an orderly wind down or transfer of work to an identified successor firm may be arranged. However, particularly where the firm is a sole practitioner, additional measures will need to be in place to protect the interest of clients in the event of the death or incapacity of the practitioner. This may simply be an arrangement for another person to access the firm's records and then make arrangements for the authorised work to be transferred to another probate practitioner.

The firm should provide details of these arrangements within an engagement letter or similar. A suggested wording is:

'If, for any reason, I am unable to run my practice, I have made arrangements for the continuation of probate workservices to clients. [Add details of the person that the client can contact.]'

Chapter 4 - Authorised individuals, Heads of Finance and Administrations and Heads of Legal Practices

All individuals who undertake, or control the undertaking of, probate work on behalf of an accredited probate firm must be individually authorised to do so under the Act by ICAEW or another approved regulator.

In an authorised firm, all the principals will need to be authorised persons. A sole practitioner must be an authorised individual and the firm's contact partner. In other authorised firms it is recommended that one of the principals be the contact partner.

A licensed firm must appoint a Head of Finance and Administration and Head of Legal Practice who have specific responsibilities and important duties as set out in regulation 1.6. The Head of Legal Practice must be an authorised individual and the firm's contact partner.

In all firms (including sole practices) the contact partner can designate appropriately qualified principals or employees as authorised individuals as set out in the following regulations.

Authorisation and withdrawal of authorisation

4.1 Subject to regulation 4.4 the contact partner (or the person who is intended to be the contact partner upon accreditation) may designate as an authorised individual any of the accredited probate firm's principals or employees (or any of the principals or employees of a firm applying for accreditation) who:

- a is a member of an accountancy body and has provided evidence to ICAEW of attendance at a course and assessment, which covered at least the following subjects:**
- a general introduction to the Act as it applies to probate work;
 - a general introduction to the law of property, equity and trusts;
 - the need for a grant and its effect;
 - the types of grant – probate, letters of administration;
 - who can apply for probate / letters of administration;
 - consideration of the validity, format and content of ~~the~~ wills;
 - intestacy provisions;
 - obtaining information about the assets and liabilities of the estate and their valuation;
 - finalising of inheritance tax, corrective accounts and obtaining a clearance certificate from HM Revenue and Customs;
 - the completion of papers for an application for a grant;
 - the completion of the oath and the filing of papers; and
 - the administration of the estate;
- b holds a qualification issued or recognised by an approved regulator (other than ICAEW) that entitles the individual to undertake probate work; or**
- c is otherwise qualified to undertake probate work so as to satisfy ICAEW that it should approve his designation as an authorised individual.**

Only principals and employees of a firm are eligible to become 'authorised individuals', not sub-contractors or consultants.

There are no prescribed courses for the purpose of regulation 4.1a but the firm or member must show that the course covered the above topics. Courses can include those where the learning is computer based 'e-learning', including training delivered over the internet.

The learning outcomes of the course must be assessed and the method of assessment can include objective testing. The pass mark for an assessment must be no less than 50%.

As the course outline set out in regulation 4.1a builds on the existing qualifications and skills of a chartered accountant, only members of the accountancy bodies as defined in regulation 1.6 may be eligible to become accredited for probate through this route.

Applications in respect of individuals under regulation 4.1c will be decided on a case by case basis, having regard to the sufficiency of the individual's qualification to undertake probate work.

- 4.2 Subject to regulation 4.4 and with the agreement of the individual, a licensed firm must designate an authorised individual to be the Head of Legal Practice.**
- 4.3 Subject to regulation 4.4 and with the agreement of the individual, a licensed firm must designate an individual to be the Head of Finance and Administration.**
- 4.4 Any designation in accordance with regulation 4.1, 4.2 or 4.3 shall not be effective until an application has been made to ICAEW in a form specified by it and the application has been approved and this may be approved with conditions or restrictions.**

Where a firm wishes to be accredited, and any principals or employees are not authorised individuals, the applications by the firm for accreditation and for approval of designation of authorised individuals should be made (and will be dealt with) simultaneously.

- 4.5 ICAEW may will only approve a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration, if it is satisfied that that individual is a fit and proper person.**
- 4.6 ICAEW may at any time vary or end a restriction or condition made under regulation 4.4.**

Cessation

- 4.7 Authorised individual status will cease if:**
- a the firm in which the individual is an authorised individual ceases to be an accredited probate firm;**
 - b the individual ceases to be a principal or employee in the accredited probate firm to which the grant of authorised individual status related;**
 - c an event occurs which under ICAEW's Charter, Bye-laws or other regulations the individual would cease to be a member or an affiliate;**
 - d the contact partner notifies ICAEW that the individual is no longer an authorised individual; or**
 - e ICAEW withdraws authorised individual status.**

Firms are reminded to inform ICAEW of any changes to the authorised individuals of the firm.

- 4.8** *Authorised individual* status will not cease under *regulation 4.7a* or *4.7b* if:
- a** the *accredited probate firm* in which the *authorised individual* is a *principal* or *employee* merges with or is acquired by another *accredited probate firm*; or
 - b** the *authorised individual* leaves the *accredited probate firm* in which he is a *principal* or *employee* and immediately becomes a *principal* or *employee* in another *accredited probate firm*;
- provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *authorised individual* status withdrawn.
- 4.9** Status as a *Head of Legal Practice* or a *Head of Finance and Administration* will cease if:
- a** the *firm* to which the status relates ceases to be an *accredited probate firm*;
 - b** the individual ceases to be a *principal* or *employee* in the *accredited probate firm* to which the status relates;
 - c** an event occurs which under *ICAEW's* Charter, Bye-laws or other regulations the individual would cease to be a *member* or an affiliate;
 - d** the *firm* or individual notifies *ICAEW* that the individual no longer consents to hold that status; or
 - e** *ICAEW* disqualifies the person from holding that status under *regulation 5.1*.
- 4.10** If an individual is no longer an *authorised individual*, a *Head of Finance and Administration* or a *Head of Legal Practice* disciplinary action under chapter 12 (including the imposition of a *regulatory penalty*) may still be taken for any failure to comply with these *regulations*.

Decisions Orders under this chapter will come into effect as set out in chapter 10. The person may request a review (with subsequent right of appeal) under chapter 11.

Chapter 12 applies *ICAEW's* disciplinary arrangements to breaches of these regulations by an authorised individual, a *Head of Finance and Administration* or a *Head of Legal Practice*. Regulation 4.10 provides that disciplinary action may be taken after a person has ceased to hold this status.

Chapter 5 - Disqualification

The following regulations set out the circumstances in which a person may be disqualified under section 99 of the Act from acting as a Head of Legal Practice or Head of Finance and Administration, or from being a principal or an employee of any licensed firm. This is liable to occur in specific situations identified in the Act ~~and~~ detailed below.

5.1 If both of the conditions set out in *regulations 5.2 and 5.3* are satisfied, ICAEW may disqualify a person from:

- a acting as the *Head of Legal Practice* of any licensed firm;**
- b acting as the *Head of Finance and Administration* of any licensed firm;**
- c being a *principal* of any licensed firm; or**
- d being an *employee* of any licensed firm.**

5.2 The first condition referred to in *regulation 5.1* is that the person, intentionally or through neglect:

- a has breached a duty to which the person is subject:**
 - as a *Head of Legal Practice* by section 91 of the Act;
 - as the *Head of Finance and Administration* by section 92 of ~~the Act~~;
 - as a regulated person by section 176 of the Act (within the meaning of that section); or
 - as a *non-authorized person* by section 90; or
- b has caused, or substantially contributed to, a significant breach of the *licensed firm's accreditation*.**

5.3 The second condition referred to in *regulation 5.1* is that ICAEW is satisfied that it is undesirable for the person to engage in the activity or activities referred to in *regulation 5.1*.

5.4 Upon the application of any person so disqualified under *regulation 5.1*, ICAEW may, if the second condition referred to in *regulation 5.3* is no longer satisfied, ~~decide order~~ that a person's disqualification shall cease to be in force on a date specified in the ~~decision order~~.

5.5 ICAEW will ~~promptly~~ notify the *Legal Services Board* within 7 days of any decision under *regulation 5.1* that a person should be disqualified, of the results of any review of such a decision under *regulation 11.3* and of any decision under *regulation 5.4* by ICAEW that a person's disqualification should cease to be in force.

If ICAEW disqualifies a person as set out above, the ~~decision order~~ will come into effect as set out in regulation 10.10. The person may request a review (with subsequent right of appeal) under chapter 11.

Chapter 6 - Ownership of licensed firms

This chapter only applies to licensed firms.

The following regulations set out the requirements where any non-authorised person holds or proposes to hold a material interest in a licensed firm.

Firms applying to be licensed must provide full details of any non-authorised person who holds or is expected to hold a material interest, even if it becomes aware of this after submitting the application.

Licensed firms must also inform ICAEW if any non-authorised person acquires or is expected to acquire a material interest, or if there is any change ~~at all~~ in the extent to which any interest in the firm is held by a non-authorised persons. ICAEW will need to approve any non-authorised persons holding or intending to hold a material interest, and changes to the firm's ownership structure may affect its eligibility to be licensed.

ICAEW will decide whether to grant approval of the holding under this chapter. Approval may be granted unconditionally or subject to conditions as set out in these regulations.

If ICAEW objects to a holding or decides to permit it subject to conditions, an applicant or the non-authorised person may request a review (with subsequent right of appeal) under chapter 11.

As set out in regulation 6.2 there are different kinds of material interest. If ICAEW has approved a non-authorised person to hold a specific kind of material interest and that person then acquires a different kind of material interest, this needs to be approved as set out above. No approval is needed if an existing material interest is increased or decreased but notification under regulation 2.71 is required.

6.1 A non-authorised person may not hold a material interest in a licensed firm without a grant of approval by ICAEW.

6.2 A person holds a material interest in a body (B) if the person:

- holds at least 10% of the shares in B;
- is able to exercise significant influence over B's management by virtue of the person's shareholding in B;
- holds at least 10% of the shares in a parent undertaking ('P') of B;
- is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B;
- is able to exercise significant influence over B's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B;
- is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

Regulation 6.2 sets out the different kinds of material interest that require ICAEW's approval.

6.3 For the purposes of this chapter, the interest held by a person in a *firm* will consist of the total of the interest held by the person and the interest held by any of his *associates*, and a person's *associate* is defined as:

- a the person's spouse or civil partner;**
- b the person's child or stepchild if aged under 18;**
- c the trustee of any settlement under which the person has a life interest in possession;**
- d an undertaking of which the person is a director;**
- e any employee of the person;**
- f any partner in a firm (other than the *licensed firm*) of which the person is a partner;**
- g if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;**
- h any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in *regulation 6.2*; or**
- i any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in *regulation 6.2*.**

Acquisition of a material interest before a firm is licensed

6.4 A *firm* which applies to ICAEW to become a *licensed firm* must:

- a identify in the application any non-*authorised person* who holds, or is expected when the *firm* has been licensed to hold, an interest to which *regulation 6.1* applies;**
- b identify in the application the kind of interest which is so held or expected to be held;**
- c in any such case, inform the non-*authorised person* that ICAEW may require the person to provide ICAEW with documents and information and that failure to comply with such a requirement is a criminal offence; and**
- d inform ICAEW of any change in the identity of such non-*authorised person* or the kind of relevant interest so held or expected to be held occurring after the application but before the *firm* is licensed, such information to be given in writing within seven days of the occurrence of such change or, if later, the day on which the *firm* becomes aware of such change.**

Firms must make any non-*authorised person* aware of the importance of the requirement to provide ICAEW with documents and information and ensure that the person understands that failure to comply would make them guilty of a criminal offence under paragraph 14 of schedule 13 to the Act, which is punishable by a fine and/or imprisonment.

An applicant who fails to comply with regulation 6.4c is also guilty of an offence under paragraph 13 of schedule 13 to the Act, which is punishable by a fine.

- 6.5 **ICAEW will not license the *firm* unless it grants approval to the holding of the non-*authorised person* either unconditionally or subject to conditions.**
- 6.6 **In deciding whether to grant approval to the holding of the non-*authorised person*, ICAEW may require the person to provide it with any documents or information and will have regard to all relevant circumstances including:**
- a **the probity and financial position of the person ~~and~~ any person listed in *regulation 6.3*;**
 - b **whether the person ~~and~~ any person listed in *regulation 6.3* has been disqualified (by ICAEW under chapter 5 of these *regulations* or by any other *licensing authority*) from acting as a Head of Legal Practice, ~~or~~ a Head of Finance and Administration, ~~or~~ a principal or an employee of any licensed body; and**
 - c **whether the person or any person listed in *regulation 6.3* has been named in a list maintained by the *Legal Services Board* of persons in respect of whom a *licensing authority* has objected to or imposed conditions on the holding of a *material interest*, or of persons who acquire a holding of a *material interest* exceeding a limit specified in the licensing rules of any *licensing authority*.**

In determining whether an applicant (together with their associates) is fit and proper, ICAEW will have regard to whether they have previously been disqualified under section 99 of the Act, and whether any other licensing authority has previously objected to, or imposed a condition on, their holding of a material (or other restricted) interest in a licensed body.

- 6.7 **ICAEW ~~may~~ will grant approval to the holding of the non-*authorised person* unconditionally if it is satisfied that:**
- a **the person's holding of the *material interest* does not compromise the regulatory objectives set out in section 1 of the *Act*;**
 - b **the person's holding of the *material interest* does not compromise compliance by *authorised persons* or the *principals* or *employees* of ~~the~~ *any firm* with these *regulations* or with any of ICAEW's regulatory arrangements; and**
 - c **the person is a fit and proper person to hold the *material interest*.**
- 6.8 **If ICAEW is not satisfied as required by *regulation 6.7* it may:**
- a **grant approval to the holding of the non-*authorised person* subject to conditions if it is satisfied that compliance with the conditions makes this appropriate; or**
 - b **object to the holding.**
- 6.9 **Before deciding either to grant approval to the holding of the non-*authorised person* subject to conditions or to object to the holding, ICAEW will:**
- a **give written notice of the proposed objection or conditions, with reasons for it, to the applicant for the licence and to the non-*authorised person*, explaining the nature of any proposed conditions and stating that representations may be made to ICAEW within 28 days;**

- b consider any representations if made within the time specified by paragraph (a) above; and**
- c notify the applicant for the licence and the non-*authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.**

In all such cases the notice will explain the effect of ICAEW's enforcement powers under Part 5 of Schedule 13 of the Act.

Acquisition of material interest after issue of licence

These regulations impose duties on non-*authorised persons* who acquire or propose to acquire a material interest in a firm which is already licensed. A failure, with knowledge of the relevant facts, to comply with any of these duties to notify is a criminal offence punishable with a fine.

Licensed firms should ensure that any non-*authorised person* who acquires or proposes to acquire a material interest in the firm is aware of the obligation to provide such documents or information as ICAEW may require. Failure to comply with this obligation is a criminal offence punishable by a fine and/or imprisonment.

- 6.10 If a non-*authorised person* who proposes to take a step which would result in his acquiring a *material interest* in a *licensed firm* or, if he already has any *material interest* in the *firm*, an additional kind of *material interest* in the *firm*, then he must:**
- a give written notification of the proposal to the *licensed firm* and to ICAEW; and**
 - b must not take the proposed step unless ICAEW has granted approval of his holding the *material interest*.**

As set out in regulation 6.2 there are different kinds of material interest. If ICAEW has [previously](#) approved a non-*authorised person* to hold a specific type of material interest, and that person then acquires a different kind of material interest, this needs to be approved as set out above.

- 6.11 If a person only becomes aware of the notification requirements referred to in *regulation 6.10* after making such a proposal, he must give written notification of the proposal to the *licensed firm* and to ICAEW within 7 days of becoming aware of them and before taking the proposed step.**
- 6.12 A non-*authorised person* who acquires a *material interest* in a *licensed firm* without taking a step as referred to in regulation 6.10 must give written notification of the acquisition to the *licensed firm* and to ICAEW within 7 days of becoming aware of the acquisition.**
- 6.13 When ICAEW receives a notification under any of *regulations 6.10, 6.11 or 6.12*, or if it becomes aware that a person has failed to comply with an obligation to make such a notification, it may require the person to provide it with any documents or information and, within 90 days of the notification, will decide whether to:**
- a approve the person's holding unconditionally;**
 - b warn the person that it proposes to approve the holding subject to conditions;**
 - c approve the holding subject to conditions;**
 - d warn the person that it proposes to object to the holding; or**

e object to the holding.

- 6.14 **ICAEW ~~may~~ will** grant approval to the holding of the *non-authorised person* unconditionally if it is satisfied of the matters specified in *regulation 6.7*.
- 6.15 If *ICAEW* is not satisfied as required by *regulation 6.14*, it may exercise either of the powers referred to in *regulation 6.8*.
- 6.16 Subject to *regulation 6.17*, before deciding either to grant approval to the holding of the *non-authorised person* subject to conditions or to object to the holding *ICAEW* will:
- a give written notice of the proposed objection or conditions, with reasons for it, to the *licensed firm* and to the *non-authorised person*, stating that representations may be made to *ICAEW* within 7 days;
 - b consider any representations made within the time specified by paragraph (a) above; and
 - c notify the *licensed firm* and ~~to~~ the *non-authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.
- 6.17 *ICAEW* may approve the holding subject to conditions or may object to the holding without giving the notice referred to in *regulation 6.16* if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives set out in section 1 of the *Act*.
- 6.18 Any approval granted by *ICAEW* under *regulations 6.14* or *6.15* is effective only if the *material interest* is acquired within such period as may be specified in **the** written notice by *ICAEW* of the approval or, if no period is specified, within one year of the date of the notice.

The approval granted by *ICAEW* is subject to the material interest being acquired either within the period set out in the notice, or, if no period is given, within one year. If the interest is not acquired within this time, approval will need to be sought again.

Powers of ICAEW in relation to existing material interests

ICAEW is empowered to give notice objecting to, or imposing conditions on, the holding of existing material interests where necessary.

A person who holds a material interest subject to any condition may apply to *ICAEW* for variation or cancellation of the condition.

- 6.19 If at any time *ICAEW* ceases to be satisfied as required by *regulation 6.7*, or if it is satisfied that a condition imposed by any of the *regulations* in this chapter has not been, or is not being, complied with, it may, within 90 days of becoming aware of the matters the question:
- a impose a condition on the holding; or
 - b object to the holding.
- 6.20 *Regulations 6.16* and *6.17* also apply to the exercise by *ICAEW* of the power referred to in *regulation 6.19*.

- 6.21** A condition imposed under any of the *regulations* in this chapter may be varied or cancelled by written notice by *ICAEW*:
- a** on the application of the person who holds the *material interest* ; or
 - b** on the initiative of *ICAEW*.

Enforcement of conditions and objections

Where a material interest is held in contravention of the regulations in this chapter, *ICAEW* may give notice restricting the rights attached to the holding and, subject to the procedural requirements imposed by the Act, may apply to the High Court for an order requiring a non-authorized person to sell shares.

Where a material interest is held in breach of a condition imposed under any of the regulations in this chapter, *ICAEW* may, subject to the procedural requirements imposed by the Act, apply to the High Court for an order securing compliance.

- 6.22** If a person holds a *material interest* in breach of any condition imposed by *ICAEW* under any of the *regulations* in this chapter, *ICAEW* may:
- a** give written notice to the person that it intends to apply to the High Court for an order securing compliance if the conditions are not complied with before the end of the period specified in the notice (not less than 28 days); and
 - b** upon expiry of the period specified in the notice, apply to the High Court to make such order securing compliance as the High Court thinks fit.

The High Court will not make an order securing compliance with a condition until the end of the period in which the person can appeal against the imposition of the condition and, if an appeal is made, until the appeal has been determined or withdrawn.

- 6.23** If a non-authorized person, who holds a *material interest* by virtue of a shareholding in a *licensed firm*, breaches:

- a** *regulation 6.10b*; or
- b** any condition or objection imposed by *ICAEW* under any of the *regulations* in this chapter;

then *ICAEW* may:

- give a notice under *regulation 6.24*; and
- apply to the High Court in accordance with paragraphs 43-45 of schedule 13 to the *Act* for an order requiring the sale of shares to secure that the non-authorized person no longer holds a *material interest* in contravention of any of the *regulations* in this chapter.

- 6.24** A notice under this *regulation* is a written notice to the person holding the *material interest* directing that one or more of the following restrictions apply until further notice:

- a** any transfer of, or agreement to transfer, the shares, or the right to be issued with the shares, is void;

- b no voting rights are to be exercisable in respect of the shares;**
- c no further shares are to be issued in right of the shares or in pursuance of any offer made to their holder; orand**
- d except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.**

If ICAEW applies to the High Court for a divestiture order, it will at the same time give a restriction notice to the non-authorized person and send a copy of this notice to the firm.

6.25 A notice under *regulation 6.24* ceases to have effect:

- a if the High Court so orders under paragraph 45(4) of schedule 13 to the *Act*;**
- b at the end of 90 days if *ICAEW* does not within that time make the application referred to in *regulation 6.23*; or**
- c if the *licensed firm* ceases to be licensed by *ICAEW*.**

Part 5 of Schedule 13 of the Act requires ICAEW to inform the Legal Services Board of decisions and actions taken under this chapter.

Chapter 7 - Complaints resolution

The following regulations detail how complaints should be dealt with. The Act requires that an accredited probate firm has procedures for dealing with complaints. Firms should take care to notify their existing clients of their right to make a complaint. This should be done at the first appropriate opportunity (eg, if a client complains or at the beginning of the next engagement).

It is clearly to the benefit of clients and firms if any complaints that may arise are dealt with promptly and efficiently. Firms should bear in mind that this may be a particularly stressful time for the client.

7.1 An accredited probate firm must establish procedures to deal with complaints.

7.2 An accredited probate firm must ensure that all clients are notified in writing at the beginning of the engagement of the name of the individual to be contacted in the event of a complaint and of their right to complain to the *Legal Ombudsman*. This individual should be a *principal* in an *authorised firm* or the *Head of Legal Practice* in a *licensed firm*.

Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the client at the beginning of the engagement. The following is a suggested paragraph for inclusion:

'If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting [state name of principal]. We will consider carefully any complaint you may make about our probate services as soon as we receive it and do all we can to resolve it. We will acknowledge your letter within five business days of its receipt and endeavour to deal with it within 8 weeks. If we do not deal with your complaint in this time, or if you are unhappy with our response, you may of course take up the matter with the Legal Ombudsman.'

You must include the contact details for the Legal Ombudsman, which are:

- T 0300 555 0333
- Post Legal Ombudsman, PO Box 15870, Birmingham, B30 9EB
- E enquiries@legalombudsman.org.uk

You must also advise the client of the timescale^s for making a complaint to the Legal Ombudsman, which are ordinarily:

- the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and
- the complainant must refer the complaint to the Legal Ombudsman no later than:
 - six years from the act/omission; or
 - three years from when the complainant should reasonably have known there was cause for complaint. ~~12 months from the time that the event occurred or the client ought reasonably to have known there was a problem;~~ and
- the complainant must refer the complaint to the Legal Ombudsman within six months from the date of your firm's written~~final~~ response.

As many complaints arise out of a misunderstanding of what services the firm has been retained to do, the progress in delivering those services and the cost involved, firms should ensure that they advise their clients in writing at the beginning of the engagement of the likely scope and nature of the intended work and the costs involved. Firms should ensure that their clients understand and

agree to the process and these costs, and should keep their clients updated on matters as the engagements proceed.

Firms should also bear in mind the importance of learning from complaints. It is recommended that at the conclusion of the complaints process firms reflect on whether procedures and/ or systems could be introduced or modified to avoid similar complaints arising in the future.

7.3 If an *accredited probate firm* receives a complaint from a client or a former client it must acknowledge the complaint within five *business days*.

7.4 The *accredited probate firm* must begin immediately to investigate the complaint in a fair, prompt, constructive and honest manner. The investigation should be conducted or supervised by the *Head of Legal Practice* in a *licensed firm*, or by a *principal* in an *authorised firm*.

In the case of serious complaints, firms should bear in mind their obligations and duties under the firm's professional indemnity insurance. If cover is not to be affected, firms should notify insurers of matters that could give rise to a claim as soon as possible. However, the firm must still investigate the complaint and this does not affect the rights of the client to take the matter up with the Legal Ombudsman.

7.5 The *accredited probate firm* must keep a full record of the way in which the complaint has been handled. This documentation must be kept in a separate complaint file.

7.6 If following such an investigation the *accredited probate firm* is of the opinion that the complaint is justified in whole or in part, it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise.

7.7 When the *accredited probate firm* notifies the client of its final response, which should be provided within 8 weeks of receiving the complaint, the client must be informed of their right to refer the matter to the *Legal Ombudsman*.

Once a firm has concluded its investigation of the complaint, it should notify the client in writing of the outcome and how, if appropriate, it intends to rectify the matter. This may lead to more discussions with the client. However the firm should make clear to the client when it has made its final response. At this stage the client should also be informed of their right to refer the matter to the Legal Ombudsman.

7.8 If the complaint is not resolved within 8 weeks of receipt of the complaint, the client must be informed in writing of their right to request that the *Legal Ombudsman* investigate the matter.

If the complaint is not resolved within 8 weeks the client must be informed of their right to refer the matter to the Legal Ombudsman. This does not prevent a firm continuing to try to resolve the matter with the client, but the client could still request that the Legal Ombudsman looks into the matter.

7.9 The *accredited probate firm* must cooperate with the *Legal Ombudsman*.

7.10 The *accredited probate firm* must comply with any decision that the *Legal Ombudsman* may make and promptly comply with any remedy ordered by the *Legal Ombudsman*.

The Legal Ombudsman may decide that a firm should pay the client compensation for any loss, inconvenience or distress caused to the client arising from the matter complained of. The decision may also include an apology, reimbursement of all or part of the firm's fees paid by the client, the requirement that the firm takes remedial action to put the matter right or pays another firm to do so, or any other action which the Ombudsman deems necessary.

7.11 The *accredited probate firm* must provide *ICAEW* with such details of complaints as *ICAEW* may request (whether by writing, visiting the *firm's* offices or by any other method) within 20 *business days* of receiving such a request.

Chapter 8 - Probate affiliates

ICAEW may accredit a firm which has a principal (an individual or a corporate body) who is not:

- a member;
- a member of one of the bodies listed below; or
- an accredited probate firm;
- a registered auditor; or
- ~~or~~ a DPB-licensed firm.

and who, at the time of the proposed accreditation, is not an affiliate under the audit regulations, the DPB Handbook, the insolvency regulations or ICAEW's regulations governing the use of the description 'chartered accountant' and general affiliates, only if that principal individual or body corporate is granted probate affiliate status by ICAEW.

The bodies referred to above are the:

- Institute of Chartered Accountants of Scotland;
- Institute of Chartered Accountants in Ireland; or
- another approved regulator.

Probate affiliate status does not confer membership of ICAEW nor entitle the individual or body corporate to use the title 'chartered accountant'. However, it does mean that a probate affiliate is bound by the same rules and regulations as govern a member of ICAEW.

Granting probate affiliate status

- 8.1 ***Probate affiliate status does not give the probate affiliate any rights other than those contained in these regulations. Neither the probate affiliate nor his accredited probate firm shall make any public representation that the probate affiliate has any rights other than those contained in these probate affiliate regulations.***
- 8.2 ***A person must apply for probate affiliate status in the manner decided by ICAEW. To carry out its responsibilities under these probate affiliate regulations, ICAEW may make any enquiries necessary to assess the eligibility of the applicant.***
- 8.3 ***ICAEW may grant probate affiliate status if it is satisfied that the applicant:***
- a ***is a fit and proper person to be granted probate affiliate status;***
 - b ***has agreed to comply with these regulations;***
 - c ***has agreed to observe and uphold ICAEW's Code of Ethics; and***
 - d ***has agreed to provide ICAEW with all the information it needs.***
- 8.4 ***ICAEW may, on receiving an application for probate affiliate status:***
- a ***grant probate affiliate status;***
 - b ***reject the application;***
 - c ***grant probate affiliate status with restrictions or conditions; or***

d postpone consideration of the application.

8.5 **ICAEW** may at any time vary or end a restriction or condition made under *regulation 8.4*.

Withdrawal of probate affiliate status

8.6 **ICAEW** may in its sole discretion withdraw *probate affiliate* status if the *probate affiliate*:

- a is in the opinion of **ICAEW** no longer a fit and proper person;
- b fails to pay on time any fines or costs ordered by any committee or tribunal of **ICAEW**;
- c has a disciplinary order made against him by any committee or tribunal of **ICAEW**;
- d fails to pay the annual subscription within 30 days of the date of a notice to renew *probate affiliate* status; or
- e fails or ceases to comply with any of these *regulations* and, in the circumstances, **ICAEW** considers that withdrawal is justified.

Decisions under regulations 8.4, 8.5 or 8.6 will come into effect as set out in chapter 10.

If a probate affiliate is dissatisfied with a decision made by **ICAEW** under regulations 8.4, 8.5 or 8.6 it may apply for a review of the decision in accordance with the procedures set out in chapter 11.

Cessation of probate affiliate status

8.7 **Probate affiliate** status will cease if:

- a subject to *regulation 8.8*, the *firm* in which the *probate affiliate* is a *principal* ceases to be *accredited*;
- b subject to *regulation 8.8*, the *probate affiliate* ceases to be a *principal* in the *accredited probate firm* to which the grant of *probate affiliate* status related;
- c the *probate affiliate* is an individual and has a bankruptcy order made against him;
- d the *probate affiliate* is a body corporate which:
 - has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its members) for it to be wound up or has had a winding up order made against it on the grounds of insolvency;
 - has had an administration order made against it on grounds of insolvency; or
 - has had a receiver appointed by a creditor or by a court on the application of a creditor.

8.8 **Probate affiliate** status will not cease under *regulation 8.7a* or *8.7b* if:

- a the *accredited probate firm* in which the *probate affiliate* is a *principal* merges with or is acquired by another *accredited probate firm*; or

b the *probate affiliate* leaves the *accredited probate firm* in which he is a *principal* and immediately becomes a *principal* in another *accredited probate firm*;

provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *probate affiliate* status withdrawn.

Changes in circumstances

8.9 A *probate affiliate* or the *accredited probate firm's contact partner* must inform *ICAEW* in writing within 10 *business days* of any changes relevant to matters considered by *ICAEW* under *regulation 8.3*.

Fees

8.10 *Probate affiliates* must pay a fee each year in addition to the *accredited probate firm's* annual fee. The first annual fee for *probate affiliate* status is due when an application is made for such status, together with any application fee.

8.11 The amount of the fees for *probate affiliate* status will be determined by *ICAEW* from time to time.

Disciplinary arrangements

8.12 The disciplinary provisions of *ICAEW* that apply to a *member* also apply to a *probate affiliate*.

8.13 A *probate affiliate* shall be liable to disciplinary action for any failure to observe and uphold any guidance issued by *ICAEW*, including any ethical guidance.

8.14 A *probate affiliate* will remain liable to disciplinary action under these *regulations* for any acts or omissions relating to the obligations in these *regulations* during the period in which *probate affiliate* status was held, regardless of any subsequent cessation of such status.

Chapter 9 - Probate and other committees

This chapter describes the various committees involved in the regulatory process and their powers. Some, but not all, of the powers may be delegated by the Probate Committee to either sub-committees or staff.

A firm generally has the right to seek a review of a decision. Details are in chapter 11.

Probate Committee

9.1 The *Probate Committee* must:

- a comprise ten members, half of whom must be lay members; and
- b have a quorum of five members, the majority of whom must be lay members.

The chairman of the Probate Committee must be a lay member and will have the casting vote where required. A lay member is a person who has never qualified or practised as a professional accountant. Solicitors and persons with legal training are also unable to act as lay members on the committee.

Members of ICAEW's Council and Board are excluded from membership of this committee.

9.2 The *Probate Committee* is responsible for discharging ICAEW's functions as an *approved regulator* and *licensing authority* as set out in these *regulations* and is also responsible for:

- a reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
- b making appropriate enquiries into the eligibility of applicants for *accreditation; authorised individual status; Head of Legal Practice status; Head of Finance and Administration status, or probate affiliate status* (by writing, visiting a *firm's* office or offices, or in any other way);
- c making appropriate enquiries into the eligibility of applicants for status as non-*authorised persons* who hold *material interests* in *licensed firms*;
- d making appropriate enquiries to confirm that an *authorised person, Head of Legal Practice, Head of Finance and Administration or probate affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- e making appropriate enquiries to confirm that a non-*authorised person* who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- f publishing, in any manner it decides, its ~~orders or~~ decisions if it considers this appropriate; and
- g compiling and maintaining a *register of licensed firms* and supplying information to the *Legal Services Board* as required.

In discharging its functions the Probate Committee will have regard at all times to the public interest, and the requirements and regulatory objectives of the ~~Legal Services Act 2007~~.

9.3 The *Probate Committee* may delegate the following functions to sub-committees, ICAEW's staff, or another duly appointed agent:

- granting applications for *accreditation* under *regulation 2.5a*;
- granting applications for *accreditation* subject to conditions under *regulation 2.5c*;
- varying or ending a condition or restriction under *regulation 2.6*;
- granting applications for *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status under *regulation 4.4*;
- granting applications for *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status subject to conditions under *regulation 4.4*;
- varying or ending a condition or restriction under *regulation 4.6*;
- granting approval to a holding of a *material interest* by a *non-authorised person* with or without conditions under *regulations 6.7, 6.8a, 6.14* or *6.15*;
- deciding to vary or end a condition on the holding of a *material interest* by a *non-authorised person* under *regulation 6.21*;
- granting applications for *probate affiliate* status under *regulation 8.4a*;
- granting applications for *probate affiliate* status subject to conditions under *regulation 8.4c*;
- varying or ending a condition or restriction under *regulation 8.5*;
- withdrawing *probate affiliate* status under *regulations*:
 - 8.6b - failure to pay on time any fines or costs;
 - 8.6c - disciplinary order; or
 - 8.6d - failure to pay annual subscriptions;
- reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
- making appropriate enquiries into the eligibility of applicants for *accreditation; authorised individual* status; *Head of Legal Practice* status; *Head of Finance and Administration* status, or *probate affiliate* status (by writing, visiting a *firm's* office or offices, or in any other way);
- making appropriate enquiries into the eligibility of *non-authorised persons* who seek approval as holders of *material interests* in a *licensed firm*;
- making appropriate enquiries to confirm that an *authorised person, Head of Legal Practice, Head of Finance and Administration* or *probate affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);

- making appropriate enquiries to confirm that a non-*authorised person* who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- publishing, in any manner it decides, its ~~orders or~~ decisions if it considers this appropriate;
- compiling and maintaining a *register of licensed firms* and supplying information to the *Legal Services Board* as required;
- impose a condition on accreditation under regulation 10.1;
- varying or ending a condition or restriction under *regulation 10.2*; or
- withdrawing *accreditation* under *regulations*:
 - 10.3b - non-compliance with the PII *regulations*;
 - 10.3c - failure or delay in submitting a return or report;
 - 10.3d - failure to pay amounts due;
 - 10.3e - failure to pay costs awarded by the *Review Committee*; or
 - 10.3f - failure to pay fines or costs awarded by *ICAEW's* disciplinary committees or the *First-tier Tribunal*.

9.4 All information obtained under these *regulations* will be confidential but may be disclosed by *ICAEW* (directly or indirectly) to any person or body undertaking regulatory, redress, disciplinary or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

All information that *ICAEW* receives will remain confidential except in the above circumstances.

9.5 In carrying out its responsibilities under these *regulations* *ICAEW*, the *Probate Committee* and the *Review Committee* may consider any disciplinary findings, orders, ongoing investigations or any other information (including criminal and civil court judgments) concerning or affecting the *firm* or its *principals* or *employees*, any non-*authorised persons* holding a *material interest* in a *firm* (either actual or proposed), an applicant for *authorised individual* status, an *authorised individual*, an applicant for *Head of Legal Practice* status, a *Head of Legal Practice*, an applicant for *Head of Finance and Administration* status, a *Head of Finance and Administration*, an applicant for *probate affiliate* status or *probate affiliate*.

Regulation 9.5 allows consideration of any disciplinary or other matter that affects the firm.

Notification to committees

9.6 The *Probate Committee* must notify the *Investigation Committee* about any fact or matter which:

- a suggests that an *accredited probate firm*, an *authorised individual*, a *Head of Legal Practice*, a *Head of Finance and Administration*, a *probate affiliate* or any other person (including a non-*authorised person* holding a *material interest*) may be liable to

disciplinary action under these *regulations* or other regulations or bye-laws of *ICAEW*;
and

b in the opinion of the *Probate Committee* needs to be investigated.

9.7 The *Investigation Committee* must inform the *Probate Committee* about any fact or matter which appears to it to be relevant to the powers and duties of the *Probate Committee* under these *regulations*.

Under regulations 9.6 and 9.7 information may be exchanged between the ICAEW committees responsible for regulation and discipline.

Chapter 10 - Regulatory action

This chapter explains how ICAEW may take regulatory action against an accredited probate firm, including withdrawal of accreditation if necessary.

Regulatory decisions come into effect as set out in regulations 10.9 to 10.110.

A firm may ask for a review of a decision and this is dealt with in chapter 11. A firm must apply for a review within 10 business days (or in some cases 28 days) of the decision being given to the firm.

Restrictions and conditions

- 10.1 ICAEW may impose restrictions or conditions on an *accredited probate firm* if it considers that:**
- a any of the circumstances mentioned in *regulation* 10.3a to 10.3f or 10.3j exist, or may exist, and the restrictions or conditions are justified;**
 - b the *firm* has not or may not have complied with these *regulations* in the past, and the restrictions or conditions are justified;**
 - c there is reason to believe that the *firm* may cease to comply with these *regulations* in the future and the restrictions or conditions are justified;**
 - d being *accredited* or continuing *probate work* without restrictions or conditions could adversely affect a client or any other person; or**
 - e it is appropriate to do so to ensure that *probate work* is undertaken, supervised and managed effectively.**
- 10.2 ICAEW may at any time vary or end a restriction or condition made under *regulation* 10.1.**

ICAEW may place conditions on how an accredited probate firm carries out or manages its probate work. These could be that a firm should undertake specified training or change its procedures.

ICAEW may place restrictions on an accredited probate firm such as:

- against the firm, for example that it cannot accept any new clients or probate work;
- against a principal, for example that a particular principal may no longer be an authorised individual; or
- that an employee may no longer be involved in probate work.

Where conditions or restrictions are imposed by ICAEW, a firm will have to undertake to comply with the terms of the restriction or condition. Any failure to deal with these matters is likely to be viewed extremely seriously.

ICAEW may, as an alternative to regulatory action, accept a written undertaking from a firm that it will undertake a particular course of action.

Withdrawal of accreditation

- 10.3 ICAEW may withdraw a *firm's accreditation* if:**

- a it considers that the *firm* no longer meets one or more of the eligibility requirements of *regulations 2.2 or 2.3*;
- b it considers that the *firm* is not complying with the PII regulations;
- c the *firm* is over 30 days late submitting the required returns or reports;
- d the *firm* has not paid the amounts due under *regulations 2.14, 2.15 or 2.16* within 60 days of the date of an invoice under *regulation 2.17*;
- e the *firm* has not paid the costs in the time set by the *Review Committee* under *regulation 11.4*;
- f the *firm* has not paid in the time set any fines or costs ordered by the *Investigation Committee*, the *Disciplinary Committee*, or the *First-tier Tribunal*;
- g it considers that the *firm* has not complied with any restriction or condition under *regulation 10.1* or any written undertaking that the *firm* has given to *ICAEW*;
- h it considers that the *firm* or any of its *principals, employees* and shareholders have not complied with any other *regulation* and, in the circumstances, withdrawal is justified;
- i it considers that the continued *accreditation* of the *firm* may adversely affect a client or any other person; or
- j in the case of a *licensed firm*, a non-*authorised person* holds an interest in the *firm* as a result of which the *firm* has ceased to comply with any of the *regulations* in chapter 6.

ICAEW may, as an alternative to regulatory action, accept a written undertaking from a firm that it will undertake a particular course of action.

Suspension

- 10.4 ICAEW may suspend an *accredited probate firm's accreditation* for a period if it considers that:
- a any of the circumstances mentioned in *regulation 10.3a to 10.3g or 10.3j* exists or may exist;
 - b the *firm* is not, or may no longer be, complying with these *regulations*; or
 - c the continuation of the *firm's probate work* could adversely affect a *client* or any other person.
- 10.5 During a period of suspension an *accredited probate firm*:
- a may continue with any ongoing *probate work* with the permission of the *Probate Committee*; but
 - b may not accept any new appointments for *probate work*.
- 10.6 ICAEW may vary or end a suspension made under *regulation 10.4*.

ICAEW can ~~decide order~~ that a firm's accreditation is suspended rather than withdrawing accreditation. This allows ICAEW to consider further evidence while protecting the public interest.

Urgent orders

10.7 ICAEW may impose restrictions or conditions on a *firm's accreditation* in the terms permitted by *regulation 10.1* by means of an urgent order if it considers that, in addition to the matters justifying the imposition under regulation 10.1, there is: ~~there is a need to do so.~~

a a risk of loss to a client of the *firm* if an urgent order is not made, or

b another reason justifying the making of an urgent order.

10.8 *Regulation 10.7* is subject to ICAEW allowing the *accredited probate firm* an opportunity to make oral or written representations within **10 business days** of the urgent order being made. Having considered any representations ICAEW may:

a end the order; or

b continue the order.

Regulation 10.7 allows ICAEW to take immediate regulatory action if the need arises. ICAEW may do this in the case of, for example, serious allegations or if there is a potential or actual loss of client money. As well as making immediate representations on the fact that an urgent order has been made, a firm can ask for a review under regulation 11.2 of any underlying ~~decision order~~ made under regulation 10.1. The order comes into force when it is served on the firm (see regulation 10.9) and is not lifted if a review is requested.

Implementation of decisions and orders

10.9 A decision made under *regulations 2.5, 2.6, 2.13, 2.20, 2.21, 4.4, 4.6, 5.4, 6.7, 6.8, 6.134, 6.15, 6.19, 6.21, 8.4, 8.5, 10.2, 10.6, 10.7, or 11.76* will come into effect as soon as notice of it is served on the *firm*.

The regulations quoted in regulation 10.9 concern the following:

- the grant or refusal of an application for accreditation under regulation 2.5;
- the decision to vary or end a condition or restriction on accreditation under regulation 2.6;
- decisions on applications to modify accreditation under regulation 2.13;
- the grant or refusal of dispensations under regulations 2.20 and 2.21;
- the grant or refusal of authorised individual status, or status as a Head of Legal Practice or Head of Finance and Administration under regulation 4.4;
- the decision to vary or end a condition or restriction on a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration under regulation 4.6;
- the decision to end a person's disqualification under regulation 5.4;

- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to the holding, prior to the grant of a firm's accreditation under regulations 6.7 and 6.8;
- the decision to approve a holding ~~of a material interest~~ by a non-authorised person either unconditionally or subject to conditions, or to object to a holding, following a firm's accreditation under regulation 6.134;
- the decision to approve a holding of a material interest by a non-authorised person subject to conditions, or to object to such a holding, following a firm's accreditation under regulation 6.15;
- the decision to impose conditions on a holding, or to object to a holding, of an existing material interest by a non-authorised person under regulation 6.19;
- the decision to vary or end a condition on a holding of a material interest by a non-authorised person under regulation 6.21;
- the grant or refusal of an application for probate affiliate status under regulation 8.4;
- the decision to vary or end a condition or restriction on a person's status as a probate affiliate under regulation 8.5;
- the decision to vary or end a condition or restriction on accreditation under regulation 10.2;
- the decision to vary or end a suspension on accreditation under regulation 10.6;
- orders in respect of restrictions or conditions on a firm's accreditation that are made on a urgent basis under regulation 10.7; and
- First-tier Tribunal decisions under regulation 11.76.

10.10 A decision made under regulations 4.7e, 5.1, 8.6 or 10.1 will come into effect 10 business days after notice of it is served on the firm or any later time that ICAEW specifies, except:

- a if a firm has applied for a review under regulation 11.2, the effect of the decision order will be suspended~~postponed until an pending a decision on the review order~~ under regulation 11.3 or the withdrawal of the request for a review has been put into effect; or**
- b if a firm has appealed under regulation 11.5, the effect of the decision order will be suspended pending a postponed until an decision order of the *First-tier Tribunal* under regulation 11.6 or the withdrawal of the appeal has been put into effect.**

Decisions made under the regulations referred to in regulation 10.10 come into effect 10 business days after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or First-tier Tribunal is the one that will come into effect.

The regulations referred to in regulation 10.10 concern the following:

- withdrawal of status as an authorised individual under regulation 4.7e;
- disqualification from status as a Head of Legal Practice or Head of Finance and Administration or from being a principal or an employee of a licensed firm under regulation 5.1;

- withdrawal of status as a probate affiliate under regulation 8.6; and
- the imposition of conditions or restrictions imposed on an accredited probate firm under regulation 10.1.

Regulation 1.5 details how decisions and orders are served on firms.

10.11 A decision made under *regulations* 10.3 or 10.4 will come into effect 28 days after notice of it is served on the *accredited probate firm* or any later time that *ICAEW* specifies, except:

- a if a *firm* has applied for a review under *regulation* 11.2, the effect of the decision order will be suspended pending a postponed until a decisionn order on the review under regulation 11.3 ~~or the withdrawal of the request for a review has been put into effect~~; or
- b if a *firm* has appealed under *regulation* 11.5, the effect of the decision order will be suspended pending postponed until a decisionn order of the First-tier Tribunal under regulation 11.6 ~~or the withdrawal of the appeal has been put into effect.~~

Decisions made under the regulations referred to in regulation 10.11 come into effect 28 days (rather than business days) after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or First-tier Tribunal is the one that will come into effect.

The regulations referred to in regulation 10.11 relate to the following:

- withdrawal of a firm's accreditation under regulation 10.3; and
- suspension of a firm's accreditation under regulation 10.4.

Chapter 11 - Review and appeal process

At the request of a firm or an accredited probate firm, a decision to refuse an application, grant it with conditions, withdraw a firm's accreditation or only allow it to continue with conditions or restrictions may be reviewed by ICAEW using the following process.

The same process may be used against a decision to reject an application for authorised individual status, Head of Legal Practice status, Head of Finance and Administration status or affiliate status. It may also be used against a decision to grant these applications with restrictions or conditions or to withdraw status altogether.

Similarly this process may be used against a decision to object to the holding or continued holding of a material interest or a decision to allow a holding subject to conditions.

11.1 In *regulations* 11.2 to 11.87, 'affected party' means:

- a firm
- an accredited probate firm
- an applicant for authorised individual status
- an authorised individual
- an applicant for Head of Legal Practice status
- a Head of Legal Practice
- an applicant to Head of Finance and Administration status
- a Head of Finance and Administration
- an applicant for probate affiliate status
- a probate affiliate
- a person seeking approval of the holding of a material interest or
- a person holding a material interest in a licensed firm

which is affected by a decision of ICAEW under these regulations.

Review

11.2a An affected party ~~affected by a decision or order of ICAEW under these regulations~~ may apply for a review in accordance with *regulations* 11.2b and 11.2c.

11.2b An application for review must be made in writing to ICAEW within 10 *business days* of service on the affected party of a decision ~~or order~~ made under:

regulation 2.5b- refusing to grant a *firm accreditation* as an *authorised or licensed firm*;

regulation 2.5c granting *accreditation* to a *firm* subject to conditions or restrictions;

- regulation 2.6** refusing to vary or end a condition or restriction on a *firm's accreditation* or varying a *firm's accreditation* in terms other than those sought in the *firm's* application;
- regulation 2.13** refusing to modify a *firm's accreditation* or modifying a *firm's accreditation* in terms other than those sought in the *firm's* application for modification;
- regulation 2.21** refusing to grant a dispensation from the *regulations*;
- regulation 4.4** refusing to grant *authorised individual, Head of Legal Practice or Head of Finance and Administration* status or granting such status subject to conditions or restrictions;
- regulation 4.6** refusing to vary or end a condition or restriction on a person's *authorised individual, Head of Legal Practice or Head of Finance and Administration* status, or varying the condition or restriction in terms other than those sought in the person's application;
- regulation 4.7e** withdrawing *authorised individual* status;
- regulation 5.1** disqualifying a person from acting as a *Head of Legal Practice or Head of Finance and Administration* or from being a *principal or employee* of any *licensed firm*;
- regulation 5.4** refusing to order that a person's disqualification shall cease to be in force;
- regulation 6.8** objecting to the holding of a *material interest* or granting approval subject to conditions;
- regulation 6.15** objecting to a change in the holding of a *material interest* or granting approval subject to conditions;
- regulation 6.19** objecting to the continued holding of a *material interest* or imposing conditions on that holding;
- regulation 6.21** refusing to vary or end a condition on the holding of a *material interest* by a *non-authorised person*, or varying the condition in terms other than those sought in the person's application;
- regulation 8.4b** refusing to grant *probate affiliate* status;
- regulation 8.4c** granting *probate affiliate* status subject to conditions or restrictions;
- regulation 8.5** refusing to vary or end a condition or restriction on a person's status as a *probate affiliate*, or varying the condition or restriction in terms other than those sought in the person's application;
- regulation 8.6** withdrawing *probate affiliate* status; and
- regulation 10.1** imposing restrictions or conditions on *accreditation*;

11.2c | An application for review must be made in writing to *ICAEW* within 28 days of service on the affected party of a decision ~~or order~~ made under:

regulation 10.3 withdrawing an *accredited probate firm's accreditation*; or

regulation 10.4 suspending an *accredited probate firm's accreditation*.

11.3 A meeting of the *Review Committee* will be arranged as soon as is practical after an affected party has applied under *regulation 11.2b* or *11.2c*. The *Review Committee* will consider the matter afresh and will hear new material put forward by the affected party. The *Review Committee* may make any decision which *ICAEW* could have made.

11.4 The *Review Committee* may ~~require order~~ an affected party to contribute to the costs of the review.

The Review Committee has the same powers as ICAEW when making ~~decisions in relation to orders against~~ a firm, an accredited probate firm, an applicant for authorised individual status, an authorised individual, an applicant for Head of Legal Practice status, a Head of Legal Practice, an applicant for Head of Finance and Administration status, a Head of Finance and Administration, an applicant for affiliate status or a probate affiliate. It can also make ~~orders~~ ~~decisions~~ disqualifying persons from holding positions in licensed firms (as set out in chapter 5) or from holding material interests in those firms (as set out in chapter 6).

It can impose the same, more severe or less severe ~~decisions~~ ~~orders~~. It can also award costs. Costs are likely to be awarded if, for example, the affected party fails to attend the review when it said it would, does not send in further material it has promised, or the application is frivolous.

Appeal

A firm or person who is the subject of a decision of the Review Committee and is dissatisfied with that decision can appeal to the First-tier Tribunal, which is an independent public body established under the Tribunals, Courts and Enforcement Act 2007. Appeals will be heard by the General Regulatory Chamber of the First-tier Tribunal and will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. The First-tier Tribunal can only consider an appeal on any of the grounds in regulation 11.5. On appeal, the decision of the Review Committee is postponed until the First-tier Tribunal confirms or varies the decision (see regulation 10.10 and 10.11).

Upon an appeal the First-tier Tribunal has the powers set out in regulation 11.6.

The First-tier Tribunal can also award costs against either party to an appeal but will normally do so only where it considers that the party has acted unreasonably in bringing, defending or conducting the proceedings .

11.5 ~~Following a decision of the~~ ~~Within twenty-eight days of the~~ ~~Review Committee~~ ~~serving its decision on an affected party~~ under *regulation 11.3*, the affected party may appeal to the *First-tier Tribunal*. ~~An appeal can only be made~~ on one or more of the following grounds:

a that the *Review Committee*:

1 was wrong in law; or

2 wrongly interpreted any relevant regulation, Bye-law, or associated guidance;

b that the *Review Committee* made a ~~decision~~ ~~order~~ which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or

c that there was evidence which the *Review Committee* had not considered and which:

1 could reasonably have led the *Review Committee* to make a different decision order; and

2 could not have been put before the *Review Committee* even if those concerned had done their best to produce it.

~~An appeal cannot be made if this is only against the costs awarded by the Review Committee.~~

Regulations 10.9 to 10.11 explain when decision orders come into effect. The time for making an appeal is set out in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which state that an appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received within 28 days of the date on which notice of the decision was sent to the appellant.-

11.6 An appeal to the *First-tier Tribunal* cannot be made if the appeal is only against the costs awarded by the *Review Committee*.

11.7 On hearing the appeal the *First-tier Tribunal* may:

a affirm the *Review Committee*'s decision wholly or in part;

b set aside the *Review Committee*'s decision wholly or in part;

c substitute for all or part of the *Review Committee*'s decision a new decision which the *Review Committee* could have made;

d send the matter back to the *Review Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *First-tier Tribunal*); or

e dismiss the appeal.

11.87 If the *First-tier Tribunal* sends a matter back to the *Review Committee* under regulation 11.76 then regulation 11.3 will apply when the *Review Committee* reconsiders. The meeting of the *Review Committee* to reconsider the matter will be arranged as soon as is practicable.

Chapter 12 - Disciplinary arrangements

The Probate Committee does not have the power to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Only the Disciplinary or Investigation Committees can do this. The bye-laws ~~or rules~~ already provide a framework for disciplinary action to be taken against members or firms and the purpose of this chapter is to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Where the terms of these regulations differ from those of the bye-laws ~~or rules~~, these regulations prevail.

Any fine imposed by the tribunal in the exercise of ICAEW's powers as a licensing authority cannot exceed the amount(s) from time to time stipulated by the Legal Services Board under section 95 of the Act (currently £250m in the case of a firm or £50m in the case of an individual: see the Legal Services Act 2007 (Licensing Authorities) (Maximum Penalty) Rules 2011 (SI 1659/2011).

Under regulation 12.2 the Disciplinary Committee shares with the Probate Committee the power to withdraw status as an accredited probate firm or authorised individual or to disqualify an individual from holding the status of Head of Legal Practice or Head of Finance and Administration or from being a principal of, or employed by, any licensed firm.

Appeals against decisions of the Disciplinary Committee under this chapter are made to the First-tier Tribunal under regulation 12.3 and are not subject to the separate appeal provisions of ICAEW's Disciplinary Bye-laws. See also the guidance relating to appeals to the First-tier Tribunal above regulation 11.5.

12.1 Save as provided below, the Disciplinary Bye-laws apply to breaches of these regulations:

- a as if references in those Bye-laws to a firm or member firm are construed as references to an *accredited probate firm*; and**
- b as if references in those Bye-laws to a member are construed as references to a *relevant person*.**

12.2 In addition to the powers of a tribunal set out in the Disciplinary Bye-laws, if the *Disciplinary Committee* considers that a complaint brought by the *Investigation Committee* under this chapter is proved, it will make a finding to that effect. The *Disciplinary Committee* will take the seriousness, the type of complaint and any other relevant circumstances into account and may make any of the following orders:

- a that the *accredited probate firm* or *relevant person* be reprimanded or severely reprimanded;**
- b that the *accredited probate firm* or *relevant person* be fined;**
- c that status as an *accredited probate firm* or *authorised individual* be withdrawn; or**
- d that an individual be disqualified under *regulation 5.1* from acting as the *Head of Legal Practice*, as the *Head of Finance and Administration* or as a *principal* or *employee* of any *licensed firm*.**

12.3 Following a decision of the ~~Within twenty-eight days of the~~ *Disciplinary Committee*, ~~serving its decision on an affected party the affected party~~ the *accredited probate firm* or *relevant person* may appeal to the *First-tier Tribunal*.

The time for making an appeal is set out in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

- 12.4 An appeal against a decision of the *Disciplinary Committee* under this chapter can only be made on one or more of the following grounds:
- a that the *Disciplinary Committee*:
 - 1 was wrong in law; or
 - 2 wrongly interpreted any relevant regulation, Bye-law, or associated guidance;
 - b that the *Disciplinary Committee* made an order which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or
 - c that there was evidence which the *Disciplinary Committee* had not considered and which:
 - 1 could reasonably have led the *Disciplinary Committee* to make a different order; and
 - 2 could not have been put before the *Disciplinary Committee* even if those concerned had done their best to produce it; and/or
 - d in the case of an appeal against the imposition of a fine,
 - 1 that the imposition of the fine is unreasonable in all the circumstances of the case;
 - 2 that the amount of the fine is unreasonable; or
 - 3 that it is unreasonable of the *Disciplinary Committee* to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.

12.5 An appeal to the First-tier Tribunal cannot be made if the appeal is only against the costs awarded by the *Disciplinary Committee*.

12.6 On hearing the appeal the *First-tier Tribunal* may:

- a affirm the *Disciplinary Committee*'s order decision wholly or in part;
- b set aside the *Disciplinary Committee*'s order decision wholly or in part;
- c substitute for all or part of the *Disciplinary Committee*'s order decision a new decision which the *Disciplinary Committee* could have made; or
- d send the matter back to the *Disciplinary Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *First-tier Tribunal*); or
- e dismiss the appeal; and/or
- f in the case of an appeal against the imposition of a fine:
 - 1 quash the fine;

- 2 substitute a fine of such lesser amount as it considers appropriate; or
- 3 change the time by which the fine is required to be paid.

Regulatory penalties

ICAEW may decide that a referral to the Investigation Committee to investigate an apparent failure to comply with these regulations is not appropriate. Instead, with the agreement of the firm, ICAEW may propose a regulatory penalty. The following regulations explain this process.

- 12.76** ICAEW may propose a *regulatory penalty* to an *accredited probate firm* subject to the following:
- a the *accredited probate firm* must have agreed that the breach of these *regulations* has been committed;
 - b ICAEW will decide the amount of the penalty and when it is to be paid and will set this out in the letter to the *accredited probate firm* proposing the penalty; and
 - c if the *accredited probate firm* wishes to accept the terms on which the penalty is proposed, it must notify ICAEW within 10 *business days* of the date of service of the letter from ICAEW containing the proposal.
- 12.87** There are no rights of review or appeal against a *regulatory penalty*.
- 12.98** ICAEW will take account of any comments an *accredited probate firm* makes about the terms of the *regulatory penalty*. It may then reduce the amount of the penalty.
- 12.109** If the *accredited probate firm* accepts the penalty under *regulation 12.6c*, ICAEW, as soon as is practicable:
- a will make a ~~decision~~ order; and
 - b may publish the decision order in any way it decides.
- 12.110** Details of any penalty accepted, and the decision order made, will be kept by ICAEW and it may, if it wishes, use that information in the future.
- 12.121** If an *accredited probate firm* does not agree that the breach has been committed, or does not agree to the terms of the penalty proposed or fails to comply with the terms of the penalty, the matter may be dealt with under the Disciplinary Bye-laws.

Regulatory penalties are likely to be used, for example, where a firm has consistently been late in replying to letters from ICAEW, has failed to submit annual returns, has given incorrect information on the return, or has not honoured undertakings given to ICAEW.

There is no right of appeal, as a regulatory penalty can only be made with the firm's agreement. Once a matter has been settled by a regulatory penalty, there will be no further regulatory or disciplinary action against the firm on the matter. However, the details of the regulatory penalty will be put on the firm's record and may be taken into account in the future.



A

APPENDIX B

ICAEW – PROBATE REGULATIONS

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Chapter 1 - General

The Legal Services Act 2007 permits two methods by which a firm may undertake probate work:

- as an authorised firm in which case all of the principals (and shareholders in the case of a company) have to be individually authorised to undertake probate work;
- as a licensed firm if all the principals (and shareholders in the case of a company) are not individually authorised to undertake probate work. Additional requirements then apply.

Authorisation is by an approved regulator, licensing is by a licensing authority and ICAEW is both. Once a firm is authorised or licensed under these regulations it is an 'accredited probate firm' and it has to comply with these regulations. Some regulations may only apply to a licensed firm, such as the requirement to appoint a Head of Finance and Administration and a Head of Legal Practice.

In addition to the regulatory requirements for probate work, a number of important regulatory provisions are applied to estate administration when carried out by a firm conducting probate work. 'Authorised work' for the purposes of these regulations, includes estate administration.

As a licensing authority ICAEW has statutory powers to intervene in the business of firms which it has licensed. These powers and the types of default by a licensed firm (such as breaches of licence conditions or insolvency events) which trigger them are set out in schedule 14 of the Act. ICAEW uses similar powers and applies similar principles as an approved regulator in the case of authorised firms.

It is a requirement of the Act that in discharging its regulatory functions, ICAEW, as an approved regulator, must act in a way which is compatible with the regulatory objectives set out in section 1 of the Act, and in the way which it considers most appropriate for the purpose of meeting those objectives.

All individuals who are in charge of, or control the undertaking of, probate work in an accredited probate firm must be individually authorised to do so under the Act. That authorisation may have been granted by ICAEW or another approved regulator.

ICAEW must be given full details of any non-authorised person who holds or is expected to hold a material interest (see regulation 6.2) in a licensed firm or a firm which applies to be licensed, or of any change in the holding of such an interest. Such a holding is subject to approval by ICAEW which may be granted unconditionally or subject to conditions.

In these regulations, regulations are in bold type with definitions in *italics*. Guidance, to assist firms, is in light type.

1.1 These *regulations* are made by *ICAEW's Council*, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They come into force on [Date].

1.2 These *regulations* only apply to the grant of probate or letters of administration in England and Wales.

The definition of probate work, and therefore the work that can be authorised by accreditation under these regulations, consists only of preparing papers to apply for a grant of probate or letters of administration. If a firm is asked to prepare papers to oppose a grant of probate, then the client should be requested to seek advice from a suitably authorised person.

There are different arrangements in Northern Ireland and Scotland (in the latter case probate is known as 'confirmation'). Thus a firm cannot undertake probate (or confirmation) work in Northern Ireland and Scotland unless specifically permitted to do so under the law of those countries.

- 1.3** These *regulations* apply to *firms* seeking *accreditation* and to *accredited probate firms* authorised or licensed under these *regulations*. The *regulations* also apply to *principals and employees* of the *firm*. In certain instances the *regulations* continue to apply even if *accreditation* has ceased.
- 1.4** Any notice or document may be served on *ICAEW* by sending it to:
Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard,
Milton Keynes
MK9 2FZ
- 1.5** Any notice, decision, order or other document which needs to be served on a *firm, member, affiliate* or other person under these *regulations* will be delivered by hand, or sent by email, fax or post:
- a if it is delivered by hand to the addressee, service will take effect immediately;
 - b if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
 - c if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
 - d if sent by post, it will be sent to the latest address given by the addressee and service will take effect two *business days* after posting.

Definitions and interpretation

- 1.6** The words listed below shall have the meanings given:

- Accountancy body***
- *ICAEW*;
 - Institute of Chartered Accountants of Scotland;
 - Chartered Accountants Ireland;
 - Institute of Chartered Accountants in Australia;
 - New Zealand Institute of Chartered Accountants;
 - South African Institute of Chartered Accountants;
 - Institute of Chartered Accountants of Zimbabwe; or
 - Canadian Institute of Chartered Accountants.

Accreditation The process by which *ICAEW* authorises or licenses persons to undertake *probate work*.

Accredited probate firm	A firm accredited under these regulations to conduct probate work.
Act	Legal Services Act 2007.
Approved Regulator	A body designated under Schedule 4 of the Act in respect of one or more reserved legal activities.
Associate	An associate is defined by regulation 6.3.
Authorised firm	A firm authorised under these regulations to conduct probate work.
Authorised individual	A principal or employee of an accredited probate firm who is designated under chapter 4 of these regulations.
Authorised person	A person or firm authorised or licensed by ICAEW or another approved regulator in relation to probate work.
Authorised work	<ul style="list-style-type: none"> • Probate work • Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
Business day	A day when banks are generally open for business (excluding weekends) in England or Wales (as appropriate).
Contact partner	<p>An individual appointed by a firm to:</p> <ul style="list-style-type: none"> • ensure that it has procedures and practices that enable it to comply with its obligations under these regulations. • correspond with ICAEW in relation to the activities governed by these regulations; • give an annual declaration of the firm's compliance with its responsibilities under these regulations in the form from time to time determined by ICAEW; • from time to time supply ICAEW or its agents with information as required; and • ensure that an annual compliance review is undertaken as required under regulation 3.11.

The role of the contact partner is to be responsible for ensuring that the firm complies with these regulations. The contact partner should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions.

Where one of more of the principals of the firm is an individual, one of those individuals should be the contact partner and it is recommended that they also be an authorised individual.

If the firm is a sole practice, the sole practitioner is the contact partner. The Head of Legal Practice is the contact partner in a licensed firm.

<i>Disciplinary Committee</i>	The <i>Disciplinary Committee</i> appointed by <i>ICAEW</i> under the Schedule to its Disciplinary Bye-laws.
<i>Employee</i>	Anyone who carries out work for an <i>accredited probate firm</i>, but excluding a <i>principal</i>, sub-contractor or a consultant.
<i>Firm</i>	A <i>firm</i> includes an individual, a partnership, a limited liability partnership or any other body corporate which is or seeks to be <i>accredited</i> under these <i>regulations</i> to conduct <i>probate work</i>.
<i>First-tier Tribunal</i>	The independent public body established under the Tribunals, Courts and Enforcement Act 2007 with responsibility for hearing appeals against decisions of the <i>Review Committee</i> and <i>Disciplinary Committee</i>.
<i>Head of Finance and Administration</i>	The individual appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that the <i>firm</i> complies with the requirements in <i>regulation 3.8</i> (clients' assets) and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Finance and Administration</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable.
	<p>The Head of Finance and Administration (HoFA) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. Where one of more of the principals of the firm is an individual, one of those individuals should be the HoFA. The HoFA should hold an appropriate qualification to enable the discharge of his duties with competence and skill.</p>
<i>Head of Legal Practice</i>	The <i>authorised individual</i> appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that: <ul style="list-style-type: none">• the <i>licensed firm</i> and its <i>principals</i> and <i>employees</i> comply with their duties under these <i>regulations</i> (other than <i>regulation 3.8</i>); and• non-<i>authorised persons</i> do not do anything which causes or substantially contributes to any breach of these <i>regulations</i> by the <i>firm</i> or by any <i>authorised person</i> who is a <i>principal</i> or <i>employee</i> of the <i>firm</i>; and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Legal Practice</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable.

The Head of Legal Practice (HoLP) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. They should also have sufficient independence to be

able to report matters freely if necessary. Where one of more of the principals of the firm is an authorised individual, one of those individuals should be the HoLP. The HoLP in a licensed firm is also the contact partner.

ICAEW	The Institute of Chartered Accountants in England and Wales.
Investigation Committee	The <i>Investigation Committee</i> appointed by <i>ICAEW</i> under the Schedule to its Disciplinary Bye-laws.
Legal Ombudsman	The body appointed by the Office of Legal Complaints under Part 6 of the <i>Act</i> to assist with resolving complaints.
Legal Services Board	The body established under Part 2 of the <i>Act</i>.
Licensing authority	A body designated under Part 1 of Schedule 10 of the <i>Act</i> in respect of one or more <i>reserved legal activities</i>.
Licensed firm	A <i>firm</i> licensed under these <i>regulations</i> to conduct <i>probate work</i>.
Material interest	A <i>material interest</i> is defined by <i>regulation 6.2</i>.
Member	A <i>member</i> of <i>ICAEW</i> but not including a <i>probate affiliate</i>.
Principal	<ul style="list-style-type: none">• an individual in sole practice (where the <i>firm</i> is a sole practice);• a person who is a partner (including both salaried and equity partners) (where the <i>firm</i> is a partnership);• a member of a limited liability partnership (where the <i>firm</i> is a limited liability partnership);• a director (where the <i>firm</i> is a company);• a member of the governing body (where the <i>firm</i> is an unincorporated body, other than a partnership); or• any individual or person who is held out as being a director, partner, member, or member of the governing body.
	Corporate practices or limited liability partnerships may be principals in a firm.
Probate affiliate	A person granted <i>probate affiliate</i> status by <i>ICAEW</i> for the purpose of these <i>regulations</i>.
Probate Committee	The <i>ICAEW</i> committee responsible for discharging <i>ICAEW</i>'s functions as set out in these <i>regulations</i> or any sub-committee of that committee.
Probate Compensation Scheme	The scheme for the payment of grants made in accordance with the <i>Probate Compensation Scheme</i> regulations.

Probate work The preparation of papers to apply for a grant of probate or letters of administration.

Register The *register of licensed firms* held by ICAEW in accordance with section 87 of the *Act*.

Regulations These Probate Regulations, as modified or amended from time to time.

Regulatory penalty An amount paid by an *accredited probate firm* by agreement for a breach of these *regulations* which the *accredited probate firm* agrees has been committed.

Relevant person

- an *authorised individual*;
- a *Head of Finance and Administration*;
- a *Head of Legal Practice*; or
- any other *principal* or *employee* of an *accredited probate firm*.

Reserved legal activities

- the exercise of a right of audience;
- the conduct of litigation;
- reserved instrument activities;
- probate activities;
- notarial activities;
- the administration of oaths;

as defined in section 12(1) and Schedule 2 of the *Act*.

Review Committee The committee appointed under ICAEW's Bye-laws with responsibility for reviewing decisions made by ICAEW as specified in these *regulations*.

1.7 Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined above. The definitions in these *regulations* take precedence.

1.8 In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of these *regulations*. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

1.9 Any references to legislation, regulations, requirements, bye-laws, rules or other documents, will apply to any re-enactment, re-issue or amendment.

Chapter 2 - Eligibility, application, continuing obligations and cessation

Applications

- 2.1 A *firm* that wishes to be *accredited* under these *regulations* must apply in the manner decided by *ICAEW*, on a prescribed form. The application must include the following:
- a any information that *ICAEW* may require to assess the ability of the *firm* to carry out *authorised work*;
 - b a statement by the *firm* of how its *accreditation* will promote the objective of improving access to justice;
 - c information on the *firm's* arrangements for diversity monitoring in relation to its *principals* and *employees* and existing data derived from diversity monitoring;
 - d a declaration by the *firm* that it agrees to be bound by these *regulations* and will ensure that it complies with them at all times;
 - e a declaration by the *firm* that it will deal with *ICAEW* in an open and co-operative manner and inform *ICAEW* promptly about anything concerning the *firm* as required by these *regulations*;
 - f an acknowledgement by the *firm* that none of *ICAEW*, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the *firm* in damages for any act or omission arising out of the performance of any of their functions under the *Act*, or connected with the granting of authorisation or a licence, the enforcement of these *regulations* or the monitoring of compliance with these *regulations* in any respect, unless the act or omission is shown to have been in bad faith;
 - g an acknowledgement that *ICAEW* may make enquiries of or about the *firm* as *ICAEW* deems necessary;
 - h an acknowledgement that *ICAEW* may publish, in such manner as it may determine, information about the *firm's* status under these *regulations*; and
 - i an acknowledgement that *ICAEW* may disclose information about the *firm* as set out in *regulation 2.26*.

Eligibility

- 2.2 *ICAEW* may authorise a *firm* only if:
- a each *principal* in the *firm* is an *authorised person* (or becomes an *authorised person* by decision of *ICAEW* at the same time as granting authorisation to the *firm*) and if another body is a *principal* in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body; and
 - b in the case of a corporate body (other than a limited liability partnership) each person who has an interest in the *firm* is an *authorised person* (authorised by *ICAEW* under these *regulations* or by another *approved regulator*) and if another body has an

interest in the *firm*, non-*authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body.

The above sets out who is required to be an authorised person under these regulations. Generally the principals and shareholders in the case of a company must all be authorised persons but certain *de-minimis* holdings by non-authorised persons are allowed. A firm applying for authorisation may at the same time apply for approval of designation of its principals as authorised individuals as set out in chapter 4. If a firm is unsure of its eligibility to be authorised or licensed it should contact ICAEW. A person has an interest in a firm if the person holds shares in the body or is entitled to exercise, or control the exercise of, voting rights in the firm.

2.3 If a *firm* does not meet the requirements of regulation 2.2 ICAEW may license the *firm* only if at least one *principal* in the *firm* is:

a an *authorised individual*; or

b authorised by ICAEW under regulation 2.2 or authorised by another *approved regulator* in relation to *probate work*;

but in either case is not a *licensed firm*.

2.4 ICAEW, having taken account of the objective of improving access to justice, may *accredit* a *firm* only if it is satisfied that:

a the *firm* is fit and proper to be *accredited*;

b each individual who will undertake, or control the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual* and is fit and proper;

c the *firm* has appointed a *contact partner* whose name has been given to ICAEW;

d in the case of a *firm* applying to be licensed, the *firm* has appointed a *Head of Finance and Administration* and a *Head of Legal Practice* who have consented to act in these roles and whose appointment has been approved by ICAEW;

e the *firm* has at least one office in England and Wales from which it undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);

f each *principal* who is not an *accredited probate firm*, a registered auditor, a DPB-licensed firm, a *member* of ICAEW, a member of the Institute of Chartered Accountants of Scotland, a member of Chartered Accountants Ireland or another *approved regulator* holds *affiliate* status under these regulations, ICAEW's Audit Regulations, ICAEW's DPB Handbook, ICAEW's Insolvency Regulations or ICAEW's regulations governing the use of the description 'Chartered Accountants' and general affiliates;

g in the case of a *firm* applying to be licensed, any non-*authorised person* who holds a *material interest* in the *firm* is approved by ICAEW under chapter 6;

h in the case of a *firm* applying to be licensed, the *firm* has:

- informed all *principals*, *employees* and shareholders who are non-*authorised persons* of the duties imposed on them by sections 90 and 176 of the Act; and**

- **put in place procedures to prevent such persons from improperly influencing the independence and integrity of *probate work*; and**
- i the *firm* has professional indemnity insurance under ICAEW's PII Regulations with a minimum level of indemnity of £500,000 per claim.**

Section 28 of the Act requires ICAEW to act in a way which is compatible with the regulatory objectives and which it considers most appropriate for the purpose of meeting those objectives. Under section 1 of the Act the regulatory objectives include the objective of improving access to justice. The application form contains guidance to firms on how their application may promote this objective.

2.5 ICAEW may:

- a grant the application;**
- b reject the application;**
- c grant the application subject to restrictions or conditions; or**
- d postpone consideration of the application.**

Under the Act, ICAEW has a period of 6 months (beginning when all the information required on the application form is received) to make a decision on an application. However, under regulation 2.5d, ICAEW may decide that it can only properly consider a firm's application after it has additional information about the firm. ICAEW may decide this is best achieved by a visit to the firm and a charge may be made for this. If it is necessary to seek additional information, ICAEW may, before the expiry of 6 months, issue an extension notice to the applicant extending the period of time taken to reach a decision to 9 months. The extension notice must set out the reasons for the extension.

If ICAEW rejects or grants the application subject to restrictions or conditions, it must explain in writing to the applicant the reasons for its decision. Decisions will come into effect as set out in chapter 10.

A firm can apply for a review of a decision to reject accreditation or to grant it subject to restrictions or conditions. Details of the review process are in chapter 11.

2.6 ICAEW may at any time vary or end a restriction or condition made under *regulation 2.5*.

Continuing obligations

2.7 An accredited *probate firm* and its *principals* and *employees* must at all times:

- a comply with these *regulations*, with any condition of the *firm's accreditation* and with any other relevant regulatory arrangements (and be able to satisfy ICAEW as to such compliance on request);**
- b not do or permit anything which causes or substantially contributes to any breach of these *regulations* by the *firm* or by any *authorised individual* who is a *principal* or *employee* of the *firm*;**
- c comply with ICAEW's PII regulations;**
- d deal with ICAEW in an open and cooperative manner;**

- e if an *authorised firm*, have a *contact partner* (in the case of a sole practitioner, that person will be the *contact partner*);
- f if a *licensed firm* have a *Head of Legal Practice* who is also the *contact partner*;
- g if a *licensed firm* have a *Head of Finance and Administration*;
- h ensure that each individual who undertakes, or controls the undertaking of, *probate work* on behalf of the *firm* is an *authorised individual*;
- i have at least one office in England and Wales from which the *firm* undertakes *probate work* (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- j inform *ICAEW* as soon as practicable but not later than 10 *business days* after any change to the:
 - 1 *accredited probate firm's* registered address;
 - 2 name or trading names of the *accredited probate firm*;
 - 3 address(es) of the *accredited probate firm's* offices;
 - 4 *accredited probate firm's* principals;
 - 5 name or principal business address of any of the *accredited probate firm's* principals;
 - 6 name of the *contact partner*;
 - 7 name of the *Head of Finance and Administration* who must be approved in that capacity by *ICAEW*;
 - 8 name of the *Head of Legal Practice* who must be approved in that capacity by *ICAEW*; or
 - 9 in the case of a body corporate (but excluding a limited liability partnership):
 - the name or address of any shareholder or anyone with any interest in the shares; and
 - the number of shares held by a shareholder or in the number of shares in which anyone has an interest.
- k inform *ICAEW* as soon as practicable but not later than 10 *business days* after any event affecting the *firm's* eligibility to be *accredited*;
- l in the case of a *licensed firm*, inform *ICAEW* as soon as practicable but not later than 10 *business days* after any non-*authorised person* acquires or ceases to hold, or increases or decreases a holding of, any interest in the *firm* which, either before or after the change, qualifies as a *material interest*;
- m pay any of the charges required by *ICAEW* as set out in *regulations* 2.14, 2.15 and 2.16. Such charges may be levied at any time, including after the termination of *accreditation* provided they relate to a period before the date of termination;

- n respond, when required, to enquiries made by *ICAEW* (whether by writing, visiting the *accredited probate firm's* offices or by any other method) about the *firm's* application or its activities as an *accredited probate firm*;
- o arrange for the provision of any information about the *firm* or its clients (and to allow access to the *firm's* systems and personnel) that *ICAEW* may request about the activities as an *accredited probate firm*, whether that information is held by:
 - 1 the *accredited probate firm*;
 - 2 any *principal* or *employee* (or former *principal* or former *employee*) of the *accredited probate firm*;
 - 3 any non-*authorised person* who holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*.
 - 4 any non-*authorised person* who is entitled to exercise, or control the exercise of, at least 10% of the voting rights in 'A', where A is a *principal* of the *accredited probate firm* or holds shares in the *accredited probate firm*, or is entitled to exercise, or control the exercise of, voting rights in the *accredited probate firm*;
- p provide *ICAEW* with a periodic return in relation to its activities as an *accredited probate firm*;
- q subject itself and all its *principals* to any monitoring, inspection or review process specified by *ICAEW*, including its Practice Assurance scheme;
- r send any notice or other document to be served on *ICAEW* in the manner set out in *regulation* 1.4, or as last notified to the *accredited probate firm*; and
- s monitor the diversity of the *accredited probate firm's principals* and *employees*, and publish the findings of the monitoring, in the manner and format prescribed by *ICAEW* from time to time.

2.8 An *accredited probate firm* may not have as a *principal* or *employee* a person who is disqualified pursuant to section 99 of the *Act* from being a *principal* or *employee* of a body licensed under Part 5 of the *Act*.

As is reflected in *regulation* 5.5, the Legal Services Board maintains a list of persons who have been disqualified from working in licensed firms by the approved regulators under section 99 of the *Act*. Firms are advised to refer to this list, which can be accessed on the LSB's website before submitting their application for accreditation.

2.9 If an *accredited probate firm* ceases to have any *principal* or *employee* who is an *authorised individual* the *firm* will immediately cease to undertake *probate work* until it has notified *ICAEW* of the name of another *principal* or *employee* who meets the requirements of chapter 4.

Professional Indemnity Insurance and compensation

2.10 An *accredited probate firm* shall only carry out *authorised work* if it has professional indemnity insurance under *ICAEW's* PII Regulations with a minimum level of indemnity of £500,000 per claim.

If a firm is conducting authorised work and the value of the estate is likely to exceed the level of the firm's own PII, firms must notify their clients in writing at the beginning of the engagement that their PII is capped and the level of cover.

2.11 An accredited probate firm or firm that was previously accredited must comply with the regulations of ICAEW's Probate Compensation Scheme.

Modification

2.12 An accredited probate firm that wishes to modify the terms of its accreditation must apply in the manner decided by ICAEW. The application must include the following:

- a the terms of the proposed modification;**
- b the reasons for proposing the modification; and**
- c any information that ICAEW may require in connection with the application.**

2.13 ICAEW may:

- a modify the accreditation in the terms of the application;**
- b modify the accreditation in such other terms as it considers appropriate;**
- c reject the application; or**
- d postpone consideration of the application.**

If ICAEW rejects the application for modification, it will inform the accredited probate firm of its reasons in writing within 10 business days. A firm can apply for a review of a decision to reject modification or to grant it subject to restrictions or conditions. Details of the review process are in chapter 11. A charge may be made for dealing with such an application.

Fees

2.14 An accredited probate firm must pay such registration fees (to include any costs that ICAEW is required or has agreed to pay to any other person or body exercising a regulatory or supervisory role in relation to it) as ICAEW determines, at the times and at the rates set by it. The first registration fee is due when a firm applies to be accredited under these regulations to conduct probate work. An application fee is also payable with this first fee.

If a firm's application is not accepted, the first registration fee will be refunded.

2.15 ICAEW may charge a firm or an accredited probate firm a fee if ICAEW has performed additional work. The Probate Committee will decide how much the fee will be.

Additional work may be performed, for example in:

- obtaining information for or about the firm or accredited probate firm;
- collecting any charges due under these regulations;
- responding to enquiries or complaints regarding the accredited probate firm;

- reviewing the continuation of the firm's accreditation;
- visiting the accredited probate firm where ICAEW has had to make a second or subsequent visit to the accredited probate firm as a result of an earlier visit; or
- considering an application for modification under regulations 2.12 and 2.13.

- 2.16** An *accredited probate firm* must pay any levy for *ICAEW's Probate Compensation Scheme* (whether a periodic contribution or special levy) as *ICAEW* may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.
- 2.17** If an *accredited probate firm* has not paid any amounts due under *regulations 2.14, 2.15 or 2.16* within 60 days of the invoice date, *ICAEW* may withdraw its *accreditation*.
- 2.18** Any amounts unpaid under *regulations 2.14, 2.15 or 2.16* may be recovered as a debt to *ICAEW*.

Dispensations

- 2.19** The *accredited probate firm* must inform *ICAEW* in writing within 10 *business days* of a situation arising that may indicate that the *accredited probate firm* cannot, or expects not to be able to, comply with any of these *regulations*. The notification must state what has happened and the action that the *accredited probate firm* proposes to take.
- 2.20** *ICAEW* may grant the *accredited probate firm* a dispensation, of no more than 90 days, from the requirement to comply with a *regulation* where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any client.
- 2.21** If *ICAEW* rejects the application for a dispensation, it will inform the *accredited probate firm* of its reasons in writing within 10 *business days*. The *accredited probate firm* will then be entitled to apply for a review of the decision in accordance with the procedures set out in chapter 11.

It is not expected that dispensations will be readily granted and any firm applying for a dispensation must show clearly state why the dispensation is needed and what it is doing to remedy the situation.

Cessation of accreditation

- 2.22** A *firm* will cease to be an *accredited probate firm* if:
- ICAEW* accepts an application from the *firm* to cancel its *accreditation*;
 - the *firm* becomes licensed by another *licensing authority*;
 - the *firm* ceases to exist; or
 - ICAEW* withdraws *accreditation* under *regulation 10.3*.

If a firm's accreditation is to be withdrawn, the firm may ask for a review of the decision under the procedures in chapter 11. Withdrawal at the firm's request, because the firm no longer exists or it

becomes licensed by another licensing authority, cannot lead to a review. If a firm which is no longer accredited wishes to apply again it can do so in the normal manner.

2.23 If a firm is no longer an accredited probate firm:

- a it must still respond to enquiries (made in writing or by visiting a firm's office or offices) from ICAEW in connection with any circumstance that relates to these regulations during the time that the firm was accredited and must co-operate with the work of the Legal Ombudsman, including the provision of papers and the payment of any remedies ordered;**
- b disciplinary action (including a regulatory penalty) may still be taken for:**
 - 1 any failure to comply with these regulations during the time it was accredited;**
 - 2 any failure to comply with any regulation continuing to have effect notwithstanding that accreditation has ceased;**
 - 3 any failure to keep confidential any information received in the course of authorised work.**

2.24 ICAEW's right to recover any amounts due from a firm under these regulations does not end when a firm is no longer accredited.

The effect of regulation 2.23 is that a firm cannot escape disciplinary action by applying to have its accreditation withdrawn. If, in the process of withdrawing accreditation, ICAEW places a condition on a firm and that condition is broken then disciplinary action can be taken. There is a continuing obligation to deal with ICAEW's enquiries and requests for information under regulation 2.23. Finally, under regulation 2.24 applying to have accreditation withdrawn does not remove the firm's obligation to pay outstanding fees.

Regulatory conflicts

2.25 If an accredited probate firm is of the view that any other regulatory requirement to which it or an authorised individual is subject, including the requirements of another approved regulator, may cause it to cease complying with these regulations, it must inform ICAEW within 10 business days of becoming aware of the conflict.

Firms should note that section 176 of the Act requires individuals conducting probate work to comply with the regulatory arrangements of the approved regulator by whom they are regulated. For example, in the case of a solicitor working within an accredited probate firm this will be the Solicitors Regulation Authority (SRA).

2.26 ICAEW reserves the right to pass information (directly or indirectly) about an accredited probate firm to any ICAEW committee or person or body undertaking regulatory, disciplinary, redress or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

Chapter 3 - Conduct of authorised work

3.1 An accredited probate firm must act in accordance with the fundamental principles set out in the Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its *principals* and *employees* comply with these *regulations* and the professional principles set out in the *Act* to:

- a act with independence and integrity;**
- b maintain proper standards of work;**
- c act in the best interests of their clients; and**
- d keep the affairs of clients confidential.**

Firms of different sizes and with different types of clients will adopt different procedures to comply with these regulations and to act in accordance with the fundamental principles set out in the Code of Ethics. However, all firms will be aiming to provide a high quality and cost effective service, which complies with these regulations. For most firms this means having procedures for doing probate and authorised work, and checks to make sure that the procedures are followed.

3.2 An accredited probate firm shall only carry out *authorised work* which it is competent to perform.

3.3 An accredited probate firm must make sure that only *authorised individuals* undertake, or control the undertaking of, *probate work* on behalf of the *firm*.

3.4 An accredited probate firm must make sure that all *principals* and *employees* undertaking *authorised work* are, and continue to be, competent to carry out the *authorised work* for which they are responsible.

The above places the responsibility on the firm to ensure that its principals and employees who undertake authorised work are suitably competent in doing this work and are up to date with current developments.

3.5 An accredited probate firm must make arrangements to prevent anyone who is not an *authorised individual* in the *firm*, or working under the supervision of that person, from having any influence which would be likely to affect the independence or integrity of *probate work*.

These arrangements need to include informing new principals, employees or shareholders who are non-authorised persons of the duties imposed on them by sections 90 and 176 of the Act.

3.6 An accredited probate firm shall ensure that it is in full agreement with its clients as to the nature, scope and terms of the *authorised work* which is or may be provided and that it retains evidence of this agreement.

The best way to obtain and record this agreement is by using an engagement letter. This could also deal with a firm's obligations under section 240 of the Code of Ethics to notify clients of the basis for charging fees. It could draw the client's attention to the arrangements for continuing the provision of probate services (see regulation 3.12) and the complaints procedures established under chapter 7.

As a matter of best practice and in order to reduce the likelihood of future confusion and complaints, firms should also outline clearly for clients at the beginning of the engagement what

is likely to occur and the nature and scope of the work that will be carried out, as well as the costs involved. They should also provide information to enable their clients actively to manage their costs, including being prepared to explain to clients aspects of their work as it progresses and provide them with revised choices and costs estimates if the original estimates are likely to be exceeded.

The client should not be put under pressure by the firm to accept terms of engagement that may not be in accordance with their wishes.

3.7 The *accredited probate firm* shall ensure that clients are advised in writing of the compensation arrangements at the beginning of the engagement and the time scales for making applications to the *Probate Compensation Scheme*.

It is recommended that firms use the following paragraph:

'In the unlikely event that we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Probate Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you became aware, or reasonably ought to have become aware, of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: www.icaew.com/probate.'

3.8 If an *accredited probate firm* receives any property in connection with *authorised work*, details of the property received should be recorded. The *firm* should take all reasonable steps to ensure that such property is kept safely. Where the property is money this should be dealt with in accordance with *ICAEW's* clients' money regulations, except that monies received in connection with *authorised work* must be kept separate from other clients' monies.

3.9 Any property held by an *accredited probate firm* must only be released on the client's written instructions and a receipt obtained.

Firms should consider carefully whether to hold property in connection with authorised work. It is often the case that the value of such property may be unclear but to safeguard it properly a firm should check that it has appropriate insurance cover. A receipt should be given when any property is received and transferred to a third party.

3.10 An *accredited probate firm* shall ensure that it has appropriate records of *authorised work* undertaken on behalf of clients.

Records should evidence the work undertaken on behalf of clients under these regulations, plus any specific instructions from the client. The records do not have to be on paper but could be held on microfilm or on computers. Whatever method of storage is used, the firm must keep a mechanism for gaining access to those records.

It is likely that ICAEW will only be satisfied if the firm keeps records relating to work performed under these requirements for at least 6 years. Firms should bear in mind that some legislation requires records to be retained for longer.

3.11 An *accredited probate firm* must:

- a confirm on request that it meets the requirements of these *regulations* and supply such evidence as *ICAEW* may require to support such confirmation; and**
- b ensure that it conducts a review, at least annually, to consider whether systems it has maintained have been adequate to enable it to:**

- 1 **comply with these *regulations* and to confirm its compliance with these *regulations* when requested by ICAEW; and**
- 2 **prepare any return required under *regulation 2.7p*.**

The annual compliance review checks whether a firm has complied with these regulations.

3.12 If an *accredited probate firm* ceases to undertake *authorised work* then there must be arrangements in place to protect the interests of those clients for whom it is undertaking such work.

Arrangements must be in place in case a firm ceases to undertake authorised work. These arrangements are to protect the interests of clients and the firm may need to make some arrangements on a contingency basis.

Where a firm is ceasing to conduct authorised work, an orderly wind down or transfer of work to an identified successor firm may be arranged. However, particularly where the firm is a sole practitioner, additional measures will need to be in place to protect the interest of clients in the event of the death or incapacity of the practitioner. This may simply be an arrangement for another person to access the firm's records and then make arrangements for the authorised work to be transferred to another probate practitioner.

The firm should provide details of these arrangements within an engagement letter or similar. A suggested wording is:

'If, for any reason, I am unable to run my practice, I have made arrangements for the continuation of probate work to clients. [Add details of the person that the client can contact.]'

Chapter 4 - Authorised individuals, Heads of Finance and Administration and Heads of Legal Practice

All individuals who undertake, or control the undertaking of, probate work on behalf of an accredited probate firm must be individually authorised to do so under the Act by ICAEW or another approved regulator.

In an authorised firm, all the principals will need to be authorised persons. A sole practitioner must be an authorised individual and the firm's contact partner. In other authorised firms it is recommended that one of the principals be the contact partner.

A licensed firm must appoint a Head of Finance and Administration and Head of Legal Practice who have specific responsibilities and important duties as set out in regulation 1.6. The Head of Legal Practice must be an authorised individual and the firm's contact partner.

In all firms (including sole practices) the contact partner can designate appropriately qualified principals or employees as authorised individuals as set out in the following regulations.

Authorisation and withdrawal of authorisation

4.1 Subject to regulation 4.4 the contact partner (or the person who is intended to be the contact partner upon accreditation) may designate as an authorised individual any of the accredited probate firm's principals or employees (or any of the principals or employees of a firm applying for accreditation) who:

- a is a member of an accountancy body and has provided evidence to ICAEW of attendance at a course and assessment, which covered at least the following subjects:**
- a general introduction to the Act as it applies to probate work;
 - a general introduction to the law of property, equity and trusts;
 - the need for a grant and its effect;
 - the types of grant – probate, letters of administration;
 - who can apply for probate / letters of administration;
 - consideration of the validity, format and content of wills;
 - intestacy provisions;
 - obtaining information about the assets and liabilities of the estate and their valuation;
 - finalising of inheritance tax, corrective accounts and obtaining a clearance certificate from HM Revenue and Customs;
 - the completion of papers for an application for a grant;
 - the completion of the oath and the filing of papers; and
 - the administration of the estate;
- b holds a qualification issued or recognised by an approved regulator (other than ICAEW) that entitles the individual to undertake probate work; or**
- c is otherwise qualified to undertake probate work so as to satisfy ICAEW that it should approve his designation as an authorised individual.**

Only principals and employees of a firm are eligible to become 'authorised individuals', not sub-contractors or consultants.

There are no prescribed courses for the purpose of regulation 4.1a but the firm or member must show that the course covered the above topics. Courses can include those where the learning is computer based 'e-learning', including training delivered over the internet.

The learning outcomes of the course must be assessed and the method of assessment can include objective testing. The pass mark for an assessment must be no less than 50%.

As the course outline set out in regulation 4.1a builds on the existing qualifications and skills of a chartered accountant, only members of the accountancy bodies as defined in regulation 1.6 may be eligible to become accredited for probate through this route.

Applications in respect of individuals under regulation 4.1c will be decided on a case by case basis, having regard to the sufficiency of the individual's qualification to undertake probate work.

4.2 Subject to *regulation 4.4* and with the agreement of the individual, a *licensed firm* must designate an *authorised individual* to be the *Head of Legal Practice*.

4.3 Subject to *regulation 4.4* and with the agreement of the individual, a *licensed firm* must designate an individual to be the *Head of Finance and Administration*.

4.4 Any designation in accordance with *regulation 4.1, 4.2* or *4.3* shall not be effective until an application has been made to *ICAEW* in a form specified by it and the application has been approved and this may be approved with conditions or restrictions.

Where a firm wishes to be accredited, and any principals or employees are not authorised individuals, the applications by the firm for accreditation and for approval of designation of authorised individuals should be made (and will be dealt with) simultaneously.

4.5 *ICAEW* may only approve a person's status as an *authorised individual, Head of Legal Practice* or *Head of Finance and Administration*, if it is satisfied that that individual is a fit and proper person.

4.6 *ICAEW* may at any time vary or end a restriction or condition made under *regulation 4.4*.

Cessation

4.7 *Authorised individual* status will cease if:

- a the *firm* in which the individual is an *authorised individual* ceases to be an *accredited probate firm*;**
- b the individual ceases to be a *principal* or *employee* in the *accredited probate firm* to which the grant of *authorised individual* status related;**
- c an event occurs which under *ICAEW's* Charter, Bye-laws or other regulations the individual would cease to be a *member* or an affiliate;**
- d the *contact partner* notifies *ICAEW* that the individual is no longer an *authorised individual*; or**
- e *ICAEW* withdraws *authorised individual* status.**

Firms are reminded to inform ICAEW of any changes to the authorised individuals of the firm.

- 4.8** *Authorised individual* status will not cease under *regulation 4.7a* or *4.7b* if:
- a** the *accredited probate firm* in which the *authorised individual* is a *principal* or *employee* merges with or is acquired by another *accredited probate firm*; or
 - b** the *authorised individual* leaves the *accredited probate firm* in which he is a *principal* or *employee* and immediately becomes a *principal* or *employee* in another *accredited probate firm*;
- provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *authorised individual* status withdrawn.
- 4.9** Status as a *Head of Legal Practice* or a *Head of Finance and Administration* will cease if:
- a** the *firm* to which the status relates ceases to be an *accredited probate firm*;
 - b** the individual ceases to be a *principal* or *employee* in the *accredited probate firm* to which the status relates;
 - c** an event occurs which under *ICAEW's* Charter, Bye-laws or other regulations the individual would cease to be a *member* or an affiliate;
 - d** the *firm* or individual notifies *ICAEW* that the individual no longer consents to hold that status; or
 - e** *ICAEW* disqualifies the person from holding that status under *regulation 5.1*.
- 4.10** If an individual is no longer an *authorised individual*, a *Head of Finance and Administration* or a *Head of Legal Practice* disciplinary action under chapter 12 (including the imposition of a *regulatory penalty*) may still be taken for any failure to comply with these *regulations*.

Decisions under this chapter will come into effect as set out in chapter 10. The person may request a review (with subsequent right of appeal) under chapter 11.

Chapter 12 applies *ICAEW's* disciplinary arrangements to breaches of these regulations by an authorised individual, a *Head of Finance and Administration* or a *Head of Legal Practice*. Regulation 4.10 provides that disciplinary action may be taken after a person has ceased to hold this status.

Chapter 5 - Disqualification

The following regulations set out the circumstances in which a person may be disqualified under section 99 of the Act from acting as a Head of Legal Practice or Head of Finance and Administration, or from being a principal or an employee of any licensed firm. This is liable to occur in specific situations identified in the Act as detailed below.

- 5.1** If both of the conditions set out in *regulations 5.2 and 5.3* are satisfied, *ICAEW* may disqualify a person from:
- a** acting as the *Head of Legal Practice* of any licensed firm;
 - b** acting as the *Head of Finance and Administration* of any licensed firm;
 - c** being a *principal* of any licensed firm; or
 - d** being an *employee* of any licensed firm.
- 5.2** The first condition referred to in *regulation 5.1* is that the person, intentionally or through neglect:
- a** has breached a duty to which the person is subject:
 - as a *Head of Legal Practice* by section 91 of the Act;
 - as the *Head of Finance and Administration* by section 92 of the Act;
 - as a regulated person by section 176 of the Act (within the meaning of that section); or
 - as a *non-authorised person* by section 90; or
 - b** has caused, or substantially contributed to, a significant breach of the *licensed firm's accreditation*.
- 5.3** The second condition referred to in *regulation 5.1* is that *ICAEW* is satisfied that it is undesirable for the person to engage in the activity or activities referred to in *regulation 5.1*.
- 5.4** Upon the application of any person so disqualified under *regulation 5.1*, *ICAEW* may, if the second condition referred to in *regulation 5.3* is no longer satisfied, decide that a person's disqualification shall cease to be in force on a date specified in the decision.
- 5.5** *ICAEW* will notify the *Legal Services Board* within 7 days of any decision under *regulation 5.1* that a person should be disqualified, of the results of any review of such a decision under *regulation 11.3* and of any decision under *regulation 5.4* that a person's disqualification should cease to be in force.

If *ICAEW* disqualifies a person as set out above, the decision will come into effect as set out in regulation 10.10. The person may request a review (with subsequent right of appeal) under chapter 11.

Chapter 6 - Ownership of licensed firms

This chapter only applies to licensed firms.

The following regulations set out the requirements where any non-authorised person holds or proposes to hold a material interest in a licensed firm.

Firms applying to be licensed must provide full details of any non-authorised person who holds or is expected to hold a material interest, even if it becomes aware of this after submitting the application.

Licensed firms must also inform ICAEW if any non-authorised person acquires or is expected to acquire a material interest, or if there is any change in the extent to which any interest in the firm is held by a non-authorised person. ICAEW will need to approve any non-authorised persons holding or intending to hold a material interest, and changes to the firm's ownership structure may affect its eligibility to be licensed.

ICAEW will decide whether to grant approval of the holding under this chapter. Approval may be granted unconditionally or subject to conditions as set out in these regulations.

If ICAEW objects to a holding or decides to permit it subject to conditions, an applicant or the non-authorised person may request a review (with subsequent right of appeal) under chapter 11.

As set out in regulation 6.2 there are different kinds of material interest. If ICAEW has approved a non-authorised person to hold a specific kind of material interest and that person then acquires a different kind of material interest, this needs to be approved as set out above. No approval is needed if an existing material interest is increased or decreased but notification under regulation 2.71 is required.

6.1 A non-authorised person may not hold a material interest in a licensed firm without a grant of approval by ICAEW.

6.2 A person holds a material interest in a body (B) if the person:

- holds at least 10% of the shares in B;
- is able to exercise significant influence over B's management by virtue of the person's shareholding in B;
- holds at least 10% of the shares in a parent undertaking ('P') of B;
- is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B;
- is able to exercise significant influence over B's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B;
- is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

Regulation 6.2 sets out the different kinds of material interest that require ICAEW's approval.

- 6.3** For the purposes of this chapter, the interest held by a person in a *firm* will consist of the total of the interest held by the person and the interest held by any of his *associates*, and a person's *associate* is defined as:
- a** the person's spouse or civil partner;
 - b** the person's child or stepchild if aged under 18;
 - c** the trustee of any settlement under which the person has a life interest in possession;
 - d** an undertaking of which the person is a director;
 - e** any employee of the person;
 - f** any partner in a firm (other than the *licensed firm*) of which the person is a partner;
 - g** if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
 - h** any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in *regulation 6.2*; or
 - i** any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in *regulation 6.2*.

Acquisition of a material interest before a firm is licensed

- 6.4** A *firm* which applies to ICAEW to become a *licensed firm* must:
- a** identify in the application any *non-authorized person* who holds, or is expected when the *firm* has been licensed to hold, an interest to which *regulation 6.1* applies;
 - b** identify in the application the kind of interest which is so held or expected to be held;
 - c** in any such case, inform the *non-authorized person* that ICAEW may require the person to provide ICAEW with documents and information and that failure to comply with such a requirement is a criminal offence; and
 - d** inform ICAEW of any change in the identity of such *non-authorized person* or the kind of relevant interest so held or expected to be held occurring after the application but before the *firm* is licensed, such information to be given in writing within seven days of the occurrence of such change or, if later, the day on which the *firm* becomes aware of such change.

Firms must make any non-authorized person aware of the importance of the requirement to provide ICAEW with documents and information and ensure that the person understands that failure to comply would make them guilty of a criminal offence under paragraph 14 of schedule 13 to the Act, which is punishable by a fine and/or imprisonment.

An applicant who fails to comply with regulation 6.4c is also guilty of an offence under paragraph 13 of schedule 13 to the Act, which is punishable by a fine.

- 6.5 ICAEW will not license the *firm* unless it grants approval to the holding of the non-*authorised person* either unconditionally or subject to conditions.**
- 6.6 In deciding whether to grant approval to the holding of the non-*authorised person*, ICAEW may require the person to provide it with any documents or information and will have regard to all relevant circumstances including:**
- a the probity and financial position of the person and any person listed in *regulation 6.3*;**
 - b whether the person and any person listed in *regulation 6.3* has been disqualified (by ICAEW under chapter 5 of these *regulations* or by any other *licensing authority*) from acting as a Head of Legal Practice, a Head of Finance and Administration, a principal or an employee of any licensed body; and**
 - c whether the person or any person listed in *regulation 6.3* has been named in a list maintained by the *Legal Services Board* of persons in respect of whom a *licensing authority* has objected to or imposed conditions on the holding of a *material interest*, or of persons who acquire a holding of a *material interest* exceeding a limit specified in the licensing rules of any *licensing authority*.**

In determining whether an applicant (together with their associates) is fit and proper, ICAEW will have regard to whether they have previously been disqualified under section 99 of the Act, and whether any other licensing authority has previously objected to, or imposed a condition on, their holding of a material (or other restricted) interest in a licensed body.

- 6.7 ICAEW may grant approval to the holding of the non-*authorised person* unconditionally if it is satisfied that:**
- a the person's holding of the *material interest* does not compromise the regulatory objectives set out in section 1 of the *Act*;**
 - b the person's holding of the *material interest* does not compromise compliance by *authorised persons* or the *principals* or *employees* of the *firm* with these *regulations* or with any of ICAEW's regulatory arrangements; and**
 - c the person is a fit and proper person to hold the *material interest*.**
- 6.8 If ICAEW is not satisfied as required by *regulation 6.7* it may:**
- a grant approval to the holding of the non-*authorised person* subject to conditions if it is satisfied that compliance with the conditions makes this appropriate; or**
 - b object to the holding.**
- 6.9 Before deciding either to grant approval to the holding of the non-*authorised person* subject to conditions or to object to the holding, ICAEW will:**
- a give written notice of the proposed objection or conditions, with reasons for it, to the applicant for the licence and to the non-*authorised person*, explaining the nature of any proposed conditions and stating that representations may be made to ICAEW within 28 days;**

- b consider any representations if made within the time specified by paragraph (a) above; and**
- c notify the applicant for the licence and the non-*authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.**

In all such cases the notice will explain the effect of ICAEW's enforcement powers under Part 5 of Schedule 13 of the Act.

Acquisition of material interest after issue of licence

These regulations impose duties on non-*authorised persons* who acquire or propose to acquire a material interest in a firm which is already licensed. A failure, with knowledge of the relevant facts, to comply with any of these duties to notify is a criminal offence punishable with a fine.

Licensed firms should ensure that any non-*authorised person* who acquires or proposes to acquire a material interest in the firm is aware of the obligation to provide such documents or information as ICAEW may require. Failure to comply with this obligation is a criminal offence punishable by a fine and/or imprisonment.

- 6.10 If a non-*authorised person* who proposes to take a step which would result in his acquiring a *material interest* in a *licensed firm* or, if he already has any *material interest* in the *firm*, an additional kind of *material interest* in the *firm*, then he must:**
- a give written notification of the proposal to the *licensed firm* and to ICAEW; and**
 - b must not take the proposed step unless ICAEW has granted approval of his holding the *material interest*.**

As set out in regulation 6.2 there are different kinds of material interest. If ICAEW has previously approved a non-*authorised person* to hold a specific type of material interest, and that person then acquires a different kind of material interest, this needs to be approved as set out above.

- 6.11 If a person only becomes aware of the notification requirements referred to in *regulation 6.10* after making such a proposal, he must give written notification of the proposal to the *licensed firm* and to ICAEW within 7 days of becoming aware of them and before taking the proposed step.**
- 6.12 A non-*authorised person* who acquires a *material interest* in a *licensed firm* without taking a step as referred to in *regulation 6.10* must give written notification of the acquisition to the *licensed firm* and to ICAEW within 7 days of becoming aware of the acquisition.**
- 6.13 When ICAEW receives a notification under any of *regulations 6.10, 6.11* or *6.12*, or if it becomes aware that a person has failed to comply with an obligation to make such a notification, it may require the person to provide it with any documents or information and, within 90 days of the notification, will decide whether to:**
- a approve the person's holding unconditionally;**
 - b warn the person that it proposes to approve the holding subject to conditions;**
 - c approve the holding subject to conditions;**
 - d warn the person that it proposes to object to the holding; or**

e object to the holding.

- 6.14 **ICAEW** may grant approval to the holding of the *non-authorised person* unconditionally if it is satisfied of the matters specified in *regulation 6.7*.
- 6.15 If **ICAEW** is not satisfied as required by *regulation 6.14*, it may exercise either of the powers referred to in *regulation 6.8*.
- 6.16 Subject to *regulation 6.17*, before deciding either to grant approval to the holding of the *non-authorised person* subject to conditions or to object to the holding **ICAEW** will:
- a give written notice of the proposed objection or conditions, with reasons for it, to the *licensed firm* and to the *non-authorised person*, stating that representations may be made to **ICAEW** within 7 days;
 - b consider any representations made within the time specified by paragraph (a) above; and
 - c notify the *licensed firm* and the *non-authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.
- 6.17 **ICAEW** may approve the holding subject to conditions or may object to the holding without giving the notice referred to in *regulation 6.16* if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives set out in section 1 of the *Act*.
- 6.18 Any approval granted by **ICAEW** under *regulations 6.14* or *6.15* is effective only if the *material interest* is acquired within such period as may be specified in the written notice by **ICAEW** of the approval or, if no period is specified, within one year of the date of the notice.

The approval granted by **ICAEW** is subject to the material interest being acquired either within the period set out in the notice, or, if no period is given, within one year. If the interest is not acquired within this time, approval will need to be sought again.

Powers of ICAEW in relation to existing material interests

ICAEW is empowered to give notice objecting to, or imposing conditions on, the holding of existing material interests where necessary.

A person who holds a material interest subject to any condition may apply to **ICAEW** for variation or cancellation of the condition.

- 6.19 If at any time **ICAEW** ceases to be satisfied as required by *regulation 6.7*, or if it is satisfied that a condition imposed by any of the *regulations* in this chapter has not been, or is not being, complied with, it may, within 90 days of becoming aware of the matters the question:
- a impose a condition on the holding; or
 - b object to the holding.
- 6.20 *Regulations 6.16* and *6.17* also apply to the exercise by **ICAEW** of the power referred to in *regulation 6.19*.

- 6.21 A condition imposed under any of the *regulations* in this chapter may be varied or cancelled by written notice by *ICAEW*:**
- a on the application of the person who holds the *material interest* ; or**
 - b on the initiative of *ICAEW*.**

Enforcement of conditions and objections

Where a material interest is held in contravention of the regulations in this chapter, *ICAEW* may give notice restricting the rights attached to the holding and, subject to the procedural requirements imposed by the Act, may apply to the High Court for an order requiring a non-authorized person to sell shares.

Where a material interest is held in breach of a condition imposed under any of the regulations in this chapter, *ICAEW* may, subject to the procedural requirements imposed by the Act, apply to the High Court for an order securing compliance.

- 6.22 If a person holds a *material interest* in breach of any condition imposed by *ICAEW* under any of the *regulations* in this chapter, *ICAEW* may:**
- a give written notice to the person that it intends to apply to the High Court for an order securing compliance if the conditions are not complied with before the end of the period specified in the notice (not less than 28 days); and**
 - b upon expiry of the period specified in the notice, apply to the High Court to make such order securing compliance as the High Court thinks fit.**

The High Court will not make an order securing compliance with a condition until the end of the period in which the person can appeal against the imposition of the condition and, if an appeal is made, until the appeal has been determined or withdrawn.

- 6.23 If a non-authorized person, who holds a *material interest* by virtue of a shareholding in a *licensed firm*, breaches:**

- a *regulation 6.10b*; or**
- b any condition or objection imposed by *ICAEW* under any of the *regulations* in this chapter;**

then *ICAEW* may:

- give a notice under *regulation 6.24*; and
- apply to the High Court in accordance with paragraphs 43-45 of schedule 13 to the *Act* for an order requiring the sale of shares to secure that the non-authorized person no longer holds a *material interest* in contravention of any of the *regulations* in this chapter.

- 6.24 A notice under this *regulation* is a written notice to the person holding the *material interest* directing that one or more of the following restrictions apply until further notice:**

- a any transfer of, or agreement to transfer, the shares, or the right to be issued with the shares, is void;**

- b no voting rights are to be exercisable in respect of the shares;**
- c no further shares are to be issued in right of the shares or in pursuance of any offer made to their holder; or**
- d except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.**

If ICAEW applies to the High Court for a divestiture order, it will at the same time give a restriction notice to the non-authorized person and send a copy of this notice to the firm.

6.25 A notice under *regulation 6.24* ceases to have effect:

- a if the High Court so orders under paragraph 45(4) of schedule 13 to the *Act*;**
- b at the end of 90 days if *ICAEW* does not within that time make the application referred to in *regulation 6.23*; or**
- c if the *licensed firm* ceases to be licensed by *ICAEW*.**

Part 5 of Schedule 13 of the Act requires ICAEW to inform the Legal Services Board of decisions and actions taken under this chapter.

Chapter 7 - Complaints resolution

The following regulations detail how complaints should be dealt with. The Act requires that an accredited probate firm has procedures for dealing with complaints. Firms should take care to notify their existing clients of their right to make a complaint. This should be done at the first appropriate opportunity (eg, if a client complains or at the beginning of the next engagement).

It is clearly to the benefit of clients and firms if any complaints that may arise are dealt with promptly and efficiently. Firms should bear in mind that this may be a particularly stressful time for the client.

7.1 An accredited probate firm must establish procedures to deal with complaints.

7.2 An accredited probate firm must ensure that all clients are notified in writing at the beginning of the engagement of the name of the individual to be contacted in the event of a complaint and of their right to complain to the *Legal Ombudsman*. This individual should be a *principal* in an *authorised firm* or the *Head of Legal Practice* in a *licensed firm*.

Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the client at the beginning of the engagement. The following is a suggested paragraph for inclusion:

'If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting [state name of principal]. We will consider carefully any complaint you may make about our probate services as soon as we receive it and do all we can to resolve it. We will acknowledge your letter within five business days of its receipt and endeavour to deal with it within 8 weeks. If we do not deal with your complaint in this time, or if you are unhappy with our response, you may of course take up the matter with the Legal Ombudsman.'

You must include the contact details for the Legal Ombudsman, which are:

- T 0300 555 0333
- Post Legal Ombudsman, PO Box 15870, Birmingham, B30 9EB
- E enquiries@legalombudsman.org.uk

You must also advise the client of the timescales for making a complaint to the Legal Ombudsman, which are ordinarily:

- the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and
- the complainant must refer the complaint to the Legal Ombudsman no later than:
 - six years from the act/omission; or
 - three years from when the complainant should reasonably have known there was cause for complaint.; and
- the complainant must refer the complaint to the Legal Ombudsman within six months from the date of your firm's written response.

As many complaints arise out of a misunderstanding of what services the firm has been retained to do, the progress in delivering those services and the cost involved, firms should ensure that they advise their clients in writing at the beginning of the engagement of the likely scope and nature of the intended work and the costs involved. Firms should ensure that their clients understand and agree to the process and these costs, and should keep their clients updated on matters as the engagements proceed.

Firms should also bear in mind the importance of learning from complaints. It is recommended that at the conclusion of the complaints process firms reflect on whether procedures and/ or systems could be introduced or modified to avoid similar complaints arising in the future.

7.3 If an *accredited probate firm* receives a complaint from a client or a former client it must acknowledge the complaint within five *business days*.

7.4 The *accredited probate firm* must begin immediately to investigate the complaint in a fair, prompt, constructive and honest manner. The investigation should be conducted or supervised by the *Head of Legal Practice* in a *licensed firm*, or by a *principal* in an *authorised firm*.

In the case of serious complaints, firms should bear in mind their obligations and duties under the firm's professional indemnity insurance. If cover is not to be affected, firms should notify insurers of matters that could give rise to a claim as soon as possible. However, the firm must still investigate the complaint and this does not affect the rights of the client to take the matter up with the Legal Ombudsman.

7.5 The *accredited probate firm* must keep a full record of the way in which the complaint has been handled. This documentation must be kept in a separate complaint file.

7.6 If following such an investigation the *accredited probate firm* is of the opinion that the complaint is justified in whole or in part, it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise.

7.7 When the *accredited probate firm* notifies the client of its final response, which should be provided within 8 weeks of receiving the complaint, the client must be informed of their right to refer the matter to the *Legal Ombudsman*.

Once a firm has concluded its investigation of the complaint, it should notify the client in writing of the outcome and how, if appropriate, it intends to rectify the matter. This may lead to more discussions with the client. However the firm should make clear to the client when it has made its final response. At this stage the client should also be informed of their right to refer the matter to the Legal Ombudsman.

7.8 If the complaint is not resolved within 8 weeks of receipt of the complaint, the client must be informed in writing of their right to request that the *Legal Ombudsman* investigate the matter.

If the complaint is not resolved within 8 weeks the client must be informed of their right to refer the matter to the Legal Ombudsman. This does not prevent a firm continuing to try to resolve the matter with the client, but the client could still request that the Legal Ombudsman looks into the matter.

7.9 The *accredited probate firm* must cooperate with the *Legal Ombudsman*.

7.10 The *accredited probate firm* must comply with any decision that the *Legal Ombudsman* may make and promptly comply with any remedy ordered by the *Legal Ombudsman*.

The Legal Ombudsman may decide that a firm should pay the client compensation for any loss, inconvenience or distress caused to the client arising from the matter complained of. The decision may also include an apology, reimbursement of all or part of the firm's fees paid by the client, the

requirement that the firm takes remedial action to put the matter right or pays another firm to do so, or any other action which the Ombudsman deems necessary.

7.11 The *accredited probate firm* must provide *ICAEW* with such details of complaints as *ICAEW* may request (whether by writing, visiting the *firm's* offices or by any other method) within 20 *business days* of receiving such a request.

Chapter 8 - Probate affiliates

ICAEW may accredit a firm which has a principal (an individual or a corporate body) who is not:

- a member;
- a member of one of the bodies listed below;
- an accredited probate firm;
- a registered auditor; or
- a DPB-licensed firm

and who, at the time of the proposed accreditation, is not an affiliate under the audit regulations, the DPB Handbook, the insolvency regulations or ICAEW's regulations governing the use of the description 'chartered accountant' and general affiliates, only if that principal is granted probate affiliate status by ICAEW.

The bodies referred to above are the:

- Institute of Chartered Accountants of Scotland;
- Institute of Chartered Accountants in Ireland; or
- another approved regulator.

Probate affiliate status does not confer membership of ICAEW nor entitle the individual or body corporate to use the title 'chartered accountant'. However, it does mean that a probate affiliate is bound by the same rules and regulations as govern a member of ICAEW.

Granting probate affiliate status

- 8.1** *Probate affiliate status does not give the probate affiliate any rights other than those contained in these regulations. Neither the probate affiliate nor his accredited probate firm shall make any public representation that the probate affiliate has any rights other than those contained in these probate affiliate regulations.*
- 8.2** *A person must apply for probate affiliate status in the manner decided by ICAEW. To carry out its responsibilities under these probate affiliate regulations, ICAEW may make any enquiries necessary to assess the eligibility of the applicant.*
- 8.3** *ICAEW may grant probate affiliate status if it is satisfied that the applicant:*
- a** *is a fit and proper person to be granted probate affiliate status;*
 - b** *has agreed to comply with these regulations;*
 - c** *has agreed to observe and uphold ICAEW's Code of Ethics; and*
 - d** *has agreed to provide ICAEW with all the information it needs.*
- 8.4** *ICAEW may, on receiving an application for probate affiliate status:*
- a** *grant probate affiliate status;*
 - b** *reject the application;*
 - c** *grant probate affiliate status with restrictions or conditions; or*

d postpone consideration of the application.

8.5 **ICAEW** may at any time vary or end a restriction or condition made under *regulation 8.4*.

Withdrawal of probate affiliate status

8.6 **ICAEW** may in its sole discretion withdraw *probate affiliate* status if the *probate affiliate*:

- a is in the opinion of **ICAEW** no longer a fit and proper person;
- b fails to pay on time any fines or costs ordered by any committee or tribunal of **ICAEW**;
- c has a disciplinary order made against him by any committee or tribunal of **ICAEW**;
- d fails to pay the annual subscription within 30 days of the date of a notice to renew *probate affiliate* status; or
- e fails or ceases to comply with any of these *regulations* and, in the circumstances, **ICAEW** considers that withdrawal is justified.

Decisions under regulations 8.4, 8.5 or 8.6 will come into effect as set out in chapter 10.

If a probate affiliate is dissatisfied with a decision made by **ICAEW** under regulations 8.4, 8.5 or 8.6 it may apply for a review of the decision in accordance with the procedures set out in chapter 11.

Cessation of probate affiliate status

8.7 **Probate affiliate** status will cease if:

- a subject to *regulation 8.8*, the *firm* in which the *probate affiliate* is a *principal* ceases to be accredited;
- b subject to *regulation 8.8*, the *probate affiliate* ceases to be a *principal* in the accredited *probate firm* to which the grant of *probate affiliate* status related;
- c the *probate affiliate* is an individual and has a bankruptcy order made against him;
- d the *probate affiliate* is a body corporate which:
 - has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its members) for it to be wound up or has had a winding up order made against it on the grounds of insolvency;
 - has had an administration order made against it on grounds of insolvency; or
 - has had a receiver appointed by a creditor or by a court on the application of a creditor.

8.8 **Probate affiliate** status will not cease under *regulation 8.7a* or *8.7b* if:

- a the accredited *probate firm* in which the *probate affiliate* is a *principal* merges with or is acquired by another accredited *probate firm*; or

b the *probate affiliate* leaves the *accredited probate firm* in which he is a *principal* and immediately becomes a *principal* in another *accredited probate firm*;

provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *probate affiliate* status withdrawn.

Changes in circumstances

8.9 A *probate affiliate* or the *accredited probate firm's contact partner* must inform *ICAEW* in writing within 10 *business days* of any changes relevant to matters considered by *ICAEW* under *regulation 8.3*.

Fees

8.10 *Probate affiliates* must pay a fee each year in addition to the *accredited probate firm's* annual fee. The first annual fee for *probate affiliate* status is due when an application is made for such status, together with any application fee.

8.11 The amount of the fees for *probate affiliate* status will be determined by *ICAEW* from time to time.

Disciplinary arrangements

8.12 The disciplinary provisions of *ICAEW* that apply to a *member* also apply to a *probate affiliate*.

8.13 A *probate affiliate* shall be liable to disciplinary action for any failure to observe and uphold any guidance issued by *ICAEW*, including any ethical guidance.

8.14 A *probate affiliate* will remain liable to disciplinary action under these *regulations* for any acts or omissions relating to the obligations in these *regulations* during the period in which *probate affiliate* status was held, regardless of any subsequent cessation of such status.

Chapter 9 - Probate and other committees

This chapter describes the various committees involved in the regulatory process and their powers. Some, but not all, of the powers may be delegated by the Probate Committee to either sub-committees or staff.

A firm generally has the right to seek a review of a decision. Details are in chapter 11.

Probate Committee

9.1 The *Probate Committee* must:

- a comprise ten members, half of whom must be lay members; and
- b have a quorum of five members, the majority of whom must be lay members.

The chairman of the Probate Committee must be a lay member and will have the casting vote where required. A lay member is a person who has never qualified or practised as a professional accountant. Solicitors and persons with legal training are also unable to act as lay members on the committee.

Members of ICAEW's Council and Board are excluded from membership of this committee.

9.2 The *Probate Committee* is responsible for discharging ICAEW's functions as an *approved regulator* and *licensing authority* as set out in these *regulations* and is also responsible for:

- a reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
- b making appropriate enquiries into the eligibility of applicants for *accreditation; authorised individual status; Head of Legal Practice status; Head of Finance and Administration status, or probate affiliate status* (by writing, visiting a *firm's* office or offices, or in any other way);
- c making appropriate enquiries into the eligibility of applicants for status as non-*authorised persons* who hold *material interests* in *licensed firms*;
- d making appropriate enquiries to confirm that an *authorised person, Head of Legal Practice, Head of Finance and Administration or probate affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- e making appropriate enquiries to confirm that a non-*authorised person* who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- f publishing, in any manner it decides, its decisions if it considers this appropriate; and
- g compiling and maintaining a *register of licensed firms* and supplying information to the *Legal Services Board* as required.

In discharging its functions the Probate Committee will have regard at all times to the public interest, and the requirements and regulatory objectives of the Act.

9.3 The *Probate Committee* may delegate the following functions to sub-committees, ICAEW's staff, or another duly appointed agent:

- granting applications for *accreditation* under *regulation 2.5a*;
- granting applications for *accreditation* subject to conditions under *regulation 2.5c*;
- varying or ending a condition or restriction under *regulation 2.6*;
- granting applications for *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status under *regulation 4.4*;
- granting applications for *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status subject to conditions under *regulation 4.4*;
- varying or ending a condition or restriction under *regulation 4.6*;
- granting approval to a holding of a *material interest* by a *non-authorised person* with or without conditions under *regulations 6.7, 6.8a, 6.14* or *6.15*;
- deciding to vary or end a condition on the holding of a *material interest* by a *non-authorised person* under *regulation 6.21*;
- granting applications for *probate affiliate* status under *regulation 8.4a*;
- granting applications for *probate affiliate* status subject to conditions under *regulation 8.4c*;
- varying or ending a condition or restriction under *regulation 8.5*;
- withdrawing *probate affiliate* status under *regulations*:
 - 8.6b - failure to pay on time any fines or costs;
 - 8.6c - disciplinary order; or
 - 8.6d - failure to pay annual subscriptions;
- reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
- making appropriate enquiries into the eligibility of applicants for *accreditation*; *authorised individual* status; *Head of Legal Practice* status; *Head of Finance and Administration* status, or *probate affiliate* status (by writing, visiting a *firm's* office or offices, or in any other way);
- making appropriate enquiries into the eligibility of *non-authorised persons* who seek approval as holders of *material interests* in a *licensed firm*;
- making appropriate enquiries to confirm that an *authorised person, Head of Legal Practice, Head of Finance and Administration* or *probate affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);

- making appropriate enquiries to confirm that a *non-**authorised person*** who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- publishing, in any manner it decides, its decisions if it considers this appropriate;
- compiling and maintaining a *register* of *licensed firms* and supplying information to the *Legal Services Board* as required;
- impose a condition on *accreditation* under *regulation 10.1*;
- varying or ending a condition or restriction under *regulation 10.2*; or
- withdrawing *accreditation* under *regulations*:
 - 10.3b - non-compliance with the PII *regulations*;
 - 10.3c - failure or delay in submitting a return or report;
 - 10.3d - failure to pay amounts due;
 - 10.3e - failure to pay costs awarded by the *Review Committee*; or
 - 10.3f - failure to pay fines or costs awarded by *ICAEW's* disciplinary committees or the *First-tier Tribunal*.

9.4 All information obtained under these *regulations* will be confidential but may be disclosed by *ICAEW* (directly or indirectly) to any person or body undertaking regulatory, redress, disciplinary or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

All information that *ICAEW* receives will remain confidential except in the above circumstances.

9.5 In carrying out its responsibilities under these *regulations* *ICAEW*, the *Probate Committee* and the *Review Committee* may consider any disciplinary findings, orders, ongoing investigations or any other information (including criminal and civil court judgments) concerning or affecting the *firm* or its *principals* or *employees*, any *non-**authorised persons*** holding a *material interest* in a *firm* (either actual or proposed), an applicant for *authorised individual* status, an *authorised individual*, an applicant for *Head of Legal Practice* status, a *Head of Legal Practice*, an applicant for *Head of Finance and Administration* status, a *Head of Finance and Administration*, an applicant for *probate affiliate* status or *probate affiliate*.

Regulation 9.5 allows consideration of any disciplinary or other matter that affects the firm.

Notification to committees

9.6 The *Probate Committee* must notify the *Investigation Committee* about any fact or matter which:

- a suggests that an *accredited probate firm*, an *authorised individual*, a *Head of Legal Practice*, a *Head of Finance and Administration*, a *probate affiliate* or any other person (including a *non-**authorised person*** holding a *material interest*) may be liable to

disciplinary action under these *regulations* or other regulations or bye-laws of *ICAEW*;
and

b in the opinion of the *Probate Committee* needs to be investigated.

9.7 The *Investigation Committee* must inform the *Probate Committee* about any fact or matter which appears to it to be relevant to the powers and duties of the *Probate Committee* under these *regulations*.

Under regulations 9.6 and 9.7 information may be exchanged between the ICAEW committees responsible for regulation and discipline.

Chapter 10 - Regulatory action

This chapter explains how ICAEW may take regulatory action against an accredited probate firm, including withdrawal of accreditation if necessary.

Regulatory decisions come into effect as set out in regulations 10.9 to 10.11.

A firm may ask for a review of a decision and this is dealt with in chapter 11. A firm must apply for a review within 10 business days (or in some cases 28 days) of the decision being given to the firm.

Restrictions and conditions

- 10.1 ICAEW may impose restrictions or conditions on an *accredited probate firm* if it considers that:**
- a any of the circumstances mentioned in *regulation* 10.3a to 10.3f or 10.3j exist, or may exist, and the restrictions or conditions are justified;**
 - b the *firm* has not or may not have complied with these *regulations* in the past, and the restrictions or conditions are justified;**
 - c there is reason to believe that the *firm* may cease to comply with these *regulations* in the future and the restrictions or conditions are justified;**
 - d being *accredited* or continuing *probate work* without restrictions or conditions could adversely affect a client or any other person; or**
 - e it is appropriate to do so to ensure that *probate work* is undertaken, supervised and managed effectively.**
- 10.2 ICAEW may at any time vary or end a restriction or condition made under *regulation* 10.1.**

ICAEW may place conditions on how an accredited probate firm carries out or manages its probate work. These could be that a firm should undertake specified training or change its procedures.

ICAEW may place restrictions on an accredited probate firm such as:

- against the firm, for example that it cannot accept any new clients or probate work;
- against a principal, for example that a particular principal may no longer be an authorised individual; or
- that an employee may no longer be involved in probate work.

Where conditions or restrictions are imposed by ICAEW, a firm will have to undertake to comply with the terms of the restriction or condition. Any failure to deal with these matters is likely to be viewed extremely seriously.

ICAEW may, as an alternative to regulatory action, accept a written undertaking from a firm that it will undertake a particular course of action.

Withdrawal of accreditation

- 10.3 ICAEW may withdraw a *firm's accreditation* if:**

- a it considers that the *firm* no longer meets one or more of the eligibility requirements of *regulations 2.2 or 2.3*;
- b it considers that the *firm* is not complying with the PII regulations;
- c the *firm* is over 30 days late submitting the required returns or reports;
- d the *firm* has not paid the amounts due under *regulations 2.14, 2.15 or 2.16* within 60 days of the date of an invoice under *regulation 2.17*;
- e the *firm* has not paid the costs in the time set by the *Review Committee* under *regulation 11.4*;
- f the *firm* has not paid in the time set any fines or costs ordered by the *Investigation Committee*, the *Disciplinary Committee*, or the *First-tier Tribunal*;
- g it considers that the *firm* has not complied with any restriction or condition under *regulation 10.1* or any written undertaking that the *firm* has given to *ICAEW*;
- h it considers that the *firm* or any of its *principals, employees* and shareholders have not complied with any other *regulation* and, in the circumstances, withdrawal is justified;
- i it considers that the continued *accreditation* of the *firm* may adversely affect a client or any other person; or
- j in the case of a *licensed firm*, a *non-authorized person* holds an interest in the *firm* as a result of which the *firm* has ceased to comply with any of the *regulations* in chapter 6.

Suspension

- 10.4** *ICAEW* may suspend an *accredited probate firm's accreditation* for a period if it considers that:
- a any of the circumstances mentioned in *regulation 10.3a to 10.3g or 10.3j* exists or may exist;
 - b the *firm* is not, or may no longer be, complying with these *regulations*; or
 - c the continuation of the *firm's probate work* could adversely affect a *client* or any other person.
- 10.5** During a period of suspension an *accredited probate firm*:
- a may continue with any ongoing *probate work* with the permission of the *Probate Committee*; but
 - b may not accept any new appointments for *probate work*.
- 10.6** *ICAEW* may vary or end a suspension made under *regulation 10.4*.

ICAEW can decide that a firm's accreditation is suspended rather than withdrawing accreditation. This allows ICAEW to consider further evidence while protecting the public interest.

Urgent orders

- 10.7** *ICAEW* may impose restrictions or conditions on a *firm's accreditation* in the terms permitted by *regulation* 10.1 by means of an urgent order if it considers that, in addition to the matters justifying the imposition under regulation 10.1, there is:
- a** a risk of loss to a client of the *firm* if an urgent order is not made, or
 - b** another reason justifying the making of an urgent order.
- 10.8** *Regulation* 10.7 is subject to *ICAEW* allowing the *accredited probate firm* an opportunity to make oral or written representations within 10 *business days* of the urgent order being made. Having considered any representations *ICAEW* may:
- a** end the order; or
 - b** continue the order.

Regulation 10.7 allows ICAEW to take immediate regulatory action if the need arises. ICAEW may do this in the case of, for example, serious allegations or if there is a potential or actual loss of client money. As well as making immediate representations on the fact that an urgent order has been made, a firm can ask for a review under regulation 11.2 of any underlying decision made under regulation 10.1. The order comes into force when it is served on the firm (see regulation 10.9) and is not lifted if a review is requested.

Implementation of decisions and orders

- 10.9** A decision made under *regulations* 2.5, 2.6, 2.13, 2.20, 2.21, 4.4, 4.6, 5.4, 6.7, 6.8, 6.13, 6.19, 6.21, 8.4, 8.5, 10.2, 10.6, 10.7, or 11.7 will come into effect as soon as notice of it is served on the *firm*.

The regulations quoted in regulation 10.9 concern the following:

- the grant or refusal of an application for accreditation under regulation 2.5;
- the decision to vary or end a condition or restriction on accreditation under regulation 2.6;
- decisions on applications to modify accreditation under regulation 2.13;
- the grant or refusal of dispensations under regulations 2.20 and 2.21;
- the grant or refusal of authorised individual status, or status as a Head of Legal Practice or Head of Finance and Administration under regulation 4.4;
- the decision to vary or end a condition or restriction on a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration under regulation 4.6;
- the decision to end a person's disqualification under regulation 5.4;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to the holding, prior to the grant of a firm's accreditation under regulations 6.7 and 6.8;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to a holding, following a firm's accreditation under regulation 6.13;

- the decision to approve a holding of a material interest by a non-authorised person subject to conditions, or to object to such a holding, following a firm's accreditation under regulation 6.15;
- the decision to impose conditions on a holding, or to object to a holding, of an existing material interest by a non-authorised person under regulation 6.19;
- the decision to vary or end a condition on a holding of a material interest by a non-authorised person under regulation 6.21;
- the grant or refusal of an application for probate affiliate status under regulation 8.4;
- the decision to vary or end a condition or restriction on a person's status as a probate affiliate under regulation 8.5;
- the decision to vary or end a condition or restriction on accreditation under regulation 10.2;
- the decision to vary or end a suspension on accreditation under regulation 10.6;
- orders in respect of restrictions or conditions on a firm's accreditation that are made on a urgent basis under regulation 10.7; and
- First-tier Tribunal decisions under regulation 11.7.

10.10 A decision made under *regulations 4.7e, 5.1, 8.6 or 10.1* will come into effect 10 *business days* after notice of it is served on the *firm* or any later time that *ICAEW* specifies, except:

- a if a *firm* has applied for a review under *regulation 11.2*, the effect of the decision will be suspended pending a decision on the review under *regulation 11.3* or the withdrawal of the request for a review; or**
- b if a *firm* has appealed under *regulation 11.5*, the effect of the decision will be suspended pending a decision of the *First-tier Tribunal* under *regulation 11.6* or the withdrawal of the appeal.**

Decisions made under the regulations referred to in regulation 10.10 come into effect 10 business days after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or First-tier Tribunal is the one that will come into effect.

The regulations referred to in regulation 10.10 concern the following:

- withdrawal of status as an authorised individual under regulation 4.7e;
- disqualification from status as a Head of Legal Practice or Head of Finance and Administration or from being a principal or an employee of a licensed firm under regulation 5.1;
- withdrawal of status as a probate affiliate under regulation 8.6; and
- the imposition of conditions or restrictions imposed on an accredited probate firm under regulation 10.1.

Regulation 1.5 details how decisions and orders are served on firms.

- 10.11** A decision made under *regulations* 10.3 or 10.4 will come into effect 28 days after notice of it is served on the *accredited probate firm* or any later time that *ICAEW* specifies, except:
- a** if a *firm* has applied for a review under *regulation* 11.2, the effect of the decision will be suspended pending a decision on the review under *regulation* 11.3 or the withdrawal of the request for a review; or
 - b** if a *firm* has appealed under *regulation* 11.5, the effect of the decision will be suspended pending a decision of the *First-tier Tribunal* under *regulation* 11.6 or the withdrawal of the appeal.

Decisions made under the regulations referred to in regulation 10.11 come into effect 28 days (rather than business days) after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or First-tier Tribunal is the one that will come into effect.

The regulations referred to in regulation 10.11 relate to the following:

- withdrawal of a firm's accreditation under regulation 10.3; and
- suspension of a firm's accreditation under regulation 10.4.

Chapter 11 - Review and appeal process

At the request of a firm or an accredited probate firm, a decision to refuse an application, grant it with conditions, withdraw a firm's accreditation or only allow it to continue with conditions or restrictions may be reviewed by ICAEW using the following process.

The same process may be used against a decision to reject an application for authorised individual status, Head of Legal Practice status, Head of Finance and Administration status or affiliate status. It may also be used against a decision to grant these applications with restrictions or conditions or to withdraw status altogether.

Similarly this process may be used against a decision to object to the holding or continued holding of a material interest or a decision to allow a holding subject to conditions.

11.1 In *regulations* 11.2 to 11.8, 'affected party' means:

- a *firm*;
- an *accredited probate firm*;
- an applicant for *authorised individual status*;
- an *authorised individual*;
- an applicant for *Head of Legal Practice status*;
- a *Head of Legal Practice*;
- an applicant to *Head of Finance and Administration status*;
- a *Head of Finance and Administration*;
- an applicant for *probate affiliate status*;
- a *probate affiliate*;
- a person seeking approval of the holding of a *material interest*; or
- a person holding a *material interest* in a *licensed firm*

which is affected by a decision of ICAEW under these *regulations*.

Review

11.2a An affected party may apply for a review in accordance with *regulations* 11.2b and 11.2c.

11.2b An application for review must be made in writing to ICAEW within 10 *business days* of service on the affected party of a decision made under:

regulation 2.5b refusing to grant a *firm accreditation* as an *authorised or licensed firm*;

regulation 2.5c granting *accreditation* to a *firm* subject to conditions or restrictions;

- regulation 2.6** refusing to vary or end a condition or restriction on a *firm's accreditation* or varying a *firm's accreditation* in terms other than those sought in the *firm's* application;
- regulation 2.13** refusing to modify a *firm's accreditation* or modifying a *firm's accreditation* in terms other than those sought in the *firm's* application for modification;
- regulation 2.21** refusing to grant a dispensation from the *regulations*;
- regulation 4.4** refusing to grant *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status or granting such status subject to conditions or restrictions;
- regulation 4.6** refusing to vary or end a condition or restriction on a person's *authorised individual, Head of Legal Practice* or *Head of Finance and Administration* status, or varying the condition or restriction in terms other than those sought in the person's application;
- regulation 4.7e** withdrawing *authorised individual* status;
- regulation 5.1** disqualifying a person from acting as a *Head of Legal Practice* or *Head of Finance and Administration* or from being a *principal* or *employee* of any *licensed firm*;
- regulation 5.4** refusing to order that a person's disqualification shall cease to be in force;
- regulation 6.8** objecting to the holding of a *material interest* or granting approval subject to conditions;
- regulation 6.15** objecting to a change in the holding of a *material interest* or granting approval subject to conditions;
- regulation 6.19** objecting to the continued holding of a *material interest* or imposing conditions on that holding;
- regulation 6.21** refusing to vary or end a condition on the holding of a *material interest* by a *non-authorised person*, or varying the condition in terms other than those sought in the person's application;
- regulation 8.4b** refusing to grant *probate affiliate* status;
- regulation 8.4c** granting *probate affiliate* status subject to conditions or restrictions;
- regulation 8.5** refusing to vary or end a condition or restriction on a person's status as a *probate affiliate*, or varying the condition or restriction in terms other than those sought in the person's application;
- regulation 8.6** withdrawing *probate affiliate* status; and
- regulation 10.1** imposing restrictions or conditions on *accreditation*;
- 11.2c** An application for review must be made in writing to *ICAEW* within 28 days of service on the affected party of a decision made under:

regulation 10.3 withdrawing an *accredited probate firm's accreditation*; or

regulation 10.4 suspending an *accredited probate firm's accreditation*.

11.3 A meeting of the *Review Committee* will be arranged as soon as is practical after an affected party has applied under *regulation 11.2b* or *11.2c*. The *Review Committee* will consider the matter afresh and will hear new material put forward by the affected party. The *Review Committee* may make any decision which *ICAEW* could have made.

11.4 The *Review Committee* may require an affected party to contribute to the costs of the review.

The Review Committee has the same powers as ICAEW when making decisions in relation to a firm, an accredited probate firm, an applicant for authorised individual status, an authorised individual, an applicant for Head of Legal Practice status, a Head of Legal Practice, an applicant for Head of Finance and Administration status, a Head of Finance and Administration, an applicant for affiliate status or a probate affiliate. It can also make decisions disqualifying persons from holding positions in licensed firms (as set out in chapter 5) or from holding material interests in those firms (as set out in chapter 6).

It can impose the same, more severe or less severe decisions. It can also award costs. Costs are likely to be awarded if, for example, the affected party fails to attend the review when it said it would, does not send in further material it has promised, or the application is frivolous.

Appeal

A firm or person who is the subject of a decision of the Review Committee and is dissatisfied with that decision can appeal to the First-tier Tribunal, which is an independent public body established under the Tribunals, Courts and Enforcement Act 2007. Appeals will be heard by the General Regulatory Chamber of the First-tier Tribunal and will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009. The First-tier Tribunal can only consider an appeal on any of the grounds in regulation 11.5. On appeal, the decision of the Review Committee is postponed until the First-tier Tribunal confirms or varies the decision (see regulation 10.10 and 10.11).

Upon an appeal the First-tier Tribunal has the powers set out in regulation 11.6.

The First-tier Tribunal can also award costs against either party to an appeal but will normally do so only where it considers that the party has acted unreasonably in bringing, defending or conducting the proceedings .

11.5 Following a decision of the *Review Committee* under *regulation 11.3*, the affected party may appeal to the *First-tier Tribunal* on one or more of the following grounds:

a that the *Review Committee*:

1 was wrong in law; or

2 wrongly interpreted any relevant regulation, Bye-law, or associated guidance;

b that the *Review Committee* made a decision which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or

c that there was evidence which the *Review Committee* had not considered and which:

- 1 could reasonably have led the *Review Committee* to make a different decision; and**
- 2 could not have been put before the *Review Committee* even if those concerned had done their best to produce it.**

Regulations 10.9 to 10.11 explain when decisions come into effect. The time for making an appeal is set out in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 which state that an appellant must start proceedings before the Tribunal by sending or delivering to the Tribunal a notice of appeal so that it is received within 28 days of the date on which notice of the decision was sent to the appellant.

- 11.6 An appeal to the *First-tier Tribunal* cannot be made if the appeal is only against the costs awarded by the *Review Committee*.**
- 11.7 On hearing the appeal the *First-tier Tribunal* may:**
- a affirm the *Review Committee*'s decision wholly or in part;**
 - b set aside the *Review Committee*'s decision wholly or in part;**
 - c substitute for all or part of the *Review Committee*'s decision a new decision which the *Review Committee* could have made;**
 - d send the matter back to the *Review Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *First-tier Tribunal*); or**
 - e dismiss the appeal.**
- 11.8 If the *First-tier Tribunal* sends a matter back to the *Review Committee* under *regulation* 11.7 then *regulation* 11.3 will apply when the *Review Committee* reconsiders. The meeting of the *Review Committee* to reconsider the matter will be arranged as soon as is practicable.**

Chapter 12 - Disciplinary arrangements

The Probate Committee does not have the power to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Only the Disciplinary or Investigation Committees can do this. The bye-laws already provide a framework for disciplinary action to be taken against members or firms and the purpose of this chapter is to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Where the terms of these regulations differ from those of the bye-laws, these regulations prevail.

Any fine imposed by the tribunal in the exercise of ICAEW's powers as a licensing authority cannot exceed the amount(s) from time to time stipulated by the Legal Services Board under section 95 of the Act (currently £250m in the case of a firm or £50m in the case of an individual: see the Legal Services Act 2007 (Licensing Authorities) (Maximum Penalty) Rules 2011 (SI 1659/2011).

Under regulation 12.2 the Disciplinary Committee shares with the Probate Committee the power to withdraw status as an accredited probate firm or authorised individual or to disqualify an individual from holding the status of Head of Legal Practice or Head of Finance and Administration or from being a principal of, or employed by, any licensed firm.

Appeals against decisions of the Disciplinary Committee under this chapter are made to the First-tier Tribunal under regulation 12.3 and are not subject to the separate appeal provisions of ICAEW's Disciplinary Bye-laws. See also the guidance relating to appeals to the First-tier Tribunal above regulation 11.5.

- 12.1 Save as provided below, the Disciplinary Bye-laws apply to breaches of these regulations:**
- a as if references in those Bye-laws to a firm or member firm are construed as references to an *accredited probate firm*; and**
 - b as if references in those Bye-laws to a member are construed as references to a *relevant person*.**
- 12.2 In addition to the powers of a tribunal set out in the Disciplinary Bye-laws, if the *Disciplinary Committee* considers that a complaint brought by the *Investigation Committee* under this chapter is proved, it will make a finding to that effect. The *Disciplinary Committee* will take the seriousness, the type of complaint and any other relevant circumstances into account and may make any of the following orders:**
- a that the *accredited probate firm* or *relevant person* be reprimanded or severely reprimanded;**
 - b that the *accredited probate firm* or *relevant person* be fined;**
 - c that status as an *accredited probate firm* or *authorised individual* be withdrawn; or**
 - d that an individual be disqualified under *regulation 5.1* from acting as the *Head of Legal Practice*, as the *Head of Finance and Administration* or as a *principal* or *employee* of any *licensed firm*.**
- 12.3 Following a decision of the *Disciplinary Committee*, the *accredited probate firm* or *relevant person* may appeal to the *First-tier Tribunal*.**

The time for making an appeal is set out in the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.

- 12.4 An appeal against a decision of the *Disciplinary Committee* under this chapter can only be made on one or more of the following grounds:**
- a that the *Disciplinary Committee*:**
 - 1 was wrong in law; or**
 - 2 wrongly interpreted any relevant regulation, Bye-law, or associated guidance;**
 - b that the *Disciplinary Committee* made an order which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or**
 - c that there was evidence which the *Disciplinary Committee* had not considered and which:**
 - 1 could reasonably have led the *Disciplinary Committee* to make a different order; and**
 - 2 could not have been put before the *Disciplinary Committee* even if those concerned had done their best to produce it; and/or**
 - d in the case of an appeal against the imposition of a fine,**
 - 1 that the imposition of the fine is unreasonable in all the circumstances of the case;**
 - 2 that the amount of the fine is unreasonable; or**
 - 3 that it is unreasonable of the *Disciplinary Committee* to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.**
- 12.5 An appeal to the *First-tier Tribunal* cannot be made if the appeal is only against the costs awarded by the *Disciplinary Committee*.**
- 12.6 On hearing the appeal the *First-tier Tribunal* may:**
- a affirm the *Disciplinary Committee*'s order wholly or in part;**
 - b set aside the *Disciplinary Committee*'s order wholly or in part;**
 - c substitute for all or part of the *Disciplinary Committee*'s order a new decision which the *Disciplinary Committee* could have made; or**
 - d send the matter back to the *Disciplinary Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *First-tier Tribunal*); or**
 - e dismiss the appeal; and/or**
 - f in the case of an appeal against the imposition of a fine:**
 - 1 quash the fine;**

- 2 substitute a fine of such lesser amount as it considers appropriate; or**
- 3 change the time by which the fine is required to be paid.**

Regulatory penalties

ICAEW may decide that a referral to the Investigation Committee to investigate an apparent failure to comply with these regulations is not appropriate. Instead, with the agreement of the firm, ICAEW may propose a regulatory penalty. The following regulations explain this process.

- 12.7 ICAEW may propose a regulatory penalty to an accredited probate firm subject to the following:**
- a the accredited probate firm must have agreed that the breach of these regulations has been committed;**
 - b ICAEW will decide the amount of the penalty and when it is to be paid and will set this out in the letter to the accredited probate firm proposing the penalty; and**
 - c if the accredited probate firm wishes to accept the terms on which the penalty is proposed, it must notify ICAEW within 10 business days of the date of service of the letter from ICAEW containing the proposal.**
- 12.8 There are no rights of review or appeal against a regulatory penalty.**
- 12.9 ICAEW will take account of any comments an accredited probate firm makes about the terms of the regulatory penalty. It may then reduce the amount of the penalty.**
- 12.10 If the accredited probate firm accepts the penalty under regulation 12.6c, ICAEW, as soon as is practicable:**
- a will make a decision; and**
 - b may publish the decision in any way it decides.**
- 12.11 Details of any penalty accepted, and the decision made, will be kept by ICAEW and it may, if it wishes, use that information in the future.**
- 12.12 If an accredited probate firm does not agree that the breach has been committed, or does not agree to the terms of the penalty proposed or fails to comply with the terms of the penalty, the matter may be dealt with under the Disciplinary Bye-laws.**

Regulatory penalties are likely to be used, for example, where a firm has consistently been late in replying to letters from ICAEW, has failed to submit annual returns, has given incorrect information on the return, or has not honoured undertakings given to ICAEW.

There is no right of appeal, as a regulatory penalty can only be made with the firm's agreement. Once a matter has been settled by a regulatory penalty, there will be no further regulatory or disciplinary action against the firm on the matter. However, the details of the regulatory penalty will be put on the firm's record and may be taken into account in the future.



APPENDIX C

ICAEW – PROBATE COMPENSATION SCHEME REGULATIONS

General

Authority and commencement

- 1.1. These *regulations* are made by the Council of *ICAEW*, pursuant to Clause 16 of the Supplemental Royal Charter of 1948. They come into force on [date].
- 1.2. Any notice or document may be served on *ICAEW* by sending it to:
Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK
- 1.3. Subject as herein provided, any notice, decision, order or other document which needs to be served on any *applicant*, *firm* or *accredited probate firm* under these *regulations* will be delivered by hand, or sent by email, fax or post:
 - a. if it is delivered by hand to the addressee, service will take effect immediately;
 - b. if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
 - c. if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
 - d. if sent by post, it will be sent to the latest address given by the addressee and service will take effect two business days after posting.
- 1.4. Any requirement of the *Probate Committee* under these *regulations* will be communicated in writing.

Interpretation

- 1.5. The words listed below shall have the meanings given:

<i>Accreditation</i>	The process by which <i>ICAEW</i> authorises or licenses persons to undertake <i>probate work</i> in accordance with the Probate Regulations.
<i>Accredited probate firm</i>	A <i>firm</i> authorised or licensed under <i>ICAEW</i> 's Probate Regulations to conduct <i>probate work</i> .
<i>Act</i>	Legal Services Act 2007
<i>Applicant</i>	A person (including an individual or a body corporate) who, being eligible under regulation 3.2 , makes an <i>application</i> for a <i>grant</i> of compensation in accordance with these <i>regulations</i> <u>but excluding a person as set out in regulation 3.2</u> .
<i>Application</i>	A claim for the <i>grant</i> of compensation made in accordance with <i>regulation</i> 7.1.
<i>Authorised work</i>	<ul style="list-style-type: none">• <i>Probate work</i>• Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
<i>Employee</i>	Anyone who carries out <i>authorised work</i> for an <i>accredited</i>

probate firm but excluding a *principal*.

Firm

A *firm* includes a:

- sole practice;
- partnership;
- limited liability partnership; or
- body corporate.

Grant

The payment to an *applicant* in accordance with a decision of the *Probate Committee* under *regulation 3*.

ICAEW

The Institute of Chartered Accountants in England and Wales

Principal

- an individual in sole practice (where the *firm* is a sole practice);
- a person who is a partner (including both salaried and equity partners) (where the *firm* is a partnership);
- a member of a limited liability partnership (where the *firm* is a limited liability partnership);
- a director (where the *firm* is a company);
- a member of the governing body (where the *firm* is an unincorporated body, other than a partnership); or
- any individual or person who is held out as being a director, partner, member, or member of the governing body.

Probate Committee

The committee established under chapter 9 of the Probate Regulations.

Probate Compensation Scheme

The *scheme* for the payment of *grants* made in accordance with these *regulations*.

Probate work

The preparation of papers to apply for a grant of probate or letters of administration.

Regulations

These *Probate Compensation Scheme Regulations*, as modified or amended from time to time.

1.6. In these *regulations*, headings are for convenience only, and shall not affect interpretation.

1.7. In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.

Administration of the scheme

1.8. The *Probate Committee* is responsible for administering the *Probate Compensation Scheme* and for determining *applications* for compensation made under these *regulations*.

2 The Probate Compensation Scheme

- 2.1. These *regulations* apply to:
 - a. *accredited probate firms*;
 - b. *firms* that were previously *accredited* in accordance with the Probate Regulations and any reference to *accredited probate firms* shall include such *firms*; and
 - c. *applicants*.
- 2.2. An *accredited probate firm* must pay any levy for ICAEW's *Probate Compensation Scheme* (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.
- 2.3. ICAEW may invest any money which forms part of the *Probate Compensation Scheme* in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- 2.4. ICAEW may insure, in relation to the *Probate Compensation Scheme*, for such purposes and on such terms as it considers appropriate.
- 2.5. ICAEW may borrow for the purposes of the *Probate Compensation Scheme* and charge investments which form part of the *Scheme* as security for borrowing by ICAEW for the purposes of the *Scheme*.
- 2.6. The *Probate Compensation Scheme* may be applied by ICAEW for the following purposes (in addition to the making of *grants* in respect of *applications* for compensation):
 - a. payment of premiums on insurance policies effected under *regulation 2.4*;
 - b. repayment of money borrowed by ICAEW for the purposes of the *Probate Compensation Scheme* and payment of interest on any money so borrowed under *regulation 2.5*;
 - c. payment of any other costs, charges or expenses incurred by ICAEW in establishing, investing, maintaining, protecting, administering or applying the *Probate Compensation Scheme*;
 - d. payment of any costs, charges or expenses incurred by the ICAEW in exercising its powers under Schedule 14 to the *Act* (intervention powers) or any intervention powers which it may have as an approved regulator under the *Act*;
 - e. payment of any costs or damages incurred by ICAEW or its employees, agents, any member, officer, and any member of the *Probate Committee*, as a result of proceedings against any of them for any act or omission made in good faith and in the exercise or purported exercise of any of their functions under these *regulations*.

3 Grants from the Probate Compensation Scheme

3.1. A *grant* from the *Probate Compensation Scheme* is made wholly at the discretion of the *Probate Committee* and on such terms as the *Committee* deems appropriate. No person has a right to a *grant* enforceable at law.

3.2. In particular and for the avoidance of doubt, the *Probate Committee* may refuse to make a *grant* if payment could cause the *Probate Compensation Scheme* to exhaust the funds available for payment at the time of the decision on whether to make a *grant*.

~~3.2.3.3.~~ The *Probate Committee* will not make a *grant* in favour of an *applicant* which, if a body corporate or a registered charity, had an annual turnover in the last accounting year equal to, or exceeding, £1 million.

~~3.3.3.4.~~ For a *grant* to be made from the *Probate Compensation Scheme*, an *applicant* must satisfy the *Probate Committee* that:

- a. he has suffered loss in consequence of fraud or other dishonesty on the part of an *accredited probate firm* or of any *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*; or
- b. he has suffered loss in consequence of a failure to account for money which was received by an *accredited probate firm*, or the *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*.

~~3.4.3.5.~~ A *grant* may be made, at the sole discretion of the *Probate Committee*, as an interim measure and on such terms as the *Probate Committee* deems appropriate.

4 Grants in respect of persons in default of regulatory requirements

4.1. At the absolute discretion of the *Probate Committee* a *grant* may be made even if at the time of the relevant act or default by the *accredited probate firm* or its *principal* or *employee*:

- a. the *accreditation* of the *accredited probate firm* had ceased under regulation 2.22 of the Probate Regulations; or
- b. the *accreditation* of the *accredited probate firm* was suspended under chapter 10 of the Probate Regulations; or
- c. the *principal* or *employee* of the *accredited probate firm* was disqualified under chapter 5 of the Probate Regulations,
provided that the *Probate Committee* is reasonably satisfied that the *applicant* at that time was unaware of the cessation, suspension or disqualification.

5 Cases not covered by the Probate Compensation Scheme

5.1. For the avoidance of doubt, a *grant* will not be made in respect of losses which:

- a. are the personal debts of an *accredited probate firm* or a *principal* or *employee* of such a *firm* and where the facts would not otherwise give rise to an *application* to the *Probate Compensation Scheme*;
- b. result from, but do not form part of, any misappropriation of, or failure to account for, money or money's worth;
- c. result from the trading debts or liabilities of the *accredited probate firm*;
- d. amount to a claim for contractually agreed interest between the *applicant* and the *accredited probate firm*;
- e. were not notified to the *Probate Committee* in accordance with *regulation 7.1*;
- f. result from activities of the *accredited probate firm* other than in its performance of *authorised work*;
- g. arise solely by reason of professional negligence by an *accredited probate firm* or a *principal* or *employee* of such a *firm*; or

- h. arose at any time when the *firm* was not *accredited*, save for the circumstances set out in *regulation* 4.1.

6 Multi-party and multi-profession issues

- 6.1. Where the loss has been sustained as a result of the combined activities of more than one party (eg, an *accredited probate firm* conspires with a solicitor or is assisted by a negligent solicitor), the *Probate Committee* will consider the role of each contributing factor in causing the *applicant's* loss. The *Probate Committee* will base any *grant* on its assessment of that portion of the loss primarily attributable to the acts of the *accredited probate firm*. The *Probate Committee* may decide to make a *grant* on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an *application* in its entirety if it is of the opinion that the loss was primarily due to factors other than the fraud or dishonesty of the *accredited probate firm*, or its *principal(s)* or *employee(s)*, or their failure to account for money which was received in connection with activities in the course of *authorised work*.
- 6.2. When an individual authorised by another approved regulator (as set out in Schedule 4 of the *Act*) is practising as the *principal* or *employee* of an *ICAEW accredited probate firm*, *ICAEW* may, in its absolute discretion, consider an *application* in respect of that individual's act or default.

7 Applications: form and time limit

- 7.1. Every *application* must be delivered to *ICAEW*, in such form as may from time to time be prescribed by *ICAEW*, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the *applicant*. The *Probate Committee* may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

8 Documentation in support

- 8.1. An *applicant* must provide such documentation as may be required by the *Probate Committee* including, when requested, a statement of truth. Failure to provide such documentation or to cooperate with the *Probate Committee* will be taken into account when determining the merits of the *application* and may be treated as a reason for withholding or reducing a *grant*.

9 Exhausting other remedies

- 9.1. A *grant* will be refused or reduced where the loss or part of the loss is an insured risk or where, in the reasonable opinion of the *Probate Committee*, the loss is capable of being made good by some other means.
- 9.2. In particular the *Probate Committee* may, before deciding whether to make a *grant* or the amount of a *grant*, require the *applicant* to:
 - a. pursue any civil remedy which may be available to the *applicant* in respect of the loss;
 - b. commence insolvency proceedings;
 - c. make a formal complaint to the Police in respect of any dishonesty on the part of the *accredited probate firm* or its *principal(s)* or *employee(s)*; or
 - d. assist in the taking of any action against the *accredited probate firm* or its *principal(s)* or *employee(s)*.
- 9.3. If a *grant* is made (whether under *regulation* 3.4 or otherwise) before requiring the *applicant* to resort to other means of recovery, such *grant* will be made repayable to *ICAEW* in the event (and to the extent) that losses are recovered by such other means.

10 Notice to accredited firm

10.1. The *Probate Committee* shall not make a *grant* unless:

- a. a communication has been sent to the *accredited probate firm* at its last known correspondence address, as set out in *regulation 1.3*, or to its representative informing the *accredited probate firm* of the nature of the *application*; and
- b. not less than eight days have elapsed since the date of receipt of such communication which, notwithstanding *regulation 1.3*, shall be regarded as the day following the date of the communication.

10.2. If it appears to the *Probate Committee* that any communication sent under *regulation 10.1* will not come to the attention of the *accredited probate firm* or its representative, then the *Probate Committee* may make a *grant* notwithstanding failure to comply with the provisions of this *regulation*.

11 Costs

Litigation costs

11.1. Where an *applicant* intends to institute or has already instituted civil proceedings for recovery of his loss and wishes to apply for a *grant* in respect of the costs of the proceedings, the *Probate Committee* will not consider making or increasing a *grant* in respect of such costs unless:

- a. they can be shown to be proportionate to the loss and the amount likely to be recovered; or
- b. the proceedings are/were necessary for the making of the *application* for a *grant*.

Application costs

11.2. Where a *grant* is made, the *Probate Committee* may, in its absolute discretion, consider an *application* for a further *grant* in respect of any reasonable fees payable by the *applicant* to any professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the *application*.

12 Maximum payment

12.1. Subject to *regulation 12.2* the maximum total amount that may be granted pursuant to *applications* under this *scheme* in respect of *authorised work* in connection with any single estate is limited to £500,000 (exclusive of any interest payable under *regulation 17.1*).

12.2. The maximum amount which the *Probate Committee* may determine shall be paid out of the *Probate Compensation Scheme* in any ~~calendar~~*financial* year ~~of ICAEW~~ shall be:

- a. the amount determined by the *Probate Committee* which may be expected not to cause the *grants* payable in that year to exceed £5,000,000; plus
- b. the amount of any money recovered in that year by the *Probate Compensation Scheme*, net of VAT (if applicable), pursuant to the provisions of *regulation 13.1* and available for payment in that year; plus
- c. the amount of any sums so recovered in previous years and not disbursed and which are available for payment in the relevant year, net of VAT (if applicable).

Accordingly if, in the course of any such ~~calendar~~*financial* year, it appears to the *Probate Committee*, in its absolute discretion, that the total of such amounts is otherwise likely to be exceeded in that ~~calendar~~*financial* year, then in the remainder of that ~~calendar~~*financial* year it shall not determine that the full amount shall be paid in respect of any *application*, but shall secure, as far as it reasonably can, that all *grants* it thereafter determines shall be made, taking into consideration any *grant* on account, are abated rateably one with another.

12.3. Where the *Probate Committee* has abated a *grant* under 12.2 it may, in its absolute discretion, at the end of the financial year of *ICAEW* in which the initial *grant* was made (the Grant Year) determine whether or not:

- a. the balance of the amount stated in the *application* or a part thereof; and
- b. interest on such balance;

should be paid in the next following year of *ICAEW* (the Following Year) and any such further *grant* shall be made out of funds available to the *Probate Committee* for the Following Year as provided in *regulation* 12.2.

13 Recovery and subrogation

13.1. Where a *grant* is made otherwise than by way of loan, or where a *grant* is made by way of a loan and repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, *ICAEW* shall be subrogated to the rights and remedies of the person to whom or on whose behalf the *grant* is made (the recipient) to the extent of the amount of the *grant*. In such event the recipient shall if required by *ICAEW* whether before or after the making of a *grant* and upon *ICAEW* giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the *accredited probate firm* and/or sue for recovery of the loss in the name of the recipient but on behalf of *ICAEW*. The recipient shall also comply with all proper and reasonable requirements of *ICAEW* for the purpose of giving effect to *ICAEW*'s rights and shall permit *ICAEW* to have conduct of such proceedings.

14 Reduction in grants

14.1. Where an *applicant* or the *applicant's* servant or agent has contributed to the loss as a result of his activities, omissions or behaviour whether before, during or after the event giving rise to the *application*, the *Probate Committee* may, in the exercise of its absolute discretion and to the extent that it considers that such activity, omission or behaviour has contributed to the loss, reduce the amount of any *grant* or reject the *application* in its entirety.

15 Deduction from grants

15.1. The *Probate Committee* may deduct from any *grant* the fees that would have been payable by the *applicant* to the *accredited probate firm* so that the *applicant* will not be in a better position by reason of a *grant* than he would otherwise have been in had the loss not occurred.

15.2. The *Probate Committee* may deduct from any *grant* all monies already recovered by an *applicant* and monies which in its reasonable opinion either will be or should have been recovered.

16 Refusal of an application

16.1. If the *Probate Committee* refuses to make a *grant* of either the whole or part of the amount applied for, the *applicant* will be informed in writing of the reasons for the decision.

16.2. If an *application* is refused in whole or in part, a further *application* for the same loss (or loss which includes the same loss) may not be made unless, in the reasonable opinion of the *Probate Committee*, it is supported by substantial new relevant evidence, information or submissions in which case *ICAEW* may, in its absolute discretion, consider a renewed *application*.

17 Interest

17.1. The *Probate Committee* may in its absolute discretion pay interest to an *applicant* on a *grant* of compensation. Any interest shall accrue from a date three calendar months after the date on which all information necessary to determine the *application* was provided by the *applicant* to the *Probate Committee*.

17.2. Any interest payable under *regulation* 17.1 shall be simple interest paid at a rate which is applied by HMRC in respect of Income Tax repayments.

18 Appeals

18.1. If an *application* is refused in whole or in part, the *applicant* may appeal to the General Regulatory Chamber of the First-tier Tribunal in accordance with the rules governing the Tribunal as amended from time to time.¹

19 ~~Waivers~~

~~The *Probate Committee* may, in its absolute discretion, waive any of the provisions of regulations 1.4, 6 – 11, 16 or 17 above.~~

¹ The rules that currently govern the Tribunal are The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.



APPENDIX D

ICAEW – PROBATE COMPENSATION SCHEME REGULATIONS

1 General

Authority and commencement

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The *scheme* for the payment of *grants* made in accordance with these *regulations*.

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The preparation of papers to apply for a grant of probate or letters of administration.

Regulations

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1.6. In these *regulations*, headings are for convenience only, and shall not affect interpretation.

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Administration of the scheme

1.8. The *Probate Committee* is responsible for administering the *Probate Compensation Scheme* and for determining *applications* for compensation made under these *regulations*.

2 The Probate Compensation Scheme

- 2.1. These *regulations* apply to:
 - a. *accredited probate firms*;
 - b. *firms* that were previously *accredited* in accordance with the Probate Regulations and any reference to *accredited probate firms* shall include such *firms*; and
 - c. *applicants*.
- 2.2. An *accredited probate firm* must pay any levy for ICAEW's *Probate Compensation Scheme* (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.
- 2.3. ICAEW may invest any money which forms part of the *Probate Compensation Scheme* in any investments in which trustees may invest under the general power of investment in section 3 of the Trustee Act 2000 (as restricted by sections 4 and 5 of that Act).
- 2.4. ICAEW may insure, in relation to the *Probate Compensation Scheme*, for such purposes and on such terms as it considers appropriate.
- 2.5. ICAEW may borrow for the purposes of the *Probate Compensation Scheme* and charge investments which form part of the *Scheme* as security for borrowing by ICAEW for the purposes of the *Scheme*.
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 - a. payment of premiums on insurance policies effected under *regulation 2.4*;
 - b. repayment of money borrowed by ICAEW for the purposes of the *Probate Compensation Scheme* and payment of interest on any money so borrowed under *regulation 2.5*;
 - c. payment of any other costs, charges or expenses incurred by ICAEW in establishing, investing, maintaining, protecting, administering or applying the *Probate Compensation Scheme*;
 - d. payment of any costs, charges or expenses incurred by the ICAEW in exercising its powers under Schedule 14 to the *Act* (intervention powers) or any intervention powers which it may have as an approved regulator under the *Act*;
 - e. payment of any costs or damages incurred by ICAEW or its employees, agents, any member, officer, and any member of the *Probate Committee*, as a result of proceedings against any of them for any act or omission made in good faith and in the exercise or purported exercise of any of their functions under these *regulations*.

3 Grants from the Probate Compensation Scheme

- 3.1. A *grant* from the *Probate Compensation Scheme* is made wholly at the discretion of the *Probate Committee* and on such terms as the *Committee* deems appropriate. No person has a right to a *grant* enforceable at law.
- 3.2. In particular and for the avoidance of doubt, the *Probate Committee* may refuse to make a *grant* if payment could cause the *Probate Compensation Scheme* to exhaust the funds available for payment at the time of the decision on whether to make a *grant*.
- 3.3. The *Probate Committee* will not make a *grant* in favour of an *applicant* which, if a body corporate or a registered charity, had an annual turnover in the last accounting year equal to, or exceeding, £1 million.
- 3.4. For a *grant* to be made from the *Probate Compensation Scheme*, an *applicant* must satisfy the *Probate Committee* that:
 - a. he has suffered loss in consequence of fraud or other dishonesty on the part of an *accredited probate firm* or of any *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*; or
 - b. he has suffered loss in consequence of a failure to account for money which was received by an *accredited probate firm*, or the *principal* or *employee* of an *accredited probate firm*, in connection with their activities in the course of *authorised work*.
- 3.5. A *grant* may be made, at the sole discretion of the *Probate Committee*, as an interim measure and on such terms as the *Probate Committee* deems appropriate.

4 Grants in respect of persons in default of regulatory requirements

- 4.1. At the absolute discretion of the *Probate Committee* a *grant* may be made even if at the time of the relevant act or default by the *accredited probate firm* or its *principal* or *employee*:
 - a. the *accreditation* of the *accredited probate firm* had ceased under regulation 2.22 of the Probate Regulations; or
 - b. the *accreditation* of the *accredited probate firm* was suspended under chapter 10 of the Probate Regulations; or
 - c. the *principal* or *employee* of the *accredited probate firm* was disqualified under chapter 5 of the Probate Regulations,

provided that the *Probate Committee* is reasonably satisfied that the *applicant* at that time was unaware of the cessation, suspension or disqualification.

5 Cases not covered by the Probate Compensation Scheme

- 5.1. For the avoidance of doubt, a *grant* will not be made in respect of losses which:
 - a. are the personal debts of an *accredited probate firm* or a *principal* or *employee* of such a *firm* and where the facts would not otherwise give rise to an *application* to the *Probate Compensation Scheme*;
 - b. result from, but do not form part of, any misappropriation of, or failure to account for, money or money's worth;
 - c. result from the trading debts or liabilities of the *accredited probate firm*;
 - d. amount to a claim for contractually agreed interest between the *applicant* and the *accredited probate firm*;
 - e. were not notified to the *Probate Committee* in accordance with *regulation 7.1*;
 - f. result from activities of the *accredited probate firm* other than in its performance of *authorised work*;
 - g. arise solely by reason of professional negligence by an *accredited probate firm* or a *principal* or *employee* of such a *firm*; or

- h. arose at any time when the *firm* was not *accredited*, save for the circumstances set out in *regulation 4.1*.

6 Multi-party and multi-profession issues

- 6.1. Where the loss has been sustained as a result of the combined activities of more than one party (eg, an *accredited probate firm* conspires with a solicitor or is assisted by a negligent solicitor), the *Probate Committee* will consider the role of each contributing factor in causing the *applicant's* loss. The *Probate Committee* will base any *grant* on its assessment of that portion of the loss primarily attributable to the acts of the *accredited probate firm*. The *Probate Committee* may decide to make a *grant* on a pro-rata basis in accordance with its assessment of the importance of each contributing factor in the loss, or may reject an *application* in its entirety if it is of the opinion that the loss was primarily due to factors other than the fraud or dishonesty of the *accredited probate firm*, or its *principal(s)* or *employee(s)*, or their failure to account for money which was received in connection with activities in the course of *authorised work*.
- 6.2. When an individual authorised by another approved regulator (as set out in Schedule 4 of the *Act*) is practising as the *principal* or *employee* of an *ICAEW accredited probate firm*, *ICAEW* may, in its absolute discretion, consider an *application* in respect of that individual's act or default.

7 Applications: form and time limit

- 7.1. Every *application* must be delivered to *ICAEW*, in such form as may from time to time be prescribed by *ICAEW*, within twelve months after the loss first came, or reasonably should have come, to the knowledge of the *applicant*. The *Probate Committee* may extend this period if satisfied that there are exceptional circumstances which justify the extension of the time limit.

8 Documentation in support

- 8.1. An *applicant* must provide such documentation as may be required by the *Probate Committee* including, when requested, a statement of truth. Failure to provide such documentation or to cooperate with the *Probate Committee* will be taken into account when determining the merits of the *application* and may be treated as a reason for withholding or reducing a *grant*.

9 Exhausting other remedies

- 9.1. A *grant* will be refused or reduced where the loss or part of the loss is an insured risk or where, in the reasonable opinion of the *Probate Committee*, the loss is capable of being made good by some other means.
- 9.2. In particular the *Probate Committee* may, before deciding whether to make a *grant* or the amount of a *grant*, require the *applicant* to:
- a. pursue any civil remedy which may be available to the *applicant* in respect of the loss;
 - b. commence insolvency proceedings;
 - c. make a formal complaint to the Police in respect of any dishonesty on the part of the *accredited probate firm* or its *principal(s)* or *employee(s)*; or
 - d. assist in the taking of any action against the *accredited probate firm* or its *principal(s)* or *employee(s)*.
- 9.3. If a *grant* is made (whether under *regulation 3.4* or otherwise) before requiring the *applicant* to resort to other means of recovery, such *grant* will be made repayable to *ICAEW* in the event (and to the extent) that losses are recovered by such other means.

10 Notice to accredited firm

10.1. The *Probate Committee* shall not make a *grant* unless:

- a. a communication has been sent to the *accredited probate firm* at its last known correspondence address, as set out in *regulation 1.3*, or to its representative informing the *accredited probate firm* of the nature of the *application*; and
- b. not less than eight days have elapsed since the date of receipt of such communication which, notwithstanding *regulation 1.3*, shall be regarded as the day following the date of the communication.

10.2. If it appears to the *Probate Committee* that any communication sent under *regulation 10.1* will not come to the attention of the *accredited probate firm* or its representative, then the *Probate Committee* may make a *grant* notwithstanding failure to comply with the provisions of this *regulation*.

11 Costs

Litigation costs

11.1. Where an *applicant* intends to institute or has already instituted civil proceedings for recovery of his loss and wishes to apply for a *grant* in respect of the costs of the proceedings, the *Probate Committee* will not consider making or increasing a *grant* in respect of such costs unless:

- a. they can be shown to be proportionate to the loss and the amount likely to be recovered; or
- b. the proceedings are/were necessary for the making of the *application* for a *grant*.

Application costs

11.2. Where a *grant* is made, the *Probate Committee* may, in its absolute discretion, consider an *application* for a further *grant* in respect of any reasonable fees payable by the *applicant* to any professional adviser, provided that such costs were incurred wholly, necessarily and exclusively in connection with the preparation, submission and proof of the *application*.

12 Maximum payment

12.1. Subject to *regulation 12.2* the maximum total amount that may be granted pursuant to *applications* under this *scheme* in respect of *authorised work* in connection with any single estate is limited to £500,000 (exclusive of any interest payable under *regulation 17.1*).

12.2. The maximum amount which the *Probate Committee* may determine shall be paid out of the *Probate Compensation Scheme* in any calendar year shall be:

- a. the amount determined by the *Probate Committee* which may be expected not to cause the *grants* payable in that year to exceed £5,000,000; plus
- b. the amount of any money recovered in that year by the *Probate Compensation Scheme*, net of VAT (if applicable), pursuant to the provisions of *regulation 13.1* and available for payment in that year; plus
- c. the amount of any sums so recovered in previous years and not disbursed and which are available for payment in the relevant year, net of VAT (if applicable).

Accordingly if, in the course of any such calendar year, it appears to the *Probate Committee*, in its absolute discretion, that the total of such amounts is otherwise likely to be exceeded in that calendar year, then in the remainder of that calendar year it shall not determine that the full amount shall be paid in respect of any *application*, but shall secure, as far as it reasonably can, that all *grants* it thereafter determines shall be made, taking into consideration any *grant* on account, are abated rateably one with another.

12.3. Where the *Probate Committee* has abated a *grant* under 12.2 it may, in its absolute discretion, at the end of the financial year of *ICAEW* in which the initial *grant* was made (the Grant Year) determine whether or not:

- a. the balance of the amount stated in the *application* or a part thereof; and
- b. interest on such balance;

should be paid in the next following year of *ICAEW* (the Following Year) and any such further *grant* shall be made out of funds available to the *Probate Committee* for the Following Year as provided in *regulation* 12.2.

13 Recovery and subrogation

13.1. Where a *grant* is made otherwise than by way of loan, or where a *grant* is made by way of a loan and repayment of the loan is waived or otherwise the borrower has failed to repay part or all of the loan, *ICAEW* shall be subrogated to the rights and remedies of the person to whom or on whose behalf the *grant* is made (the recipient) to the extent of the amount of the *grant*. In such event the recipient shall if required by *ICAEW* whether before or after the making of a *grant* and upon *ICAEW* giving to the recipient a sufficient indemnity against costs, prove in any insolvency and/or winding-up of the *accredited probate firm* and/or sue for recovery of the loss in the name of the recipient but on behalf of *ICAEW*. The recipient shall also comply with all proper and reasonable requirements of *ICAEW* for the purpose of giving effect to *ICAEW*'s rights and shall permit *ICAEW* to have conduct of such proceedings.

14 Reduction in grants

14.1. Where an *applicant* or the *applicant's* servant or agent has contributed to the loss as a result of his activities, omissions or behaviour whether before, during or after the event giving rise to the *application*, the *Probate Committee* may, in the exercise of its absolute discretion and to the extent that it considers that such activity, omission or behaviour has contributed to the loss, reduce the amount of any *grant* or reject the *application* in its entirety.

15 Deduction from grants

15.1. The *Probate Committee* may deduct from any *grant* the fees that would have been payable by the *applicant* to the *accredited probate firm* so that the *applicant* will not be in a better position by reason of a *grant* than he would otherwise have been in had the loss not occurred.

15.2. The *Probate Committee* may deduct from any *grant* all monies already recovered by an *applicant* and monies which in its reasonable opinion either will be or should have been recovered.

16 Refusal of an application

16.1. If the *Probate Committee* refuses to make a *grant* of either the whole or part of the amount applied for, the *applicant* will be informed in writing of the reasons for the decision.

16.2. If an *application* is refused in whole or in part, a further *application* for the same loss (or loss which includes the same loss) may not be made unless, in the reasonable opinion of the *Probate Committee*, it is supported by substantial new relevant evidence, information or submissions in which case *ICAEW* may, in its absolute discretion, consider a renewed *application*.

17 Interest

17.1. The *Probate Committee* may in its absolute discretion pay interest to an *applicant* on a *grant* of compensation. Any interest shall accrue from a date three calendar months after the date on which all information necessary to determine the *application* was provided by the *applicant* to the *Probate Committee*.

17.2. Any interest payable under *regulation* 17.1 shall be simple interest paid at a rate which is applied by HMRC in respect of Income Tax repayments.

18 Appeals

18.1. If an *application* is refused in whole or in part, the *applicant* may appeal to the General Regulatory Chamber of the First-tier Tribunal in accordance with the rules governing the Tribunal as amended from time to time.¹

¹ The rules that currently govern the Tribunal are The Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009.



APPENDIX H

DRAFT PROBATE APPLICATION FORM

APPLICATION TO BECOME AN ACCREDITED PROBATE FIRM

Firms may apply to become **accredited probate firms** under the Legal Services Act 2007 (the Act) either:

- as an **authorised firm**; all the principals* [ie. directors, partners and members of a LLP](#) (and shareholders in the case of a company) have to be individually authorised to undertake probate work; or
- as a **licensed firm**; **not** all the principals (and shareholders in the case of a company) **need to be** individually authorised to undertake probate work ([although at least one principal need to be](#)); [however](#), additional requirements apply.

*** If you are applying to become an authorised firm and if a principal of your firm is a corporate body please telephone ICAEW for further information**

How to complete this application form:

Where necessary, we give guidance before [the a section question](#). Please read the guidance before you complete the questions [in each section](#).

Please complete the form in BLOCK CAPITALS. If you run out of space, please attach additional sheets.

You will need to submit a ~~separate~~ application form for each individual [who is](#) to be authorised to conduct probate work on the firm's behalf. You can download these application forms from [icaew.com/probate](#); click on 'Application forms and fees' in the left-hand menu.

If you are applying to become a licensed firm, you will need to complete an application form for a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA), and for any non-authorised person who [is an is a principal or shareholder owner](#) and holds a material interest ([see Probate Regulation 6.2](#)) in the firm. You can download these application forms from [icaew.com/probate](#)

If your firm includes principals who are not members of ICAEW, the Institute of Chartered Accountants of Scotland (ICAS), Chartered Accountants Ireland (CAI) or another approved regulator, or are not already accredited probate firms, registered auditors, DPB-licensed firms or affiliates under other ICAEW regulations, these principals will need also to apply for probate affiliate status. You can download an application from [icaew.com/probate](#)

To be eligible for accreditation, a firm must have in place professional indemnity insurance (PII) as required by the PII and Probate Regulations. Please enclose a copy of the firm's PII policy schedule and your insurer's details with this application.

To complete section 21 on diversity, you will need to conduct an initial diversity monitoring exercise- [prior to submitting your application](#).

The entity making this application may not hold itself out as an accredited probate firm until we have confirmed in writing that your application has been successful.

If you have any questions as you fill in this form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

1 Application type

Does your firm wish to apply for authorisation or a licence? Please tick the relevant box.

An authorised firm is one in which all the principals ie, all partners, directors or members of a LLP (and shareholders in the case of a company) are individually authorised to conduct probate work.	Authorised firm	<input type="checkbox"/>
A licensed firm is one in which not all principals (and shareholders in the case of a company) are individually authorised to conduct probate work (although at least one principal must be).	Licensed firm	<input type="checkbox"/>

2 Firm details

Name of firm applying to become an accredited probate firm			
Firm number (if known)	C00 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Is the firm a member of a group?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If 'Yes', please provide details of the group.			

3 Type of practice

Is it a sole practice?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is it a partnership?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is it a limited liability partnership?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is it a corporate practice?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4 Principal office

Principal office: the office to which ICAEW will send all communications regarding a firm's probate accreditation.

[Trading name: an alternative name used by the firm to practise under.](#)

Address		ICAEW use	
		L00_-----	
Postcode			
Phone			
Fax			
Company/LLP number (if applicable)		Is the registered office situated in England or Wales	Yes <input type="checkbox"/> No <input type="checkbox"/>
Firm's website address			
Do you intend to conduct probate work from this office?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
Firms use trading names when they trade under more than one name but with the same owners.			
Trading name (if applicable)			
Do you intend to use the trading name when conducting probate work?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name and position in the firm of the probate contact partner. In the case of a licensed firm, this will be the Head of Legal Practice.	Name		ICAEW use
	Position in firm		L00_-----
If the probate contact partner does not work from the principal office of the firm, please give their office address.			
Address			
Postcode			
Phone			
Fax			
Email address			

5 Other offices and trading names

Include all offices and trading names of the firm, excluding market day offices. Please continue on a separate sheet if necessary.

[Trading name: an alternative name used by the firm to practise under.](#)

Address 1		ICAEW use
		L00_-----
Postcode		
Phone		
Fax		
Do you intend to conduct probate work from this office?		Yes <input type="checkbox"/> No <input type="checkbox"/>
Firms use trading names when they trade under more than one name but with the same owners.		
Trading name (if applicable)		
Do you intend to use the trading name when conducting probate work?		Yes <input type="checkbox"/> No <input type="checkbox"/>
Address 2		ICAEW use
		L00_-----
Postcode		
Phone		
Fax		
Do you intend to conduct probate work from this office?		Yes <input type="checkbox"/> No <input type="checkbox"/>
Firms use trading names when they trade under more than one name but with the same owners.		
Trading name (if applicable)		
Do you intend to use the trading name when conducting probate work?		Yes <input type="checkbox"/> No <input type="checkbox"/>

6 Principals – sole practitioners, partners, directors, LLP members

In this section please list all the **principals** of the firm, indicating those whom the firm wishes to designate as authorised individuals.

Authorised individuals: the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only principals and employees who hold a probate qualification are eligible to apply to become authorised individuals, not consultants or sub-contractors. Where appropriate, each individual will need to complete a separate 'individual' application form which you can download from icaew.com/probate

Membership number: if an individual is a member of ICAEW or another professional body, please give this number if known.

Professional body: if an individual is a member of a professional body (eg, ICAEW) please give name.

Office: the location of the office from which the principal or employee normally practises.

Approved regulator: the name of the approved regulator that has authorised the individual to conduct probate work.

If any principal is not a member of the ICAEW, ICAS, CAI, another approved regulator, or an affiliate under the ICAEW's audit, insolvency or use of the description /regulations or DPB Handbook then a probate affiliate form must be completed.

Member no.	Surname	First names	Date of birth	Office location (eg, York)	Professional body	PC held Yes/No	Authorised individual Yes/No	Approved regulator/ professional body	% of voting rights held

Please continue on a separate sheet if necessary.

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7 Employee authorised individuals

Please list all the **employees** that the firm wishes to designate as authorised individuals and continue on a separate sheet if necessary.

Authorised individuals: the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only ~~principals and~~ employees who hold a probate qualification are eligible to apply to become authorised individuals, not consultants or sub-contractors. Each individual [listed below](#) will need to complete a separate 'individual' application form which you can download from icaew.com/probate

Membership number: if an individual is a member of ICAEW or another professional body, please give this number if known.

Professional body: if an individual is a member of a professional body (eg, ICAEW) please give name.

Office: the location of the office from which the principal or employee normally practises.

Approved regulator: the name of the approved regulator that has authorised the individual to conduct probate work.

Member no.	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Approved regulator/ Professional body

Please continue on a separate sheet if necessary.

8 Head of Legal Practice and Head of Finance and Administration

This section is only for firms applying to become licensed firms. If your firm wishes to become an authorised firm, please go to the next section.

Please provide details of the individuals your firm wishes to designate as Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA).

The HoLP must be an authorised individual. The same person can be both a HoLP and a HoFA.

	Member no. if known	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Authorised individual Yes/No	Principal Yes/No	% of voting rights held (if relevant)
HOLP									
HOFA									

9 Authorised individuals, Heads of Legal Practice, Head of Finance and Administration

All individuals who are to be designated as authorised individuals, Heads of Legal Practice or Heads of Finance and Administration must complete a separate application form for individuals. You can download this application form from icaew.com/probate. Please give the number of individual application forms you have enclosed with this application.

I have enclosed application forms for individuals with this application.

10 Management board

If the firm has a management board, please supply the following details and continue on a separate sheet if necessary.

Member no. if known	Surname	First names	Office location (e.g. York)	Principal Yes/No	% voting rights in board	Authorised individual Yes/No	Approved regulator/ Professional body

11 Shareholders of a corporate practice

This section is for listing all the shareholders of the corporate practice ~~with voting rights~~. If your firm is not a corporate practice, go to the next section.

Member/firm number if known	Full name and address of shareholder	% of total voting rights	Director, employee or other	Authorised individual Yes/No	Approved regulator

12 Licensed firms: non-authorised owners and material interests (ie, partners, members of a LLP, directors or shareholders)

Under the Act there are special requirements for non-authorised owners who hold a material interest in a licensed firm. Such persons must complete a separate application form for non-authorised owners principals and shareholders because ICAEW needs specifically to approve these persons. You can download this application form from icaew.com/probate.

In this section please list all the non-authorised owners who hold a material interest in the firm and continue on a separate sheet if necessary.

The definition of what constitutes a material interest is set out in Probate Regulation 6.2. In determining whether the threshold for a material interest has been reached, the interests of the person’s associates need also to be taken into account. The definition of ‘associate’ is set out in Probate Regulation 6.3.

Member no.	Surname	First names	Date of birth	% interest in firm

Please give the number of non-authorised principal owner and shareholder application forms you have enclosed with this application. _____

~~I have enclosed non-authorised principal or shareholder application forms with this application.~~

13 Probate connected entities

A Connections – Please list any connected firm(s) accredited for probate with ICAEW or another approved regulator.	
Connected firm - any practising firm which has one or more principals of your firm among its principals.	
Firm name	
Relationship with applicant firm	
Address	
Registered with	
Postcode	
Firm number (if known)	

14 Regulation and supervision

Is the firm currently authorised for probate work, or has it (or any former entities) previously been authorised or applied to be authorised for probate work by another regulatory body in England and Wales?			Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'Yes', which body?	Solicitors Regulation Authority	<input type="checkbox"/>	ICAS	<input type="checkbox"/>
	Council of Licensed Conveyancers	<input type="checkbox"/>	ACCA	<input type="checkbox"/>
	Other (please specify)			
Please provide details of the application.				

15 Staff in each office

The total number of principals and the total number of authorised individuals should agree with the totals in sections 6 and 7. Sub-contractors and consultants should be included as staff in the appropriate column. These individuals cannot be authorised individuals.

Office number or location.	Principals		Other staff			Total staff
	Authorised individuals	Non-authorised individuals	Authorised individuals	Professional staff	Admin staff	
L00						
L00						
L00						
L00						
L00						
L00						
L00						
L00						
Total						

16 Practice income

For this purpose, fee income excludes the re-charge of out-of-pocket expenses and VAT. If the firm has not started trading, please give a forecast of the first year's trading figures.

Total fee income from all sources	£
Financial year ending	□□ □□ □□□□
Estimated annual fee income from probate and probate-related services (see section 17)	£

17 Nature of probate-related work

Please give details of the probate-related services your firm wishes to deliver.

Will-writing services	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Provision of advice in connection with the drafting of wills (eg, on IHT and trust planning)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Activities carried out before the application for a grant of probate or letters of administration (eg, IHT calculations)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Assistance to an executor with estate administration	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Estate administration as an executor	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is the firm likely to hold clients' and/or estate monies in connection with the above activities?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

18 Statement on access to justice

[It is a requirement of the Act that you](#) ~~Please~~ explain how your firm's application to become an accredited probate firm will promote **access to justice**.

For example, access to justice may be promoted through improved access to services geographically or through technology. It may also be improved by making services cheaper for consumers or by delivering services in new ways. Please continue on a separate sheet if necessary.

19 Statement on the regulatory objectives

For a list of the regulatory objectives and professional principles, please refer to section 1 of the Act, www.legislation.gov.uk/ukpga/2007/29/contents

Are you aware of any issues affecting your firm that might compromise the regulatory objectives if this application is successful and you begin to undertake probate work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is anyone in your firm (including any owner or shareholder) subject to duties that might conflict with the firm's ability to carry out probate work in accordance with the probate regulations and the professional principles contained in the Act?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If 'Yes', please outline the steps your firm will take to mitigate the risk of conflict and/or to address this issue.

20 Statement on improper influence

Firms are under an obligation to ensure that non-authorised persons (whether principals, employees or shareholders) do not influence improperly the conduct of probate work.

Please outline the steps your firm will take to ensure that authorised individuals can conduct probate work independently and free from influence that might compromise their ability to adhere to the probate regulations and the professional principles set down in the Act ([see section 1 of the Act](#)).--

Does the firm have any contractual or other arrangements with another entity that may allow that other entity to have any influence that might affect, or could be perceived as affecting, how probate work is carried out?

Yes

No

If 'Yes', please attach details of any safeguards designed to prevent such influence.

21 Diversity

One of the Act's regulatory objectives ([see section 1 of the Act, www.legislation.gov.uk/ukpga/2007/29/contents](#)) is to encourage an independent, strong, diverse and

effective legal profession. The Legal Services Board (LSB) has published guidance-stating that firms should have arrangements in place for monitoring periodically the diversity of individuals in their firm. Firms will need to publish this data and supply this information to ICAEW in summary form for submission to the LSB. Only summary information will be provided to the LSB; your firm will not be identified.

Please outline the steps your firm will take periodically to monitor the diversity of the individuals in the firm. There is a model questionnaire at [icaew.com/probate](https://www.icaew.com/probate)

Please summarise the results of your initial diversity monitoring below. On a periodic basis, we will request updates to this information.

Diversity

22 Professional indemnity insurance

Please enclose a copy of your firm's PII policy schedule with this application [which shows the entities and sums insured](#).

Cover arranged with (name of participating insurer)	
Period of cover	from □□ □□ □□ to □□ □□ □□

23 Offices without an authorised individual

Will probate work be carried out from any office listed in section 5 where there is no resident authorised individual?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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If 'Yes', please [set out attach](#) details of the probate supervision arrangements at each of these offices.

24 Fit and proper

The Act requires authorised persons to be fit and proper to carry out probate work. Under the Probate Regulations, any firm seeking accreditation must satisfy ICAEW that it is fit and proper. It is for each firm to ensure that all its principals, and those employees involved directly or indirectly with probate work, are fit and proper. The fit and proper requirement does not normally extend to administrative or secretarial staff but does cover practice support staff such as computer specialists.

If a firm has any doubts about the fit and proper status of any of its principals or employees, it should contact Regulatory Support on +44 (0)1908 546 302.

If a firm has merged in the last 10 years, the questions relate to every constituent part of the merged firm.

A 'Yes' answer to any of the questions in this section will not automatically result in a firm being refused accreditation. The Probate Committee may, however, wish to make further enquiries before reaching a decision.

If the Probate Committee finds out about any matters which a firm does not disclose, this will be viewed very seriously. It could jeopardise the firm's application or continuing accreditation.

If you are a sole practitioner, or a sole director or sole shareholder of a corporate practice, these questions apply to you personally as well as to the firm.

The questions relate to all principals, authorised individuals and previous practices.

The answers will be 'Yes' or 'No', but a 'Yes' answer will need further explanation.

The word 'firm' indicates all principals and previous practices.

Financial integrity and reliability	Yes <input type="checkbox"/>	No <input type="checkbox"/>
In the last 10 years, has the firm made any compromise or arrangement with its creditors, or otherwise failed to satisfy creditors in full?		
In the last 10 years, has the firm been the subject of any insolvency proceedings?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Civil liabilities		
In the last five years, has the firm been the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Good reputation and character		
There is no need to mention cautions or offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974 or, in the case of a firm which is a sole practice, offences committed by any individual before the age of 17 (unless committed within the last 10 years) or road traffic offences that did not lead to a prison sentence).		
In the last 10 years, has the firm been:		
<ul style="list-style-type: none">convicted by a court of any criminal offence;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none">refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none">refused entry to any professional body or trade association; or did it decide not to continue with an application;	Yes <input type="checkbox"/>	No <input type="checkbox"/>

• reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
• made the subject of a court order at the instigation of any professional or regulatory body; or	Yes <input type="checkbox"/>	No <input type="checkbox"/>
• investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is the firm currently undergoing any investigation or disciplinary procedures as described above?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is there any other information relevant to any of the above questions which the firm wishes to disclose to ICAEW? If 'Yes', please specify details on a separate sheet.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

25 Maintaining competence

Please tick the CPD activities which authorised individuals and others use regularly to maintain competence and keep up to date with probate legislation, regulations and related matters.

	Authorised individuals	Employees engaged in probate work under supervision	Other
Online learning/e-learning			
DVD subscriptions			
Update services			
In-house courses			
In-house technical discussion groups			
Training consortium or another firm's in-house courses			
ICAEW or district society courses			
Other commercial courses			
Local discussion groups			
Private reading: technical papers, accountancy, journals, articles, newsletters			
Access to a technical library			
Focused discussion with more experienced colleagues			
Other (please give further details)			

Will individual training records be maintained for all authorised individuals and employees involved in probate work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Name of the principal responsible for assessing the competence of staff engaged in probate work		
Name of the principal responsible for ensuring that probate principals authorised individuals and staff receive relevant training		
Does the firm intend to use a probate manual and/or probate documentation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'Yes', is this commercially available?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'Yes', please name the manual.		
Does the firm intend to subscribe to an updating service for the probate manual?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

26 Control of probate work

Will the firm ensure that it has appropriate arrangements to deal with:					
fit and proper considerations	Yes <input type="checkbox"/>	No <input type="checkbox"/>	recruitment	Yes <input type="checkbox"/>	No <input type="checkbox"/>
independence and integrity	Yes <input type="checkbox"/>	No <input type="checkbox"/>	staff appraisal	Yes <input type="checkbox"/>	No <input type="checkbox"/>
confidentiality	Yes <input type="checkbox"/>	No <input type="checkbox"/>	training standards	Yes <input type="checkbox"/>	No <input type="checkbox"/>
conduct of probate work (including acting in the best interests of clients)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	discipline	Yes <input type="checkbox"/>	No <input type="checkbox"/>
recording of work done	Yes <input type="checkbox"/>	No <input type="checkbox"/>	reporting and supervisory responsibilities in the firm	Yes <input type="checkbox"/>	No <input type="checkbox"/>
review procedures	Yes <input type="checkbox"/>	No <input type="checkbox"/>	complaints-handling	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			clients' money (if held)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the firm have a subscription to an updating service or training provider?				Yes <input type="checkbox"/>	No <input type="checkbox"/>

27 [Alternate arrangements](#)

The next question is for sole practitioners or corporate practices with only one shareholder or director.

Do you have arrangements in place for the appointment of an alternate in the case of death or incapacity:	Yes <input type="checkbox"/>	No <input type="checkbox"/>

2728 Signature and confirmations

I certify that, to the best of my knowledge and belief, the information in, or provided with, this application is a true and accurate statement of the firm's circumstances.

I confirm that:

- the control of this firm is in accordance with the Probate Regulations;
- I have taken steps to ensure that all principals and employees involved in probate work are fit and proper persons;
- I will notify the ICAEW immediately of any matter which indicates the firm has, or may in the future, cease to comply with the Probate Regulations; and
- this firm has professional indemnity insurance in place as required by the PII and Probate Regulations.
- this firm will comply with the Practice Assurance Regulations as if it were a member firm

If this application is approved, I confirm that:

- this firm will comply with the Probate Regulations at all times;
- this firm will deal with ICAEW in an open and cooperative manner and will inform ICAEW promptly of anything concerning the firm as required by the Probate Regulations
- this firm will inform all principals, employees and shareholders of the duties contained in sections 90 and 176 of the Act;
- this firm acknowledges that ICAEW may make enquiries of, or about the firm, as it deems necessary;
- the firm acknowledges that ICAEW may publish, in such manner as it may determine, any information about the firm's status under the regulations;
- the firm acknowledges that ICAEW may disclose information about it to other bodies as set out in [pProbate rRegulation 2.26](#).
- the firm will establish and maintain internal processes for handling complaints about probate work, and will deal cooperatively with the Legal Ombudsman and comply with his office's decisions as necessary;
- none of ICAEW, its officers, staff, members of its [Coouncil](#) or ~~the~~ committees, [their servants or agents](#) can be held liable [to the firm](#) in damages for [any act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the Probate Regulations or the monitoring of compliance with the Probate Regulations in any respect, unless the act or omission is shown to have been in bad faith, anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith;](#) and
- this firm will not accept probate work or hold itself out to be an accredited probate firm unless I have received confirmation in writing that this application has been successful.

Signature of sole practitioner or probate contact partner with overall responsibility for making sure the firm complies with the Probate Regulations and who has provided [the above](#) confirmations [in section 27 above](#). In the case of a licensed firm, the probate contact partner will be the Head of Legal Practice.

Name in block capitals

Date

I have attached a total of additional sheets.

2829 Application and registration fee (if applicable)

If this application is being made as a result of a merger of existing accredited probate firms, or an incorporation of an existing accredited probate firm, and all fees have already been paid, the balance will be transferred to the new firm's account once accreditation has been approved.

Firms that are not the result of a merger or incorporation of existing accredited firms need to enclose a cheque for the relevant fee.

I enclose a cheque for £ . (payable to Chartac) as payment for the application fee. Please see fee scale at icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

I enclose a cheque for £ . (payable to Chartac) as payment for this year's registration fee. Please see fee scale at icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

You must send the applicable application fee and registration fees with this application form. The fees are calculated by reference to the number of principals, authorised individuals and offices as described in the fee scale. Your firm will receive a receipted invoice for these fees if the firm is accepted as eligible to be an accredited probate firm. If the application is not successful, we will refund the fees.

2930 Completion checklist

Before you return the completed application form, please:

- | | |
|--|--------------------------|
| • make sure you have completed all questions; | <input type="checkbox"/> |
| • enclose a cheque for the registration fee; | <input type="checkbox"/> |
| • enclose a copy of the firm's PII policy schedule and your insurer's details; | <input type="checkbox"/> |
| • include any additional sheets with the form; | <input type="checkbox"/> |
| • include a signed probate contract (see section 28) ; | <input type="checkbox"/> |
| • sign and date the form; | <input type="checkbox"/> |
| • keep a copy of this form for your records; and | <input type="checkbox"/> |
| • send it to the address below. | <input type="checkbox"/> |

We will send you an acknowledgement when we receive your application.

Please send this form to:

Regulatory Support, ICAEW
Metropolitan House
321 Averbury Boulevard
Milton Keynes
MK9 2FZ UK



Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected. For more information about our data protection policy, please go to icaew.com/dataprotection.



APPENDIX I

DRAFT PROBATE APPLICATION FORM

APPLICATION TO APPOINT: AUTHORISED INDIVIDUAL HEAD OF LEGAL PRACTICE; OR HEAD OF FINANCE AND ADMINISTRATION

Introduction

This form is for accredited probate firms that seek to appoint a new authorised individual. An authorised individual is an individual who is authorised to conduct, or control the undertaking of, probate work on behalf of an accredited probate firm.

The form is also for licensed firms seeking to appoint a Head of Legal Practice (HoLP) or a Head of Finance and Administration (HoFA).

An application is needed even if the individual was previously approved as an authorised individual in another accredited probate firm, or if the individual was previously appointed as HoLP or HoFA in a firm licensed to carry on reserved legal activities under the Legal Services Act 2007 (the Act).

An accredited probate firm is either:

- an **authorised firm**: all principals* ([ie, directors, partners or members of a LLP](#)) and shareholders need to be individually authorised to conduct probate work; or
- a **licensed firm**: not all principals or shareholders of the firm are authorised, although at least one principal must be.

* If you are applying to become an authorised firm and if a principal of your firm is a corporate body please telephone ICAEW for further information

An accredited probate firm must appoint a contact partner. If that accredited probate firm is a licensed firm, this will be the HoLP. A licensed firm must also appoint a HoFA.

The duties and responsibilities of an authorised individual, a HoLP or a HoFA are set out in the Probate Regulations.

Before an individual can act as an authorised individual, HoLP or HoFA, they must apply to ICAEW. The individual may not act as an authorised individual, HoLP or HoFA until the firm has received formal notification from ICAEW that their application has been approved.

Please note that if this application is for authorised individual status, you must include a Disclosure and Barring Service check (see www.gov.uk/disclosure-barring-service) which was made within 6 months of the date of the application. If the application is for HoLP or HoFA we will undertake such checks.

How to complete this application form

The firm's contact partner (who will be the HoLP in a licensed firm)	should complete sections 1 – 4 on the firm's behalf and sign section 9. If a firm is applying to become accredited for probate for the first time, the individual who is proposed to act as the contact partner or HoLP should complete these sections.
The individual to be appointed	should complete sections 5 – 8 and sign section 10

Where necessary, we give guidance before the [question section](#).- Please read this before you complete the question.

Please complete the application form in BLOCK CAPITALS. If you need more space for an answer, please attach additional sheets.

If you have any questions as you fill in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

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1 Firm details

Firm name	
Firm number	C00
Firm's address	

2 Individual to be appointed

Authorised individuals (AIs): the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only principals and employees can be AIs, not consultants or sub-contractors.

Head of Finance and Administration (HoFA): The individual appointed by a licensed firm and who is responsible for taking all reasonable steps to ensure that the firm complies with the requirements in regulation 3.8 (clients' assets) and who is not disqualified under the Legal Services Act 2007 from acting as a HoFA and who must report any breach of those requirements to ICAEW as soon as reasonably practicable.

Head of Legal Practice (HoLP): the authorised individual appointed by a licensed firm who is responsible for taking all reasonable steps to ensure that:

- The licensed firm and its principals and employees comply with their duties under these regulations (other than regulation 3.8); and
- Non-authorised persons do not do anything which causes or substantially contributes to any breach of these regulations by the firm or by any authorised person who is a principal or employee of the firm;
and who is not disqualified under the Legal Services Act 2007 from acting as a HoLP and who must report any breach of those requirements to ICAEW as soon as reasonably practicable

[HoFA and HoLP \(definition needed?\)](#)

In relation to licensed firms, the Act requires the HoLP to be an authorised individual. There is no requirement for the HoFA to be an authorised individual, although it is generally expected that they will hold an appropriate accountancy or finance qualification.

~~Professional Body: if the individual is a member of a professional body please give name.~~

~~For applications for designation as an authorised individual or HoLP, please give details of training or qualifications the individual has received in wills, probate and estate administration. As a minimum, any training course should have covered the content set out in regulation 4.1 of the Probate Regulations.~~

~~Please give details of the experience the individual has had in relation to wills, probate and estate administration (if any) over the last 24 months.~~

Which status is this application for?	Authorised individual	<input type="checkbox"/>
	Head of Legal Practice	<input type="checkbox"/>
	Head of Finance and Administration	<input type="checkbox"/>
Name		
Name of Professional body		
Professional body m Member number (if known)		
Individual's email address		
Individual's address		

Address of firm's office that individual will be located at			
Date of birth			
Is this individual	a principal in the firm?	<input type="checkbox"/>	
	an employee?	<input type="checkbox"/>	
If an employee, who do they report to?			
Does this individual hold a practising certificate?		Yes	<input type="checkbox"/>
		No	<input type="checkbox"/>

3 Qualifications

Please give details of the probate qualification held by an applicant for designation as an authorised individual or HoLP; or the accountancy or financial qualification held for designation as a HoFA.

Qualification	
Qualification granted by	
Date qualification granted	

[For applications for designation as an authorised individual or HoLP \(who must also be an AI\), please give details of training and/or qualifications the individual has received in wills, probate and estate administration. As a minimum, any training course should have covered the content set out in regulation 4.1 of the Probate Regulations.](#)

[Applications for designation as an authorised individual or HoLP only](#)

~~Please give details of course content and length.~~

[Please give details of:](#)

- [Course content](#)
- [Length of course](#)
- [How the course content was assessed](#)
- [The pass mark for the assessment](#)
- [The mark that you were awarded for the assessment \(please attach your certificate confirming that you have passed the assessment\)](#)

[Please give details of the experience the individual has had in relation to wills, probate and estate administration \(if any\) over the last 24 months.](#)

How many additional sheets have you attached?

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4 Maintaining competence

Please tick those activities which are, or will be, used by the individual to maintain competence and keep up to date on probate legislation, regulation and related matters.

Online/e-learning	<input type="checkbox"/>
DVD subscription	<input type="checkbox"/>
Update services	<input type="checkbox"/>
In-house courses	<input type="checkbox"/>
In-house technical discussion groups	<input type="checkbox"/>
Training consortium or another firm's in-house courses	<input type="checkbox"/>
ICAEW or district society courses	<input type="checkbox"/>
Other commercial courses	<input type="checkbox"/>
Local discussion groups	<input type="checkbox"/>
Private reading: technical papers, accountancy journals, articles, newsletters	<input type="checkbox"/>
Access to technical library	<input type="checkbox"/>
Focused discussion with more experienced colleagues	<input type="checkbox"/>
Other (please give details)	<input type="checkbox"/>
Will individual training records be maintained for the applicant?	Yes <input type="checkbox"/> No <input type="checkbox"/>

The individual to be appointed should complete sections 5 to 8 [as appropriate](#).

5 Previous status (authorised individual and HoLP only)

Have you previously been approved as an authorised individual or HoLP: Yes No

~~If 'No', please provide on a separate sheet a brief summary of your experience (if any) in wills, probate and estate administration the last 24 months. This should include brief details of the type and amount of probate-related work you have undertaken in the last 24 months and your level of seniority (eg, reporting directly to the probate principal).~~

~~How many additional sheets have you attached?~~

If 'Yes', please fill in one row for every firm in which you were authorised and indicate which body regulated the firm. If you ceased to be an authorised individual and/or HoLP more than six months ago please give, on a separate sheet, a brief summary of the work you have undertaken in the intervening period (if any) and how you will ensure your probate knowledge is up to date.

How many additional sheets have you attached?

Firm name	Firm number (if known)	Firm's regulatory body	Authorised individual or HoLP	Period as authorised individual or HoLP		Reason for ceasing as authorised individual or HoLP
				From (mm/yy)	To (mm/yy)	

6 Previous status (HoFA only)

Have you previously been approved as a HoFA? Yes No

If 'Yes', please fill in one row for every firm in which you were the HoFA and indicate which body regulated the firm.

Firm name	Firm number (if known)	Firm's regulatory body	Period as HoFA		Reason for ceasing as HoFA
			From (mm/yy)	To (mm/yy)	

7 Disqualification

Have you previously been disqualified from being a principal, employee, HoLP or HoFA of a firm eligible to be licensed under the Act?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If 'Yes', please give details of the dates you were disqualified; the reasons for disqualification and whether you are still disqualified.

8 Fit and proper

The Act requires individuals to be fit and proper to carry out probate work. An individual who is to be appointed as a HoLP, HoFA or authorised individual must satisfy ICAEW that they are fit and proper.

If you have any doubts about your fit and proper status, please call +44 (0)1908 546 279 for advice.

If you answer 'Yes' to any question in section 8, you will not automatically be refused approved status. The Probate Committee may, however, wish to make further enquiries before reaching a decision.

If the Probate Committee subsequently finds out about any matters which you did not disclose, this will be viewed very seriously. It could jeopardise your approved status.

If you answer 'Yes', you will need to give further details on a separate sheet.

Questions 1 – [8_10](#) apply to the individual to be appointed as an authorised individual, HoLP or HoFA.

[Questions 11 – 15 apply to the individual's current firm and any previous firms \(including sole practices\) in which the individual was a principal at the time any of the listed events occurred.](#)

Applicants for authorised individual status only **do not** need to mention cautions or offences that are spent for the purposes of the Rehabilitation of Offenders Act 1974 or offences committed before the age of 17 (unless committed within the last 10 years). There is no need to mention road traffic offences that did not lead to a prison sentence.

Financial integrity and reliability

1. Have you ever within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, or made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
3. If 'Yes', has this order been discharged?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

[Convictions or civil liabilities](#)

5. Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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<u>If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction. (Please attach additional sheet if necessary.)</u>				
6. Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<u>7. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>
Good reputation and character				
<u>7.8. Have you at any time pleaded guilty to or been found guilty of any offence?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>
<u>8.9. If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction. (Please attach additional sheet if necessary.)</u>				
<u>9. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>
10. Have you ever been:				
a. refused (or been the principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. refused entry to or excluded from membership of any profession or vocation?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. dismissed from any office or employment or requested to resign from any office, employment or firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
g. reprimanded, warned about future conduct, <u>censured</u> , disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry <u>or any other body</u> concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
11. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

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Questions 11 – 15 apply to your current firm and any previous firms (including sole practices) in which the individual to be appointed was you were a principal partner, member, director or shareholder at the time any of the listed events occurred.

Financial integrity and reliability				
12. In the last 10 years, did any such previous firm make any compromise or arrangement with its creditors, or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
13. In the last 10 years, was any such previous firm the subject of any insolvency proceedings?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Civil liabilities				
14. In the last five years was any such previous firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Good reputation and character				
15. In the last ten years, was any such previous firm:				
a. convicted by a court of any criminal offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. made the subject of a court order at the instigation of any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
16. Is any such previous firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
17. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

9 Signature and confirmation of the contact partner or Head of Legal Practice

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the individual's circumstances.

I confirm that the individual named in this application:

- has been proposed as an authorised individual or HoLP or HoFA by me in my capacity as the contact partner of the firm whose name is given in section 1.
- is fit and proper to be a HoLP, HoFA or authorised individual (as appropriate); and
- is not able to act as a HoLP, HoFA or authorised individual until the firm has received formal notification from ICAEW that this application has been approved.

If the application is for the appointment of an authorised individual, I confirm that the named individual:

- is competent to conduct, and control the undertaking of, probate work;

- is required by the firm to plan and control any probate work undertaken at the firm; ~~and is allowed to sign probate papers in the name of the firm.~~

If the application is for the appointment of a HoLP or HoFA, I confirm that the named individual:

- is competent to undertake this role;
- is of sufficient seniority to ensure that their instructions [in relation to probate work](#) are acted upon by the firm's principals and employees;
- will have the freedom to report any breach of the Probate Regulations to ICAEW.

If this application is approved, I confirm that the individual will, at all times, be required to comply with the Probate Regulations.

I understand that none of ICAEW, its officers, staff, members of its Council or committees, ~~their servants or agents~~ can be held liable ~~to the firm~~ in damages for ~~any act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the probate regulations or the monitoring of compliance with the probate regulations in any respect, unless the act or omission is shown to have been in bad faith, anything done or not done in dealing with any of the functions connected with accreditation under the Act or under the Probate Regulations, or enforcing the terms of either, or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.~~

Signature of the contact partner or Head of Legal Practice	
Name in BLOCK CAPITALS	
Date	

10 Signature and confirmation of the individual to be appointed

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of my circumstances.

If this application is approved, I undertake that I will, at all times, comply with the Probate Regulations.

I understand that if I leave this firm, my status will cease. If I join another firm and intend to carry out work as a HoLP, HoFA or authorised individual, I will need to submit a fresh application.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

[I acknowledge that, if applying for AI status, I must include a Disclosure and Barring Service check \(see \[www.gov.uk/disclosure-barring-service\]\(http://www.gov.uk/disclosure-barring-service\)\) which was made within 6 months of the date of this application.](#)

[\(I acknowledge that, if applying for HoLP or HoLA status, the ICAEW will undertake a Disclosure and Barring Service check on me.](#)

I understand that none of ICAEW, its officers, staff, members of its Council or committees, ~~their servants or agents~~ can be held liable ~~to the firm~~ in damages for ~~an act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the Probate Regulations or the monitoring of compliance with the Probate Regulations in any respect, unless the act or omission is shown to have been in bad faith, anything done or not done in dealing with any of the functions connected with accreditation under the Act or under the Probate Regulations, or enforcing the terms of either, or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.~~

Signature of individual to be appointed	
Name in BLOCK CAPITALS	
Date	

11 Checklist

Before you return the completed application form, please check you have:

- | | |
|--|--------------------------|
| • answered every question; | <input type="checkbox"/> |
| • checked that sections 9 and 10 have been signed; | <input type="checkbox"/> |
| • made a copy of the completed form for your records; <u>and</u> | <input type="checkbox"/> |
| • attached all additional sheets; <u>and</u> | <input type="checkbox"/> |
| • <u>included a Disclosure and Barring Service check for authorised individual status.</u> | <input type="checkbox"/> |

Now return your signed and completed form with any additional sheets to:

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

We will send you an acknowledgement as soon as we receive your application.

Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy please go to icaew.com/dataprotection.



APPENDIX J

DRAFT PROBATE APPLICATION FORM

APPLICATION TO APPROVE A NON-AUTHORISED PRINCIPAL OWNER OR SHAREHOLDER OF A LICENSED FIRM

Please use this form to apply to ICAEW for approval of a person (either an entity or an individual) as a non-authorised principal owner (ie, partner or member of a LLP) or shareholder with a material interest in a licensed firm.

In accordance with the Legal Services Act 2007 (the Act) and the Probate Regulations, ICAEW is required to approve all principals, owners' or shareholders of a licensed firm who are not authorised to undertake probate work. This only applies in cases where the person (either on their own or together with their associates) holds, or intends to hold, a material interest in the firm or the parent undertaking of the firm. Such persons, together with their associates, need to be approved as 'fit to own' a material interest in a licensed firm.

A firm wishing to apply to ICAEW to become a licensed firm must be satisfied, and confirm to the ICAEW, that each non-authorised person with an interest of 10% or more (together with their associates) is fit to own.

In addition, a firm that is already licensed must seek approval in respect of any non-authorised person who, together with any associates, intends to hold a material interest in the firm.

A non-authorised principal owner is:

- a person who is a partner (including both salaried and equity partners);
- a member of a limited liability partnership;
- a director; or
- shareholder of a company; or
- a member of the governing body; or
- any individual or person who is held out as being a director, partner or member or member of the governing body;

who is not individually authorised to undertake probate work.

Definition of material interest

A person (either a non-authorised principal owner or a shareholder) holds a material interest in the licensed probate firm (the firm) if the person (together with any associates):

- a. holds at least 10% of the shares in the firm;
- b. is able to exercise significant influence over the firm's management by virtue of the person's shareholding in the firm;
- c. holds at least 10% of the shares in a parent undertaking (P) of the firm;
- d. is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- e. is entitled to exercise, or control the exercise of, voting power in the firm which, if it consists of voting rights, constitutes at least 10% of the voting rights in the firm;
- f. is able to exercise significant influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;
- g. is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- h. is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

The above are all separate kinds types of material interests. If a person holds more than one type of material interest, or subsequently acquires a different kind of interest, each type of material interest must be approved.

Definition of associate

In determining if an interest is material, the interest held by a person in a firm will consist of the total of the interest held by that person and the interest held by any of his associates. 'Associate' is defined as:

- a. the person's spouse or civil partner;
- b. the person's child or stepchild if aged under 18;
- c. the trustee of any settlement under which the person has a life interest in possession;
- d. an undertaking of which the person is a director;
- e. any employee of the person;
- f. any partner in a firm (other than the licensed firm) of which the person is a partner;
- g. if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
- h. any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in the definition of material interest above; or
- i. any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in the definition of material interest above.

If a person holds more than one type of material interest and has different associates for different types of interest, all must be listed.

Each associate, by virtue of Schedule 13 of the Act effectively becomes a non-authorised person in their own right. This form is designed to deal with their approval without the need for a separate form.

If ICAEW has approved a non-authorised person to hold a specific type of material interest and that person then acquires a different kind of material interest, this needs to be approved by making a further application. No **approval** is needed if an existing material interest is increased or decreased but, under Probate Regulation 2.71, **notification** is required.

An application is needed even if the person was previously approved as a non-authorised principal or shareholder of another licensed probate firm.

The firm may not conduct probate work until it has received formal notification from ICAEW that this application has been approved.

If the firm is already licensed and a person intends to hold a material interest in the firm, that person must be approved before the interest is acquired.

Please note that each individual listed in section 3 must include a Disclosure and Barring Service check which was made within 6 months of the date of this application.

1 How to complete this application form

The Head of Legal Practice	should complete sections 2, 7 and 8 2, 9 and 10 on behalf of the firm and sign section 11 8 .
The person to be approved	should complete sections 3 to 6 3 to 7 and sign section 10 12 .
Each associate of the person to be approved	should complete a copy of section 6 8 and sign section 10 13 .

Where necessary, we give guidance before [the question each section](#). Please read the guidance before you complete the question.

Please complete the application form in BLOCK CAPITALS.

If you need more space for an answer, please attach additional sheets.

In these notes, the 'Act' refers to the Legal Services Act 2007.

If you have any questions as you fill in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

2 Firm details

Firm name	
Firm number	C00

3 Person to be approved

Please give details of the person to be approved as a non-authorised principal or shareholder of a licensed firm.

Name				
Member number (if known)				
Legal status of applicant	individual <input type="checkbox"/>	a corporate body <input type="checkbox"/>	a partnership <input type="checkbox"/>	
Applicant's email address				
Applicant's address				
Date of birth				
Is the applicant	a principal in the firm?	<input type="checkbox"/>	a shareholder?	<input type="checkbox"/>
	a principal in a parent undertaking of the firm?	<input type="checkbox"/>	a shareholder in a parent undertaking of the firm?	<input type="checkbox"/>

What kind of material interest does the applicant hold, or intend to hold, in the firm?

	Tick all that apply	% of shares held:	% of voting rights held:
holds at least 10% of the shares in the firm;	<input type="checkbox"/>		
is able to exercise significant influence over the firm's management by virtue of the person's shareholding in the firm;	<input type="checkbox"/>		
holds at least 10% of the shares in a parent undertaking (P) of the firm;	<input type="checkbox"/>		
is able to exercise significant influence over P's management by virtue of the person's shareholding in P;	<input type="checkbox"/>		
is entitled to exercise, or control the exercise of, voting power in the firm which, if it consists of voting rights, constitutes at least 10% of the voting rights in the firm;	<input type="checkbox"/>		
is able to exercise significant influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;	<input type="checkbox"/>		
is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P;	<input type="checkbox"/>		
is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.	<input type="checkbox"/>		

3 Person to be approved

Please give details in the following table of the person to be approved as a non-authorized owner of a licensed firm and their associates (if any).

In the column 'type of material interest' please enter the corresponding letter from the table on page 1 of this application form.

In the column 'associate status' please enter the corresponding letter from the table on page 2 of this application form.

The associate(s) will need to sign the confirmation at the end of this application

<u>Name</u>	<u>Address</u>	<u>Member no.</u>	<u>Email address</u>	<u>Date of birth</u>	<u>Type of material interest</u>	<u>Associate status</u>	<u>% of shares held</u>	<u>% of voting rights held</u>

<u>Has any person in section 3 already been approved as a non-authorized owner or shareholder in this firm?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>
<u>If 'Yes', please give the types of existing material interest that the applicant has in the firm. See the table on page 1 of this application form.</u>				

Has the person already been approved as a non-authorised principal or shareholder in this firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If 'Yes', what kind of existing material interest does the applicant have in the firm? See the list in the table above.				

4—Associates

For the definition of 'associate', see guidance at the beginning of this application form.

Does the person referred to in section 3 have any associates?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If 'Yes', please give full details of each associate below.

Types of interest that can be held by an associate in firm:

- holds shares in the firm;
- is able to exercise influence over the firm's management by virtue of the person's shareholding in the firm;
- holds shares in a parent undertaking ('P') of the firm;
- is able to exercise influence over P's management by virtue of the person's shareholding in P;
- is entitled to exercise, or control the exercise of, voting power in the firm;
- is able to exercise influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;
- is entitled to exercise, or control the exercise of, voting power in P; or
- is able to exercise influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

The associate will need to sign the confirmation at the end of this application.

If any of the persons listed in the table above are corporate entities, please set out on a separate sheet, the following details relating to the entity:

<u>In the case of a limited company,</u>	<u>please provide:</u> - <u>the names and addresses of the directors</u> - <u>the names and addresses of the shareholders and their percentage share of the company's shareholding.</u>
<u>For a limited liability partnership,</u>	<u>please provide the names and addresses of the members and their percentage voting rights.</u>
<u>In all cases,</u>	<u>please indicate which directors, shareholders or members are ICAEW members.</u>

54 Other licensed firms

Has the applicant (or any associate) previously been <u>an owner a principal or a shareholder</u> in another licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If 'Yes', please fill in one row for every licensed firm in which the applicant (or any associate) was or is aan principal owner or shareholder.

Firm name	Firm number (if known)	Firm's supervisory body	Period as a principal or shareholder	
			From (mm/yy)	To (mm/yy)

65 Disqualification

The applicant to be approved must answer the following questions.

Have you (or any associate listed in section 34) previously been disqualified from being a principal, employee, Head of Legal Practice or Head of Finance and Administration in a licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has a licensing authority ever objected to you (or any associate listed in section 34) holding a material interest in a licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has a licensing authority ever imposed conditions on you (or any associate listed in section 34) holding an interest in a licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Have you (or any associate listed in section 34) ever acquired a material interest in a licensed firm that exceeds a limit specified in the licensing rules of a its licensing authority?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<u>Have you (or any associate listed in section 4) ever been disqualified as an authorised person?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>

If 'Yes', please give details of the dates of the licensing authority's decision(s); the reasons for the decision(s) and whether these restrictions/~~disqualification is -are~~ still in place.

Please continue on a separate sheet if necessary.

76 Fitness to own an interest in a licensed firm (applicant)

The applicant to be approved All persons listed in section 3 must answer the following questions. Please complete and submit a copy of this section for each person listed in section 3 with the name of the person at the top of the copy.

The Act requires persons with an interest in accredited probate firms to be fit to own. A person who holds a material interest in a licensed firm must satisfy ICAEW that they are fit to own.

If you have any doubts about your fit and proper status, please call +44 (0)1908 546 279 for advice.

If you answer 'Yes' to any of the questions in this section, you will not automatically be refused authorised status. However, the Probate Committee may wish to make further enquiries before reaching a decision.

If the Probate Committee subsequently finds out about any matters which you did not disclose this will be viewed very seriously.

If you answer 'Yes', you will need to give further details on a separate sheet.

There is no need to mention offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974, offences committed before the age of 17 (unless committed with the last 10 years) or road traffic offences that did not lead to a prison sentence.

Person's name.....

Questions 1 – 10 apply to the person to be approved as a non-authorised principal or shareholder.				
Financial integrity and reliability				
1. Have you ever , within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, –or made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
3. If 'Yes', has this order been discharged?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Convictions or cCivil liabilities				
5. <u>Have you at any time pleaded guilty to or been found guilty of any offence?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>
<u>If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction and attach additional sheet if necessary.</u>				
6. Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
7. <u>Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?</u>	<u>Yes</u>	<input type="checkbox"/>	<u>No</u>	<input type="checkbox"/>

Good reputation and character				
There is no need to mention road traffic offences that did not lead to a prison sentence.				
7. Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
8. If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction and attach additional sheet if necessary.				
9.8. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
10.9. Have you ever been:				
a. refused (or been a principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. refused entry to or excluded from membership of any profession or vocation?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. dismissed, <u>or asked to resign</u> , from any office, <u>or</u> employment <u>or requested to resign from any office, employment</u> or firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
g. reprimanded, warned about future conduct, <u>censured</u> , disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry <u>or any other body</u> concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
11.10. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Questions 11 – 15 apply to <u>your current firm and any</u> previous firms (including sole practices) in which <u>you were the individual to be approved as</u> a <u>principal, partner, member</u> , director or shareholder at the time any of the events occurred, <u>regardless of whether those firms were licensed firms</u> .				
Financial integrity and reliability				
12.11. In the last 10 years, did any such <u>previous</u> firm make any compromise or arrangement with its creditors, or otherwise fail to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
13.12. In the last 10 years, was any such <u>previous</u> firm the subject of any insolvency proceedings?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Civil liabilities				
14.13. In the last five years, was any such <u>previous</u> firm the subject of any civil action relating to its professional or business activities which resulted in a	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?				
Good reputation and character				
15-14. In the last 10 years, was any such previous firm:				
a. convicted by a court of any criminal offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. made the subject of a court order at the instigation of any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
16-15. Is any such other firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
17-16. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Formatted Table

Please give the number of 'fitness to own' forms included with this application

8—Fitness to own an interest in a licensed firm (associates)

All associates must also complete a declaration that they are fit to own an interest in a licensed firm. Please complete and submit copies of this section for each associate listed in section 4 with the name of the associate at the top of the form.

Questions 1 – 10 apply to the person who is an associate.

Financial integrity and reliability

1. Have you ever made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
3. If 'Yes', has this order been discharged?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Civil liabilities			
5.— Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Good reputation and character			
There is no need to mention road traffic offences that did not lead to a prison sentence.			
6.— Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
7.— If 'Yes', give details of the court which convicted you, the offence, the penalty imposed and date of conviction. Please attach additional sheet if necessary.			
8.— Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
9.— Have you ever been:			
a.— refused (or been a principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
b.— investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
c.— the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
d.— reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
e.— refused entry to or excluded from membership of any profession or vocation?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
f.— dismissed from any office or employment or requested to resign from any office, employment or firm?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
g.— reprimanded, warned about future conduct, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
h.— the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
10.— Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Questions 11—15 apply to previous firms (including sole practices) in which the associate was a principal, director or shareholder at the time any of the listed events occurred, regardless of whether those firms were licensed firms.			
Financial integrity and reliability			
11.— In the last 10 years, did any such previous firm make any compromise or	Yes	<input type="checkbox"/>	No <input type="checkbox"/>

arrangement with its creditors, or otherwise fail to satisfy creditors in full?				
12. In the last 10 years, was any such previous firm the subject of any insolvency proceedings?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Civil liabilities				
13. In the last five years, was any such previous firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Good reputation and character				
14. In the last 10 years, was any such previous firm:				
• convicted by a court of any criminal offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
• refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
• refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
• reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
• made the subject of a court order at the instigation of any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
• investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being provided but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
15. Is any such previous firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
16. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If yes, please supply details on a separate sheet).	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Please give the number of 'fitness to own' forms for associates included with this application.

97 The regulatory objectives

This section should be completed by the firm's Head of Legal Practice.

The Act's regulatory objectives [and professional principles](#) are contained in section 1. (www.legislation.gov.uk/ukpga/2007/29/section/1)

Are you aware of any issues that may compromise the regulatory objectives or professional principles set out in the Act if this application is approved? For example, is the applicant to be approved subject to any other duties that may conflict with the Act's regulatory objectives?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
---	-----	--------------------------	----	--------------------------

If 'Yes', please give details of the possible issue and the steps that you have or will take to address this.

Please continue on a separate sheet if necessary.

108 Regulated persons

This section should be completed by the firm's Head of Legal Practice.

The Act requires non-authorised persons (whether principals, employees or shareholders) to comply with the duties set out in section 90 [of the Act](http://www.legislation.gov.uk/ukpga/2007/29/section/90) (~~Visit~~ www.legislation.gov.uk/ukpga/2007/29/section/90).

Essentially, this requires firms to ensure that non-authorised persons do not do anything which may lead the firm or any authorised individual to breach the Probate Regulations or their regulatory responsibilities under the Act.

Are you aware of any issues that may compromise the ability of the firm or any authorised individuals to comply with the Probate Regulations if this application is approved?

Yes

No

If 'Yes', please give details of the possible issue and the steps that you have or will take to address this.

Please continue on a separate sheet if necessary.

119 Signature and confirmation of the Head of Legal Practice

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the person's circumstances.

I confirm that:

- the person(s) named in section 3 as an non-~~authorised principal owner or shareholder~~ holds or intends to hold, together with any associates, a material interest in ~~the this~~ firm; ~~whose name is given in section 2;~~
- the person's holding of the interest in ~~this~~ firm will not compromise the regulatory objectives set out in section 1 of the Act;
- the person's holding of the interest will not compromise the ability of ~~this~~ firm's principals and employees to comply at all times with the Probate Regulations and the professional principles contained in section 1 of the Act; and
- the person, together with any associates, is otherwise fit and proper to hold a material interest in this firm.

If this application is approved, I confirm that the person will be required to comply at all times with the Probate Regulations.

I confirm that (please delete the bullet that does not apply):

- until this application and this firm's application to be licensed is approved, this firm will not conduct probate work; or
- as a licensed firm, the person(s) named in section 3 will not acquire a material interest until this application is approved.

I understand that none of ICAEW, its officers, staff, members of its Council or committees, their servants or agents, can be held liable to the firm in damages for any act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the Probate Regulations or the monitoring of compliance with the Probate Regulations in any respect, unless the act or omission is shown to have been in bad faith, anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations, or enforcing the terms of either, or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of the Head of Legal Practice	
Name in BLOCK CAPITALS	
Date	

1210 Signature and confirmation of the person to be approved - each person in section 3 should sign below and by doing so makes the following declarations.

I certify that, to the best of my knowledge and belief, the information in or provided with this application that is relevant to me is a true and accurate statement of my circumstances.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

I acknowledge that ICAEW may require me to provide documents/information in connection with my application or continued status as a non-authorized principal or shareholder and that any failure to provide this information is a criminal offence.

I acknowledge that ICAEW may disclose this information about me to other bodies as set out in Probate Regulation 2.26. If this application is approved, I undertake to comply with the Probate Regulations at all times.

I confirm that section 43 includes all my associates as defined at the beginning of this form, and I confirm that, to the best of my knowledge and belief, they are fit and proper persons.

I will not do anything that might compromise the integrity of probate work carried out by the firm.

I understand that if my interest in the firm ends, then approval as a non-authorized owner principal or shareholder will cease. I understand that if I acquire a material interest in another accredited probate firm, or if I acquire another kind of material interest in the is firm, I will need to submit a fresh application.

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

<u>Signature of person to be approved</u>	
<u>Name in BLOCK CAPITALS</u>	
<u>Date</u>	

13 Signature and confirmation of associates

Each associate listed in section 4 should sign below.

~~I certify that, to the best of my knowledge and belief, the information in or provided with this application that is relevant to me is a true and accurate statement of my circumstances.~~

~~I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).~~

~~I acknowledge that ICAEW may require me to provide documents/information in connection with this application.~~

~~I acknowledge that ICAEW may disclose this information about me to other bodies as set out in Probate Regulation 2.26. If this application is approved, I undertake to comply with the Probate Regulations at all times.~~

~~I will not do anything that might compromise the integrity of probate work carried out by the firm.~~

~~I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.~~

Name	Signature of associate person	Date

1411 Checklist

Before you return the completed application form, please check you have:

• answered every question;	<input type="checkbox"/>
• checked that sections 9 and 10 , 11 , 12 and 13 have been signed;	<input type="checkbox"/>
• made a copy of the completed form for your records;	<input type="checkbox"/>
• attached all additional sheets; and	<input type="checkbox"/>
• attached separate fitness to own declarations for each associate.	<input type="checkbox"/>

Now return your signed and completed form with any additional sheets to:

Using your personal information

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK

We will send you an acknowledgement as soon as we receive your application.

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy please go to icaew.com/dataprotection.

DRAFT PROBATE APPLICATION FORM



PROBATE – APPLICATION FOR AFFILIATE STATUS

Individual applicants

All principals ([ie partners, members of an LLP or directors](#)) in a firm accredited for probate by ICAEW must be either:

- members of ICAEW
- members of the Institute of Chartered Accountants of Scotland (ICAS);
- members of Chartered Accountants Ireland (CAI);
- members of another approved regulator under the Legal Services Act 2007 (the Act);
- accredited probate firms;
- registered auditors;
- DPB-licensed firms; or
- affiliates of ICAEW [under the audit, DPB, Insolvency or Use of the description regulations](#).

[If the applicant is not one of the above then](#) Please submit an application form for each principal who is to become a probate affiliate.

How to complete this application form

Fill in this form electronically, using the TAB key to move from one answer to the next.

The firm's contact partner (who will be the Head of Legal Practice in a licensed firm)	should complete sections 1 and 2 on the firm's behalf and sign section 8.
The person who is applying for affiliate status	should complete sections 3 and 4 and sign section 7.
The person's referees	should complete and sign section 5.

[Where necessary, we give guidance before each section. Please read this before you complete the questions in each section.](#)

[Please complete the application form in BLOCK CAPITALS. If you need more space for an answer, please attach additional sheets.](#)

If you have any questions as you are filling in the form, please call +44 (0)1908 546 279. [This may avoid delays in dealing with your application.](#)

[If this application is in respect of an individual you must include a Disclosure and Barring Service check \(see \[www.gov.uk/disclosure-barring-service\]\(http://www.gov.uk/disclosure-barring-service\)\) which was made within 6 months of the date of this application.](#)

[If you are a licensed firm you should consider if you also need to make an application for approval of a non-authorised owner. You should refer to that application form to decide if the applicant for affiliate status is also a non-authorised owner \(ie, partner, member of a LLP, director or shareholder\) with a material interest.](#)

[If this application is in respect of an individual who will be an authorised person, the Head of Legal Practice or the Head of Finance and Administration you need to complete that application form.](#)

1 Firm details

Firm name	
Firm number	C00
Address	_____
Postcode	_____
Phone	_____

2 Details of principal (or body) applying for affiliate status

ICAEW use A/			
Principal applying		Corporate body applying	
Title (eg, Mr, Mrs, Ms, Dr)		Name of firm	
Surname of principal		Firm address	
First names of principal			
Date of birth of principal			
Address			
Home phone number		Firm phone number	
Email (this will give you access to icaew.com)		Companies House registration number	
Address of firm's office at which affiliate will be located.			

Corporate applicants

Please set out on a separate sheet, the following details relating to the corporate applicant:

<ul style="list-style-type: none">In the case of a limited company,	please provide: <ul style="list-style-type: none">the names and addresses of the directorsthe names and addresses of the shareholders and their percentage share of the company's shareholding.
<ul style="list-style-type: none">For a limited liability partnership,	please provide the names and addresses of the members and their percentage voting rights.
<ul style="list-style-type: none">In all cases,	please indicate which directors, shareholders or members are ICAEW members.

3 Previous affiliate status

Has ICAEW granted affiliate status to this person or body on a previous occasion, eg, audit registration?	Select Y/N from list
If 'Yes', please give details of the firm in which they were a principal and the dates they were an affiliate.	
Name of previous firm	
Number of previous firm (if known)	C00
Affiliate number (if known)	
From	(dd/mm/yyyy)
To	(dd/mm/yyyy)

4 Fit and proper

Applicants for affiliate status are required to demonstrate that they are fit and proper.

Please answer the following questions and, if necessary, provide additional information in a covering letter or on a separate sheet. In the case of a corporate applicant, the answers should be in respect of each shareholder, director or member.

[There is no need to mention offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974, offences committed before the age of 17 \(unless committed with the last 10 years\) or road traffic offences that did not lead to a prison sentence.](#)

Financial integrity and reliability		
1	Have you, within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, or made any compromise arrangement with your creditors <u>? or otherwise failed to satisfy creditors in full?</u>	Select from list
	<u>If 'Yes', please give details.</u>	
2	Have you- <u>ever been declared bankrupt or</u> been the subject of a bankruptcy order by a court in the United Kingdom or elsewhere or has a bankruptcy order petition ever been served on you?	Select from list
	If 'Yes', please give details.	
	<u>If 'Yes', has this order been discharged?</u>	<u>Select from list</u>
3	Have you ever <u>signed a trust deed for a creditor,</u> made an assignment for the benefit of creditors or made any arrangement for the payment of a composition to creditors?	Select from list
	If 'Yes', please give details.	
Convictions or civil liabilities		
4	Have you at any time pleaded guilty to or been found guilty of any offences?	Select from list
	If 'Yes', please give details.	
	<u>If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction and attach additional sheet if necessary.</u>	
5	Have you, <u>ever within the last 5 years in the United Kingdom or elsewhere,</u> been <u>the subject of party to</u> any civil action <u>relating to your professional or business activities</u> which has resulted in a <u>judgement or</u> finding against you by a court, or a settlement <u>(other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs)</u> being agreed, <u>in respect of any matter relating to your professional or business activities?</u>	Select from list
	If 'Yes', please give details.	
6	Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?	Select from list
	If 'Yes', please give details.	
Good reputation and character		

7	Have you, in the United Kingdom or elsewhere, ever been refused (or been the principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	If 'Yes', please give details.	
8	Have you, in the United Kingdom or elsewhere, ever been the subject of an investigation into allegations of misconduct or malpractice in connection with your professional activities, which resulted in a formal complaint being proved but no disciplinary order being made?	Select from list
	If 'Yes', please give details.	
9	Have you, in the United Kingdom or elsewhere, ever been the subject of disciplinary procedures against you resulting in a finding by a professional body or employer?	Select from list
	If 'Yes', please give details.	
10	Have you, in the United Kingdom or elsewhere, ever been reprimanded, excluded, otherwise disciplined or publicly criticised by any professional body to which you belong or have belonged?	Select from list
	If 'Yes', please give details.	
11	Have you, in the United Kingdom or elsewhere, ever been refused entry to or excluded from membership of any profession or vocation?	Select from list
	If 'Yes', please give details.	
12	Have you, in the United Kingdom or elsewhere, ever been dismissed, or asked to resign, from any office, or employment or asked to resign from a firm?	Select from list
	If 'Yes', please give details.	
13	Have you, in the United Kingdom or elsewhere, ever been reprimanded, warned about future conduct censured, disciplined, or publicly criticised by, or made the subject of a court order at the instigation of any regulatory authority, or any officially appointed enquiry, or any other body concerned with the regulation of a financial, professional or other business activity?	Select from list
	If 'Yes', please give details.	
14	Have you, in the United Kingdom or elsewhere, ever been the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Select from list
	If 'Yes', please give details.	_____
14 15	Are you currently undergoing investigation or disciplinary procedures as described in 8, 9 or 10?	Select from list
	If 'Yes', please give details.	

[Questions 11 – 15 apply to your current firm and any previous firms \(including sole practices\) in which you were a partner, member, director or shareholder at the time any of the events occurred.](#)

[Financial integrity and reliability](#)

16	In the last 10 years, did any such firm make any compromise or arrangement with its creditors, or otherwise fail to satisfy creditors in full?	Select from list
	If 'Yes', please give details.	_____

17	In the last 10 years, was any such firm the subject of any insolvency proceedings?	Select from list
	If 'Yes', please give details.	_____
Civil liabilities		
18	In the last five years, was any such firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Select from list
	If 'Yes', please give details.	_____
Good reputation and character		
19	In the last 10 years, was any such firm:	
	a. convicted by a court of any criminal offence?	Select from list
	b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Select from list
	d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Select from list
	e. made the subject of a court order at the instigation of any professional or regulatory body?	Select from list
	f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Select from list
20	Is any such firm currently undergoing any investigation or disciplinary procedures as described above?	Select from list
	If 'Yes', please give details.	_____
21	Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Select from list
	If 'Yes', please give details.	
Questions 22-2615-19 apply to corporate body applicants only		
15 22	Has the corporate entity ever been the subject of an effective resolution passed by the shareholders (or, in the case of a limited liability partnership, by its members) for it to be wound up or has a winding-up order made against it on grounds of insolvency?	Select from list
	If 'Yes', please give details.	
16 23	Has the corporate entity ever has an administration order made against it on grounds of insolvency?	Select from list
	If 'Yes', please give details.	
17 24	Has the corporate entity ever had a receiver appointed by a creditor or by a court on the application of a creditor?	Select from list
	If 'Yes', please give details.	
18 25	Has the corporate entity, in the United Kingdom or elsewhere, ever been refused the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	If 'Yes', please give details.	

1926 Is the corporate entity currently undergoing investigation or disciplinary procedure as described in 8, 9 or 10?	Select from list
If 'Yes', please give details.	

5 Declaration by two chartered accountants

This declaration should be signed by the two most senior chartered accountant principals in the firm.

If there are only two principals in an applicant's firm, of whom one is the applicant, the chartered accountant principal and a member of ICAEW who is **not** an employee of the firm should sign the declaration and confirmation.

If the applicant is a corporate body, two independent chartered accountants will need to sign the declaration below rather than a principal within the company.

First referee

I confirm that, in my opinion, the applicant is a fit and proper person to be granted probate affiliate status with ICAEW.	
Name	
Firm name	
Member body	Select from list
Membership number	
Date of qualification (dd/mm/yyyy)	
I have known the applicant for	years
Signature	
Date	

Second referee

I confirm that, in my opinion, the applicant is a fit and proper person to be granted probate affiliate status with ICAEW.	
Name	
Firm name	
Member body	Select from list
Membership number	
Date of qualification (dd/mm/yyyy)	
I have known the applicant for	years
Signature	
Date	

6 Affiliate fees

~~We have enclosed a copy of T~~his year's affiliate fee scale [can be found at \(icaew.com/affiliates\)](http://icaew.com/affiliates) and you must pay your affiliate fee when you submit your application. We are unable to process applications without the appropriate fee. We will send you a receipted invoice for the first annual fee once your application has been approved. If your application is not successful, we will refund the affiliate fee.

7 Signature and confirmations of the applicant for affiliate status

I hereby apply to the council to be accepted as an affiliate of ICAEW under ICAEW's Probate Regulations.

I certify that the details provided in this application are correct.

I know of no reason why there should be any doubts regarding my being a fit and proper person to be an affiliate of ICAEW.

I undertake, if accepted as an affiliate, to comply with the Royal Charter, bye-laws and regulations which, at the time of acceptance and thereafter, are in force.

In particular, I will:

- observe and uphold the ethical and professional standards of ICAEW;
- perform faithfully and promptly any service that I am retained or employed to undertake in my professional capacity;
- provide promptly and willingly all such information and assistance as I am able, if asked to do so by ICAEW in pursuance of its duties; and
- pay the appropriate annual affiliate fee when due.

I understand that I shall not be entitled to call myself a chartered accountant and that affiliate status does not confer any rights, acknowledgements, status or designatory letters on an affiliate or entitle an affiliate to be publicly represented as having such.

I acknowledge that, if accepted as an affiliate, I shall be subject to the disciplinary processes of ICAEW for any failure to comply with its bye-laws or regulations, or the undertakings in this application.

Signature

Print full name of applicant

Date

8 Signature and confirmations of the firm's contact partner or Head of Legal Practice (HoLP)

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the individual's circumstances.

Signature

Print full name of the firm's contact partner or HoLP

Date

9 Additional notes

The Royal Charter, bye-laws, Probate Regulations and Guidance and Code of Ethics are published at [icaew.com/regulations](https://www.icaew.com/regulations). The probate contact partner or HoLP in your firm should keep a copy of the Probate Regulations and Guidance.

10 Submit your form

Save your completed form to your computer. Print a copy, sign it and send your application, together with a cheque payable to CHARTAC, to:

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK



Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information for administration, communication and research, so we will sometimes share it with our business partners. We will also use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy, please go to [icaew.com/dataprotection](https://www.icaew.com/dataprotection)



APPLICATION TO BECOME AN ACCREDITED PROBATE FIRM

Firms may apply to become **accredited probate firms** under the Legal Services Act 2007 (the Act) either:

- as an **authorised firm**; all the principals* ie, directors, partners and members of a LLP (and shareholders in the case of a company) have to be individually authorised to undertake probate work; or
- as a **licensed firm**; not all the principals (and shareholders in the case of a company) **need to be** individually authorised to undertake probate work (although at least one principal need to be); however, additional requirements apply.

* If you are applying to become an authorised firm and if a principal of your firm is a corporate body please telephone ICAEW for further information

How to complete this application form:

Where necessary, we give guidance before a section. Please read the guidance before you complete the questions in each section.

Please complete the form in BLOCK CAPITALS. If you run out of space, please attach additional sheets.

You will need to submit a separate application form for each individual who is to be authorised to conduct probate work on the firm's behalf. You can download these application forms from icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

If you are applying to become a licensed firm, you will need to complete an application form for a Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA), and for any non-authorised person who is an owner and holds a material interest (see Probate Regulation 6.2) in the firm. You can download these application forms from icaew.com/probate

If your firm includes principals who are not members of ICAEW, the Institute of Chartered Accountants of Scotland (ICAS), Chartered Accountants Ireland (CAI) or another approved regulator, or are not already accredited probate firms, registered auditors, DPB-licensed firms or affiliates under other ICAEW regulations, these principals will need also to apply for probate affiliate status. You can download an application from icaew.com/probate

To be eligible for accreditation, a firm must have in place professional indemnity insurance (PII) as required by the PII and Probate Regulations. Please enclose a copy of the firm's PII policy schedule and your insurer's details with this application.

To complete section 21 on diversity, you will need to conduct an initial diversity monitoring exercise **prior to submitting your application**.

The entity making this application may not hold itself out as an accredited probate firm until we have confirmed in writing that your application has been successful.

If you have any questions as you fill in this form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

1 Application type

Does your firm wish to apply for authorisation or a licence? Please tick the relevant box.

An authorised firm is one in which all the principals ie, all partners, directors or members of a LLP (and shareholders in the case of a company) are individually authorised to conduct probate work.	Authorised firm	<input type="checkbox"/>
A licensed firm is one in which not all principals (and shareholders in the case of a company) are individually authorised to conduct probate work (although at least one principal must be).	Licensed firm	<input type="checkbox"/>

2 Firm details

Name of firm applying to become an accredited probate firm			
Firm number (if known)	C00 <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>		
Is the firm a member of a group?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	
If 'Yes', please provide details of the group.			

3 Type of practice

Is it a sole practice?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is it a partnership?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is it a limited liability partnership?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is it a corporate practice?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

4 Principal office

Principal office: the office to which ICAEW will send all communications regarding a firm's probate accreditation.

Trading name: an alternative name used by the firm to practise under.

Address		ICAEW use	
		L00_-----	
Postcode			
Phone			
Company/LLP number (if applicable)		Is the registered office situated in England or Wales	Yes <input type="checkbox"/> No <input type="checkbox"/>
Firm's website address			
Do you intend to conduct probate work from this office?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
Trading name (if applicable)			
Do you intend to use the trading name when conducting probate work?		Yes <input type="checkbox"/> No <input type="checkbox"/>	
Name and position in the firm of the probate contact partner. In the case of a licensed firm, this will be the Head of Legal Practice.	Name		
	Position in firm		
		ICAEW use	
		L00_-----	
If the probate contact partner does not work from the principal office of the firm, please give their office address.			
Address			
Postcode			
Phone			
Email address			

5 Other offices and trading names

Include all offices and trading names of the firm, excluding market day offices. Please continue on a separate sheet if necessary.

Trading name: an alternative name used by the firm to practise under.

Address 1		ICAEW use
		L00_____
Postcode		
Phone		
Do you intend to conduct probate work from this office?		Yes <input type="checkbox"/> No <input type="checkbox"/>

Trading name (if applicable)		
Do you intend to use the trading name when conducting probate work?		Yes <input type="checkbox"/> No <input type="checkbox"/>

Address 2		ICAEW use
		L00_____
Postcode		
Phone		
Do you intend to conduct probate work from this office?		Yes <input type="checkbox"/> No <input type="checkbox"/>

Trading name (if applicable)		
Do you intend to use the trading name when conducting probate work?		Yes <input type="checkbox"/> No <input type="checkbox"/>

6 Principals – sole practitioners, partners, directors, LLP members

In this section please list all the **principals** of the firm, indicating those whom the firm wishes to designate as authorised individuals.

Authorised individuals: the individuals who can undertake, or control the undertaking of, probate work on the firm’s behalf. Only principals and employees who hold a probate qualification are eligible to apply to become authorised individuals, not consultants or sub-contractors. Where appropriate each individual will need to complete a separate ‘individual’ application form which you can download from icaew.com/probate

Membership number: if an individual is a member of ICAEW or another professional body, please give this number if known.

Professional body: if an individual is a member of a professional body (eg, ICAEW) please give name.

Office: the location of the office from which the principal or employee normally practises.

Approved regulator: the name of the approved regulator that has authorised the individual to conduct probate work.

If any principal is not a member of the ICAEW, ICAS, CAI, another approved regulator, or an affiliate under the ICAEW’s audit, insolvency or use of the description /regulations or DPB Handbook then a probate affiliate form must be completed.

Member no.	Surname	First names	Date of birth	Office location (eg, York)	Professional body	PC held Yes/No	Authorised individual Yes/No	Approved regulator/professional body	% of voting rights held

Please continue on a separate sheet if necessary.

7 Employee authorised individuals

Please list all the **employees** that the firm wishes to designate as authorised individuals and continue on a separate sheet if necessary.

Authorised individuals: the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only employees who hold a probate qualification are eligible to apply to become authorised individuals, not consultants or sub-contractors. Each individual listed below will need to complete a separate 'individual' application form which you can download from icaew.com/probate

Membership number: if an individual is a member of ICAEW or another professional body, please give this number if known.

Professional body: if an individual is a member of a professional body (eg, ICAEW) please give name.

Office: the location of the office from which the principal or employee normally practises.

Approved regulator: the name of the approved regulator that has authorised the individual to conduct probate work.

Member no.	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Approved regulator/Professional body

Please continue on a separate sheet if necessary.

8 Head of Legal Practice and Head of Finance and Administration

This section is only for firms applying to become licensed firms. If your firm wishes to become an authorised firm, please go to the next section. Please provide details of the individuals your firm wishes to designate as Head of Legal Practice (HoLP) and Head of Finance and Administration (HoFA). The HoLP must be an authorised individual. The same person can be both a HoLP and a HoFA.

	Member no. if known	Surname	First names	Date of birth	Office location (eg, York)	PC held Yes/No	Authorised individual Yes/No	Principal Yes/No	% of voting rights held (if relevant)
HOLP									
HOFA									

9 Authorised individuals, Heads of Legal Practice, Head of Finance and Administration

All individuals who are to be designated as authorised individuals, Heads of Legal Practice or Heads of Finance and Administration must complete a separate application form for individuals. You can download this application form from icaew.com/probate. Please give the number of individual application forms you have enclosed with this application.

I have enclosed application forms for individuals with this application.

10 Management board

If the firm has a management board, please supply the following details and continue on a separate sheet if necessary.

Member no. if known	Surname	First names	Office location (e.g. York)	Principal Yes/No	% voting rights in board	Authorised individual Yes/No	Approved regulator/Professional body

11 Shareholders of a corporate practice

This section is for listing all the shareholders of the corporate practice. If your firm is not a corporate practice, go to the next section.

Member/firm number if known	Full name and address of shareholder	% of total voting rights	Director, employee or other	Authorised individual Yes/No	Approved regulator

12 Licensed firms: non-authorised owners and material interests (ie, partners, members of a LLP, directors or shareholders)

Under the Act there are special requirements for non-authorised owners who hold a material interest in a licensed firm. Such persons must complete a separate application form for non-authorised owners because ICAEW needs specifically to approve these persons. You can download this application form from icaew.com/probate.

In this section please list all the non-authorised owners who hold a material interest in the firm and continue on a separate sheet if necessary.

The definition of what constitutes a material interest is set out in Probate Regulation 6.2. In determining whether the threshold for a material interest has been reached, the interests of the person’s associates need also to be taken into account. The definition of ‘associate’ is set out in Probate Regulation 6.3.

Member no.	Surname	First names	Date of birth	% interest in firm

Please give the number of non-authorised owner application forms you have enclosed with this application.

13 Probate connected entities

A Connections – Please list any connected firm(s) accredited for probate with ICAEW or another approved regulator.	
Connected firm - any practising firm which has one or more principals of your firm among its principals.	
Firm name	
Relationship with applicant firm	
Address	
Registered with	
Postcode	
Firm number (if known)	

14 Regulation and supervision

Is the firm currently authorised for probate work, or has it (or any former entities) previously been authorised or applied to be authorised for probate work by another regulatory body in England and Wales?			Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'Yes', which body?	Solicitors Regulation Authority	<input type="checkbox"/>	ICAS	<input type="checkbox"/>
	Council of Licensed Conveyancers	<input type="checkbox"/>	ACCA	<input type="checkbox"/>
	Other (please specify)			
Please provide details of the application.				

15 Staff in each office

The total number of principals and the total number of authorised individuals should agree with the totals in sections and 6 and 7. Sub-contractors and consultants should be included as staff in the appropriate column. These individuals cannot be authorised individuals.

Office number or location.	Principals		Other staff			Total staff
	Authorised individuals	Non-authorised individuals	Authorised individuals	Professional staff	Admin staff	
L00						
L00						
L00						
L00						
L00						
L00						
L00						
L00						
Total						

16 Practice income

For this purpose, fee income excludes the re-charge of out-of-pocket expenses and VAT. If the firm has not started trading, please give a forecast of the first year’s trading figures.

Total fee income from all sources	£
Financial year ending	□□ □□ □□□□
Estimated annual fee income from probate and probate-related services (see section 17)	£

17 Nature of probate-related work

Please give details of the probate-related services your firm wishes to deliver.

Will-writing services	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Provision of advice in connection with the drafting of wills (eg, on IHT and trust planning)	Yes <input type="checkbox"/>	No <input type="checkbox"/>

Activities carried out before the application for a grant of probate or letters of administration (eg, IHT calculations)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Assistance to an executor with estate administration	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Estate administration as an executor	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is the firm likely to hold clients' and/or estate monies in connection with the above activities?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

18 Statement on access to justice

It is a requirement of the Act that you explain how your firm's application to become an accredited probate firm will promote **access to justice**.

For example, access to justice may be promoted through improved access to services geographically or through technology. It may also be improved by making services cheaper for consumers or by delivering services in new ways. Please continue on a separate sheet if necessary.

19 Statement on the regulatory objectives

For a list of the regulatory objectives and professional principles, please refer to section 1 of the Act, www.legislation.gov.uk/ukpga/2007/29/contents

Are you aware of any issues affecting your firm that might compromise the regulatory objectives if this application is successful and you begin to undertake probate work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is anyone in your firm (including any owner or shareholder) subject to duties that might conflict with the firm's ability to carry out probate work in accordance with the probate regulations and the professional principles contained in the Act?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

If 'Yes', please outline the steps your firm will take to mitigate the risk of conflict and/or to address this issue.

20 Statement on improper influence

Firms are under an obligation to ensure that non-authorized persons (whether principals, employees or shareholders) do not influence improperly the conduct of probate work.

Please outline the steps your firm will take to ensure that authorised individuals can conduct probate work independently and free from influence that might compromise their ability to adhere to the probate regulations and the professional principles set down in the Act (see section 1 of the Act).

Does the firm have any contractual or other arrangements with another entity that may allow that other entity to have any influence that might affect, or could be perceived as affecting, how probate work is carried out?

Yes

No

If 'Yes', please attach details of any safeguards designed to prevent such influence.

21 Diversity

One of the Act's regulatory objectives (see section 1 of the Act, www.legislation.gov.uk/ukpga/2007/29/contents) is to encourage an independent, strong, diverse and

effective legal profession. The Legal Services Board (LSB) has published guidance stating that firms should have arrangements in place for monitoring periodically the diversity of individuals in their firm. Firms will need to publish this data and supply this information to ICAEW in summary form for submission to the LSB. Only summary information will be provided to the LSB; your firm will not be identified.

Please outline the steps your firm will take periodically to monitor the diversity of the individuals in the firm. There is a model questionnaire at icaew.com/probate

Please summarise the results of your initial diversity monitoring below. On a periodic basis, we will request updates to this information.

Diversity

22 Professional indemnity insurance

Please enclose a copy of your firm's PII policy schedule with this application which shows the entities and sums insured.

Cover arranged with (name of participating insurer)	
Period of cover	from □□ □□ □□ to □□ □□ □□

23 Offices without an authorised individual

Will probate work be carried out from any office listed in section 5 where there is no resident authorised individual?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
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If 'Yes', please set out details of the probate supervision arrangements at each of these offices.

24 Fit and proper

The Act requires authorised persons to be fit and proper to carry out probate work. Under the Probate Regulations, any firm seeking accreditation must satisfy ICAEW that it is fit and proper. It is for each firm to ensure that all its principals, and those employees involved directly or indirectly with probate work, are fit and proper. The fit and proper requirement does not normally extend to administrative or secretarial staff but does cover practice support staff such as computer specialists.

If a firm has any doubts about the fit and proper status of any of its principals or employees, it should contact Regulatory Support on +44 (0)1908 546 302.

If a firm has merged in the last 10 years, the questions relate to every constituent part of the merged firm.

A 'Yes' answer to any of the questions in this section will not automatically result in a firm being refused accreditation. The Probate Committee may, however, wish to make further enquiries before reaching a decision.

If the Probate Committee finds out about any matters which a firm does not disclose, this will be viewed very seriously. It could jeopardise the firm's application or continuing accreditation.

If you are a sole practitioner, or a sole director or sole shareholder of a corporate practice, these questions apply to you personally as well as to the firm.

The questions relate to all principals, authorised individuals and previous practices.

The answers will be 'Yes' or 'No', but a 'Yes' answer will need further explanation.

The word 'firm' indicates all principals and previous practices.

Financial integrity and reliability	Yes <input type="checkbox"/>	No <input type="checkbox"/>
In the last 10 years, has the firm made any compromise or arrangement with its creditors, or otherwise failed to satisfy creditors in full?		
In the last 10 years, has the firm been the subject of any insolvency proceedings?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Civil liabilities	Yes <input type="checkbox"/>	No <input type="checkbox"/>
In the last five years, has the firm been the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?		
Good reputation and character		
There is no need to mention cautions or offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974 or, in the case of a firm which is a sole practice, offences committed by any individual before the age of 17 (unless committed within the last 10 years) or road traffic offences that did not lead to a prison sentence.		
In the last 10 years, has the firm been:		
<ul style="list-style-type: none"> convicted by a court of any criminal offence; 	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none"> refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required; 	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<ul style="list-style-type: none"> refused entry to any professional body or trade association; or decided not to continue with an application; 	Yes <input type="checkbox"/>	No <input type="checkbox"/>

• reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body;	Yes <input type="checkbox"/>	No <input type="checkbox"/>
• made the subject of a court order at the instigation of any professional or regulatory body; or	Yes <input type="checkbox"/>	No <input type="checkbox"/>
• investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is the firm currently undergoing any investigation or disciplinary procedures as described above?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is there any other information relevant to any of the above questions which the firm wishes to disclose to ICAEW? If 'Yes', please specify details on a separate sheet.	Yes <input type="checkbox"/>	No <input type="checkbox"/>

25 Maintaining competence

Please tick the CPD activities which authorised individuals and others use regularly to maintain competence and keep up to date with probate legislation, regulations and related matters.

	Authorised individuals	Employees engaged in probate work under supervision	Other
Online learning/e-learning			
DVD subscriptions			
Update services			
In-house courses			
In-house technical discussion groups			
Training consortium or another firm's in-house courses			
ICAEW or district society courses			
Other commercial courses			
Local discussion groups			
Private reading: technical papers, accountancy, journals, articles, newsletters			
Access to a technical library			
Focused discussion with more experienced colleagues			
Other (please give further details)			

Will individual training records be maintained for all authorised individuals and employees involved in probate work?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Name of the principal responsible for assessing the competence of staff engaged in probate work		
Name of the principal responsible for ensuring that authorised individuals and staff receive relevant training		
Does the firm intend to use a probate manual and/or probate documentation?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'Yes', is this commercially available?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'Yes', please name the manual.		
Does the firm intend to subscribe to an updating service for the probate manual?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

26 Control of probate work

Will the firm ensure that it has appropriate arrangements to deal with:					
fit and proper considerations	Yes <input type="checkbox"/>	No <input type="checkbox"/>	recruitment	Yes <input type="checkbox"/>	No <input type="checkbox"/>
independence and integrity	Yes <input type="checkbox"/>	No <input type="checkbox"/>	staff appraisal	Yes <input type="checkbox"/>	No <input type="checkbox"/>
confidentiality	Yes <input type="checkbox"/>	No <input type="checkbox"/>	training standards	Yes <input type="checkbox"/>	No <input type="checkbox"/>
conduct of probate work (including acting in the best interests of clients)	Yes <input type="checkbox"/>	No <input type="checkbox"/>	discipline	Yes <input type="checkbox"/>	No <input type="checkbox"/>
recording of work done	Yes <input type="checkbox"/>	No <input type="checkbox"/>	reporting and supervisory responsibilities in the firm	Yes <input type="checkbox"/>	No <input type="checkbox"/>
review procedures	Yes <input type="checkbox"/>	No <input type="checkbox"/>	complaints-handling	Yes <input type="checkbox"/>	No <input type="checkbox"/>
			clients' money (if held)	Yes <input type="checkbox"/>	No <input type="checkbox"/>
Does the firm have a subscription to an updating service or training provider?				Yes <input type="checkbox"/>	No <input type="checkbox"/>

27 Alternate arrangements

The next question is for sole practitioners or corporate practices with only one shareholder or director.

Do you have arrangements in place for the appointment of an alternate in the case of death or incapacity:	Yes <input type="checkbox"/>	No <input type="checkbox"/>

28 Signature and confirmations

I certify that, to the best of my knowledge and belief, the information in, or provided with, this application is a true and accurate statement of the firm’s circumstances.

I confirm that:

- the control of this firm is in accordance with the Probate Regulations;
- I have taken steps to ensure that all principals and employees involved in probate work are fit and proper persons;
- I will notify the ICAEW immediately of any matter which indicates the firm has, or may in the future, cease to comply with the Probate Regulations; and
- this firm has professional indemnity insurance in place as required by the PII and Probate Regulations.
- this firm will comply with the Practice Assurance Regulations as if it were a member firm

If this application is approved, I confirm that:

- this firm will comply with the Probate Regulations at all times;
- this firm will deal with ICAEW in an open and cooperative manner and will inform ICAEW promptly of anything concerning the firm as required by the Probate Regulations
- this firm will inform all principals, employees and shareholders of the duties contained in sections 90 and 176 of the Act;
- this firm acknowledges that ICAEW may make enquiries of, or about the firm, as it deems necessary;
- the firm acknowledges that ICAEW may publish, in such manner as it may determine, any information about the firm’s status under the regulations;
- the firm acknowledges that ICAEW may disclose information about it to other bodies as set out in Probate Regulation 2.26.
- the firm will establish and maintain internal processes for handling complaints about probate work, and will deal cooperatively with the Legal Ombudsman and comply with his office’s decisions as necessary;
- none of ICAEW, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the firm in damages for any act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the Probate Regulations or the monitoring of compliance with the Probate Regulations in any respect, unless the act or omission is shown to have been in bad faith. and
- this firm will not accept probate work or hold itself out to be an accredited probate firm unless I have received confirmation in writing that this application has been successful.

Signature of sole practitioner or probate contact partner with overall responsibility for making sure the firm complies with the Probate Regulations and who has provided the above confirmations. In the case of a licensed firm, the probate contact partner will be the Head of Legal Practice.

Name in block capitals

Date

□□ □□ □□□□

I have attached a total of additional sheets. Application and registration fee (if applicable)

If this application is being made as a result of a merger of existing accredited probate firms, or an incorporation of an existing accredited probate firm, and all fees have already been paid, the balance will be transferred to the new firm's account once accreditation has been approved.

Firms that are not the result of a merger or incorporation of existing accredited firms need to enclose a cheque for the relevant fee.

I enclose a cheque for £ . (payable to Chartac) as payment for the application fee. Please see fee scale at icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

I enclose a cheque for £ . (payable to Chartac) as payment for this year's registration fee. Please see fee scale at icaew.com/probate; click on 'Application forms and fees' in the left-hand menu.

You must send the applicable application fee and registration fees with this application form. The fees are calculated by reference to the number of principals, authorised individuals and offices as described in the fee scale. Your firm will receive a receipted invoice for these fees if the firm is accepted as eligible to be an accredited probate firm. If the application is not successful, we will refund the fees.

29 Completion checklist

Before you return the completed application form, please:

• make sure you have completed all questions;	<input type="checkbox"/>
• enclose a cheque for the registration fee;	<input type="checkbox"/>
• enclose a copy of the firm's PII policy schedule and your insurer's details;	<input type="checkbox"/>
• include any additional sheets with the form;	<input type="checkbox"/>
•	
• sign and date the form;	<input type="checkbox"/>
• keep a copy of this form for your records; and	<input type="checkbox"/>
• send it to the address below.	<input type="checkbox"/>

We will send you an acknowledgement when we receive your application.

Please send this form to:

Regulatory Support, ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK



Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected. For more information about our data protection policy, please go to icaew.com/dataprotection.

DRAFT PROBATE APPLICATION FORM



APPLICATION TO APPOINT: AUTHORISED INDIVIDUAL HEAD OF LEGAL PRACTICE; OR HEAD OF FINANCE AND ADMINISTRATION

Introduction

This form is for accredited probate firms that seek to appoint a new authorised individual. An authorised individual is an individual who is authorised to conduct, or control the undertaking of, probate work on behalf of an accredited probate firm.

The form is also for licensed firms seeking to appoint a Head of Legal Practice (HoLP) or a Head of Finance and Administration (HoFA).

An application is needed even if the individual was previously approved as an authorised individual in another accredited probate firm, or if the individual was previously appointed as HoLP or HoFA in a firm licensed to carry on reserved legal activities under the Legal Services Act 2007 (the Act).

An accredited probate firm is either:

- an **authorised firm**: all principals* (ie, directors, partners or members of a LLP) and shareholders need to be individually authorised to conduct probate work; or
- a **licensed firm**: not all principals or shareholders of the firm are authorised, although at least one principal must be.

* If you are applying to become an authorised firm and if a principal of your firm is a corporate body please telephone ICAEW for further information

An accredited probate firm must appoint a contact partner. If that accredited probate firm is a licensed firm, this will be the HoLP. A licensed firm must also appoint a HoFA.

The duties and responsibilities of an authorised individual, a HoLP or a HoFA are set out in the Probate Regulations.

Before an individual can act as an authorised individual, HoLP or HoFA, they must apply to ICAEW. The individual may not act as an authorised individual, HoLP or HoFA until the firm has received formal notification from ICAEW that their application has been approved.

Please note that if this application is for authorised individual status, you must include a Disclosure and Barring Service check (see www.gov.uk/disclosure-barring-service) which was made within 6 months of the date of the application. If the application is for HoLP or HoFA we will undertake such checks.

How to complete this application form

The firm's contact partner (who will be the HoLP in a licensed firm)	<p>should complete sections 1 – 4 on the firm's behalf and sign section 9.</p> <p>If a firm is applying to become accredited for probate for the first time, the individual who is proposed to act as the contact partner or HoLP should complete these sections.</p>
The individual to be appointed	should complete sections 5 – 8 and sign section 10

Where necessary, we give guidance before the section. Please read this before you complete the question.

Please complete the application form in BLOCK CAPITALS. If you need more space for an answer, please attach additional sheets.

If you have any questions as you fill in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

1 Firm details

Firm name	
Firm number	C00

2 Individual to be appointed

Authorised individuals (AIs): the individuals who can undertake, or control the undertaking of, probate work on the firm's behalf. Only principals and employees can be AIs, not consultants or sub-contractors.

Head of Finance and Administration (HoFA): The individual appointed by a licensed firm and who is responsible for taking all reasonable steps to ensure that the firm complies with the requirements in regulation 3.8 (clients' assets) and who is not disqualified under the Legal Services Act 2007 from acting as a HoFA and who must report any breach of those requirements to ICAEW as soon as reasonably practicable. **Head of Legal Practice (HoLP):** the authorised individual appointed by a licensed firm who is responsible for taking all reasonable steps to ensure that:

- The licensed firm and its principals and employees comply with their duties under these regulations (other than regulation 3.8); and
- Non-authorized persons do not do anything which causes or substantially contributes to any breach of these regulations by the firm or by any authorised person who is a principal or employee of the firm;

and who is not disqualified under the Legal Services Act 2007 from acting as a HoLP and who must report any breach of those requirements to ICAEW as soon as reasonably practicable

HoFA and HoLP (definition needed?)

In relation to licensed firms, the Act requires the HoLP to be an authorised individual. There is no requirement for the HoFA to be an authorised individual, although it is generally expected that they will hold an appropriate accountancy or finance qualification.

Professional Body: if the individual is a member of a professional body please give name.

Which status is this application for?	Authorised individual	<input type="checkbox"/>
	Head of Legal Practice	<input type="checkbox"/>
	Head of Finance and Administration	<input type="checkbox"/>
Name		
Name of Professional body		
Professional body member number (if known)		
Individual's email address		
Individual's address		
Address of firm's office that individual will be located at		
Date of birth		

Is this individual	a principal in the firm?	<input type="checkbox"/>		
	an employee?	<input type="checkbox"/>		
If an employee, who do they report to?				
Does this individual hold a practising certificate?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

3 Qualifications

Please give details of the probate qualification held by an applicant for designation as an authorised individual or HoLP; or the accountancy or financial qualification held for designation as a HoFA.

Qualification	
Qualification granted by	
Date qualification granted	

For applications for designation as an authorised individual or HoLP (who must also be an AI), please give details of training and/or qualifications the individual has received in wills, probate and estate administration. As a minimum, any training course should have covered the content set out in regulation 4.1 of the Probate Regulations.

Please give details of:

- Course content
- Length of course
- How the course content was assessed
- The pass mark for the assessment
- The mark that you were awarded for the assessment (**please attach your certificate confirming that you have passed the assessment**)

Please give details of the experience the individual has had in relation to wills, probate and estate administration (if any) over the last 24 months.

How many additional sheets have you attached?

4 Maintaining competence

Please tick those activities which are, or will be, used by the individual to maintain competence and keep up to date on probate legislation, regulation and related matters.				
Online/e-learning				<input type="checkbox"/>
DVD subscription				<input type="checkbox"/>
Update services				<input type="checkbox"/>
In-house courses				<input type="checkbox"/>
In-house technical discussion groups				<input type="checkbox"/>
Training consortium or another firm's in-house courses				<input type="checkbox"/>
ICAEW or district society courses				<input type="checkbox"/>
Other commercial courses				<input type="checkbox"/>
Local discussion groups				<input type="checkbox"/>
Private reading: technical papers, accountancy journals, articles, newsletters				<input type="checkbox"/>
Access to technical library				<input type="checkbox"/>
Focused discussion with more experienced colleagues				<input type="checkbox"/>
Other (please give details)				<input type="checkbox"/>
Will individual training records be maintained for the applicant?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

The individual to be appointed should complete sections 5 to 8 as appropriate.

5 Previous status (authorised individual and HoLP only)

Have you previously been approved as an authorised individual or HoLP:					Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
<p>If 'Yes', please fill in one row for every firm in which you were authorised and indicate which body regulated the firm. If you ceased to be an authorised individual and/or HoLP more than six months ago please give, on a separate sheet, a brief summary of the work you have undertaken in the intervening period (if any) and how you will ensure your probate knowledge is up to date.</p> <p>How many additional sheets have you attached? <input type="checkbox"/></p>								
Firm name	Firm number (if known)	Firm's regulatory body	Authorised individual or HoLP	Period as authorised individual or HoLP		Reason for ceasing as authorised individual or HoLP		
				From (mm/yy)	To (mm/yy)			

6 Previous status (HoFA only)

Have you previously been approved as a HoFA?					Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If 'Yes', please fill in one row for every firm in which you were the HoFA and indicate which body regulated the firm.								
Firm name	Firm number (if known)	Firm's regulatory body	Period as HoFA		Reason for ceasing as HoFA			
			From (mm/yy)	To (mm/yy)				

7 Disqualification

Have you previously been disqualified from being a principal, employee, HoLP or HoFA of a firm eligible to be licensed under the Act?					Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If 'Yes', please give details of the dates you were disqualified; the reasons for disqualification and whether you are still disqualified.								

8 Fit and proper

The Act requires individuals to be fit and proper to carry out probate work. An individual who is to be appointed as a HoLP, HoFA or authorised individual must satisfy ICAEW that they are fit and proper.

If you have any doubts about your fit and proper status, please call +44 (0)1908 546 279 for advice.

If you answer 'Yes' to any question in section 8, you will not automatically be refused approved status. The Probate Committee may, however, wish to make further enquiries before reaching a decision.

If the Probate Committee subsequently finds out about any matters which you did not disclose, this will be viewed very seriously. It could jeopardise your approved status.

If you answer 'Yes', you will need to give further details on a separate sheet.

Questions 1 – 10 apply to the individual to be appointed as an authorised individual, HoLP or HoFA.
 Questions 11 – 15 apply to the individual's current firm and any previous firms (including sole practices) in which the individual was a principal at the time any of the listed events occurred.

Applicants for authorised individual status only **do not** need to mention cautions or offences that are spent for the purposes of the Rehabilitation of Offenders Act 1974 or offences committed before the age of 17 (unless committed within the last 10 years). There is no need to mention road traffic offences that did not lead to a prison sentence.

Financial integrity and reliability				
1. Have you within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, or made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
3. If 'Yes', has this order been discharged?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Convictions or civil liabilities				
5. Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction. (Please attach additional sheet if necessary.)				
6. Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
7. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Good reputation and character				
8. Have you ever been:				
a. refused (or been the principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. refused entry to or excluded from membership of any profession or vocation?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. dismissed from any office or employment or requested to resign from any office, employment or firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
g. reprimanded, warned about future conduct, censured, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry or any other body concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
9. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Questions 11 – 15 apply to your current firm and any previous firms (including sole practices) in which you were a partner, member, director or shareholder at the time any of the listed events occurred

Financial integrity and reliability				
10. In the last 10 years did any such firm make any compromise or arrangement with its creditors, or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
11. In the last 10 years, was any such firm the subject of any insolvency proceedings?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Civil liabilities				
12. In the last five years was any such firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Good reputation and character				
13. In the last ten years, was any such firm:				
a. convicted by a court of any criminal offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. refused entry to any professional body or trade association, or decided not to continue with an application?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. made the subject of a court order at the instigation of any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

proved but no disciplinary order being made?				
14. Is any such firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
15. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

9 Signature and confirmation of the contact partner or Head of Legal Practice

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the individual's circumstances.

I confirm that the individual named in this application:

- has been proposed as an authorised individual or HoLP or HoFA by me in my capacity as the contact partner of the firm whose name is given in section 1.
- is fit and proper to be a HoLP, HoFA or authorised individual (as appropriate); and
- is not able to act as a HoLP, HoFA or authorised individual until the firm has received formal notification from ICAEW that this application has been approved.

If the application is for the appointment of an authorised individual, I confirm that the named individual:

- is competent to conduct, and control the undertaking of, probate work;
- is required by the firm to plan and control any probate work undertaken at the firm

If the application is for the appointment of a HoLP or HoFA, I confirm that the named individual:

- is competent to undertake this role;
- is of sufficient seniority to ensure that their instructions in relation to probate work are acted upon by the firm's principals and employees;
- will have the freedom to report any breach of the Probate Regulations to ICAEW.

If this application is approved, I confirm that the individual will, at all times, be required to comply with the Probate Regulations.

I understand that none of ICAEW, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the firm in damages for any act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the probate regulations or the monitoring of compliance with the probate regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of the contact partner or Head of Legal Practice	
Name in BLOCK CAPITALS	
Date	

10 Signature and confirmation of the individual to be appointed

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of my circumstances.

If this application is approved, I undertake that I will, at all times, comply with the Probate Regulations.

I understand that if I leave this firm, my status will cease. If I join another firm and intend to carry out work as a HoLP, HoFA or authorised individual, I will need to submit a fresh application.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

I acknowledge that, if applying for AI status, I must include a Disclosure and Barring Service check (see www.gov.uk/disclosure-barring-service) which was made within 6 months of the date of this application.

(I acknowledge that, if applying for HoLP or HoLA status, the ICAEW will undertake a Disclosure and Barring Service check on me.

I understand that none of ICAEW, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the firm in damages for an act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the Probate Regulations or the monitoring of compliance with the Probate Regulations in any respect, unless the act or omission is shown to have been in bad faith.

Signature of individual to be appointed	
Name in BLOCK CAPITALS	
Date	

11 Checklist

Before you return the completed application form, please check you have:	
• answered every question;	<input type="checkbox"/>
• checked that sections 9 and 10 have been signed;	<input type="checkbox"/>
• made a copy of the completed form for your records	<input type="checkbox"/>
• attached all additional sheets ; and	<input type="checkbox"/>
• included a Disclosure and Barring Service check for authorised individual status.	<input type="checkbox"/>
<p>Now return your signed and completed form with any additional sheets to:</p> <p>Regulatory Support ICAEW Metropolitan House 321 Avebury Boulevard Milton Keynes MK9 2FZ UK</p> <p>We will send you an acknowledgement as soon as we receive your application.</p>	<p>Using your personal information</p> <p>We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.</p> <p>We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.</p> <p>For more information about our data protection policy please go to icaew.com/dataprotection.</p>

DRAFT PROBATE APPLICATION FORM



APPLICATION TO APPROVE A NON-AUTHORISED OWNER OF A LICENSED FIRM

Please use this form to apply to ICAEW for approval of a person (either an entity or an individual) as a non-authorised owner (ie, partner or member of a LLP) or shareholder with a material interest in a licensed firm.

In accordance with the Legal Services Act 2007 (the Act) and the Probate Regulations, ICAEW is required to approve all 'owners' of a licensed firm who are not authorised to undertake probate work. This only applies in cases where the person (either on their own or together with their associates) holds, or intends to hold, a material interest in the firm or the parent undertaking of the firm. Such persons, together with their associates, need to be approved as 'fit to own' a material interest in a licensed firm.

A firm wishing to apply to ICAEW to become a licensed firm must be satisfied, and confirm to the ICAEW, that each non-authorised person with an interest of 10% or more (together with their associates) is fit to own.

In addition, a firm that is already licensed must seek approval in respect of any non-authorised person who, together with any associates, intends to hold a material interest in the firm.

A non-authorised owner is:

- a person who is a partner (including both salaried and equity partners);
- a member of a limited liability partnership;
- a director; or
- shareholder of a company; or

who is not individually authorised to undertake probate work.

Definition of material interest

A non-authorised owner holds a material interest in the licensed probate firm (the firm) if the person (together with any associates):

- a. holds at least 10% of the shares in the firm;
- b. is able to exercise significant influence over the firm's management by virtue of the person's shareholding in the firm;
- c. holds at least 10% of the shares in a parent undertaking (P) of the firm;
- d. is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- e. is entitled to exercise, or control the exercise of, voting power in the firm which, if it consists of voting rights, constitutes at least 10% of the voting rights in the firm;
- f. is able to exercise significant influence over the firm's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in the firm;
- g. is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- h. is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

The above are all separate types of material interests. If a person holds more than one type of material interest, or subsequently acquires a different kind of interest, each type of material interest must be approved. Definition of associate

In determining if an interest is material, the interest held by a person in a firm will consist of the total of the interest held by that person and the interest held by any of his associates. 'Associate' is defined as:

- a. the person's spouse or civil partner;

- b. the person's child or stepchild if aged under 18;
- c. the trustee of any settlement under which the person has a life interest in possession;
- d. an undertaking of which the person is a director;
- e. any employee of the person;
- f. any partner in a firm (other than the licensed firm) of which the person is a partner;
- g. if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
- h. any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in the definition of material interest above; or
- i. any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in the definition of material interest above.

If a person holds more than one type of material interest and has different associates for different types of interest, all must be listed.

Each associate, by virtue of Schedule 13 of the Act effectively becomes a non-authorised person in their own right. This form is designed to deal with their approval without the need for a separate form.

If ICAEW has approved a non-authorised person to hold a specific type of material interest and that person then acquires a different kind of material interest, this needs to be approved by making a further application. No **approval** is needed if an existing material interest is increased or decreased but, under Probate Regulation 2.71, **notification** is required.

An application is needed even if the person was previously approved as a non-authorised principal or shareholder of another licensed probate firm.

The firm may not conduct probate work until it has received formal notification from ICAEW that this application has been approved.

If the firm is already licensed and a person intends to hold a material interest in the firm, that person must be approved before the interest is acquired.

1 Please note that each individual listed in section 3 must include a Disclosure and Barring Service check which was made within 6 months of the date of this application. How to complete this application form

The Head of Legal Practice	should complete sections 2, 7 and 8 on behalf of the firm and sign section 8.
The person to be approved	should complete sections 3 to 6 and sign section 10.
Each associate of the person to be approved	should complete a copy of section 6 and sign section 10.

Where necessary, we give guidance before each section. Please read the guidance before you complete the question.

Please complete the application form in BLOCK CAPITALS.

If you need more space for an answer, please attach additional sheets.

In these notes, the 'Act' refers to the Legal Services Act 2007.

If you have any questions as you fill in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

2 Firm details

Firm name	
Firm number	C00

3 Person to be approved

Please give details in the following table of the person to be approved as a non-authorized owner of a licensed firm and their associates (if any).

In the column 'type of material interest' please enter the corresponding letter from the table on page 1 of this application form.

In the column 'associate status' please enter the corresponding letter from the table on page 2 of this application form.

The associate(s) will need to sign the confirmation at the end of this application

Name	Address	Member no.	Email address	Date of birth	Type of material interest	Associate status	% of shares held	% of voting rights held

Has any person in section 3 already been approved as a non-authorized owner or shareholder in this firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If 'Yes', please give the types of existing material interest that the applicant has in the firm. See the table on page 1 of this application form.				

If any of the persons listed in the table above are corporate entities, please set out on a separate sheet, the following details relating to the entity:

In the case of a limited company,	please provide: <ul style="list-style-type: none"> - the names and addresses of the directors - the names and addresses of the shareholders and their percentage share of the company's shareholding.
For a limited liability partnership,	please provide the names and addresses of the members and their percentage voting rights.
In all cases,	please indicate which directors, shareholders or members are ICAEW members.

4 Other licensed firms

Has the applicant (or any associate) previously been an owner in another licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If 'Yes', please fill in one row for every licensed firm in which the applicant (or any associate) was or is an owner.

Firm name	Firm number (if known)	Firm's supervisory body	Period as a principal or shareholder	
			From (mm/yy)	To (mm/yy)

5 Disqualification

The applicant to be approved must answer the following questions.

Have you (or any associate listed in section 3) previously been disqualified from being a principal, employee, Head of Legal Practice or Head of Finance and Administration in a licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has a licensing authority ever objected to you (or any associate listed in section 3) holding a material interest in a licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Has a licensing authority ever imposed conditions on you (or any associate listed in section 3) holding an interest in a licensed firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Have you (or any associate listed in section 3) ever acquired a material interest in a licensed firm that exceeds a limit specified in the licensing rules of its licensing authority?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Have you (or any associate listed in section 4) ever been disqualified as an	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

authorised person?				
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If 'Yes', please give details of the dates of the licensing authority's decision(s); the reasons for the decision(s) and whether these restriction/disqualification is still in place.

Please continue on a separate sheet if necessary.

6 Fitness to own an interest in a licensed firm

All persons listed in section 3 must answer the following questions. Please complete and submit a copy of this section for each person listed in section 3 with the name of the person at the top of the copy.

The Act requires persons with an interest in accredited probate firms to be fit to own. A person who holds a material interest in a licensed firm must satisfy ICAEW that they are fit to own.

If you have any doubts about your fit and proper status, please call +44 (0)1908 546 279 for advice.

If you answer 'Yes' to any of the questions in this section, you will not automatically be refused authorised status. However, the Probate Committee may wish to make further enquiries before reaching a decision.

If the Probate Committee subsequently finds out about any matters which you did not disclose this will be viewed very seriously.

If you answer 'Yes', you will need to give further details on a separate sheet.

There is no need to mention offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974, offences committed before the age of 17 (unless committed with the last 10 years) or road traffic offences that did not lead to a prison sentence.

Person's name.....

Questions 1 – 10 apply to the person to be approved as a non-authorised principal or shareholder.				
Financial integrity and reliability				
1. Have you, within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, or made any compromise or arrangement with your creditors or otherwise failed to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
2. Have you ever been declared bankrupt or been the subject of a bankruptcy court order in the United Kingdom or elsewhere, or has a bankruptcy petition ever been served on you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
3. If 'Yes', has this order been discharged?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
4. Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors, or made any arrangements for the payment of a composition to creditors?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Convictions or civil liabilities				
5. Have you at any time pleaded guilty to or been found guilty of any offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction and attach additional sheet if necessary.				
6. Have you ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
7. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Good reputation and character				
8. Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs of any company?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
9. Have you ever been:				
a. refused (or been a principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. investigated about allegations of misconduct or malpractice in connection with your professional activities which resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. the subject of disciplinary procedures by a professional body or employer resulting in a finding against you?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, excluded, disciplined or publicly criticised by any professional body which you belong to or have belonged to?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. refused entry to or excluded from membership of any profession or vocation?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. dismissed, or asked to resign, from any office, employment or firm?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
g. reprimanded, warned about future conduct, censured, disciplined, or publicly criticised by any regulatory body, or any officially appointed enquiry or any other body concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
h. the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
10. Are you currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Questions 11 – 15 apply to your current firm and any previous firms (including sole practices) in which you were a partner, member, director or shareholder at the time any of the events occurred.

Financial integrity and reliability				
11. In the last 10 years, did any such firm make any compromise or arrangement with its creditors, or otherwise fail to satisfy creditors in full?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
12. In the last 10 years, was any such firm the subject of any insolvency proceedings?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Civil liabilities				
13. In the last five years, was any such firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
Good reputation and character				
14. In the last 10 years, was any such firm:				

a. convicted by a court of any criminal offence?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
e. made the subject of a court order at the instigation of any professional or regulatory body?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
15. Is any such firm currently undergoing any investigation or disciplinary procedures as described above?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
16. Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>

Please give the number of 'fitness to own' forms included with this application

7 The regulatory objectives

This section should be completed by the firm's Head of Legal Practice.

The Act's regulatory objectives and professional principles are contained in section 1. (www.legislation.gov.uk/ukpga/2007/29/section/1)

Are you aware of any issues that may compromise the regulatory objectives or professional principles set out in the Act if this application is approved? For example, is the applicant to be approved subject to any other duties that may conflict with the Act's regulatory objectives?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If 'Yes', please give details of the possible issue and the steps that you have or will take to address this.

Please continue on a separate sheet if necessary.

8 Regulated persons

This section should be completed by the firm's Head of Legal Practice.

The Act requires non-authorised persons (whether principals, employees or shareholders) to comply with the duties set out in section 90 of the Act (www.legislation.gov.uk/ukpga/2007/29/section/90).

Essentially, this requires firms to ensure that non-authorised persons do not do anything which may lead the firm or any authorised individual to breach the Probate Regulations or their regulatory responsibilities under the Act.

Are you aware of any issues that may compromise the ability of the firm or any authorised individuals to comply with the Probate Regulations if this application is approved?	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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If 'Yes', please give details of the possible issue and the steps that you have or will take to address this.

Please continue on a separate sheet if necessary.

9 Signature and confirmation of the Head of Legal Practice

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the person's circumstances.

I confirm that:

- the person(s) named in section 3 as an non-authorized owner holds or intends to hold, together with any associates, a material interest in this firm;
- the person's holding of the interest in this firm will not compromise the regulatory objectives set out in section 1 of the Act;
- the person's holding of the interest will not compromise the ability of this firm's principals and employees to comply at all times with the Probate Regulations and the professional principles contained in section 1 of the Act; and
- the person, together with any associates, is otherwise fit and proper to hold a material interest in this firm.

If this application is approved, I confirm that the person will be required to comply at all times with the Probate Regulations.

I confirm that (please delete the bullet that does not apply):

- until this application and this firm's application to be licensed is approved, this firm will not conduct probate work; or
- as a licensed firm, the person(s) named in section 3 will not acquire a material interest until this application is approved.

<p>I understand that none of ICAEW, its officers, staff, members of its Council or committees, their servants or agents, can be held liable to the firm in damages for any act or omission arising out of the performance of any of their functions under the Legal Services Act 2007, or connected with the granting of authorisation or a licence, the enforcement of the Probate Regulations or the monitoring of compliance with the Probate Regulations in any respect, unless the act or omission is shown to have been in bad faith. Signature of the Head of Legal Practice</p>	
<p>Name in BLOCK CAPITALS</p>	
<p>Date</p>	

10 Signature and confirmation of the person to be approved - each person in section 3 should sign below and by doing so makes the following declarations.

I certify that, to the best of my knowledge and belief, the information in or provided with this application that is relevant to me is a true and accurate statement of my circumstances.

I acknowledge that ICAEW may make enquiries of, or about me, as it deems necessary (including carrying out verification checks of the information contained in this application).

I acknowledge that ICAEW may require me to provide documents/information in connection with my application or continued status as a non-authorised principal or shareholder and that any failure to provide this information is a criminal offence.

I acknowledge that ICAEW may disclose this information about me to other bodies as set out in Probate Regulation 2.26. If this application is approved, I undertake to comply with the Probate Regulations at all times.

I confirm that section 3 includes all my associates as defined at the beginning of this form, and I confirm that, to the best of my knowledge and belief, they are fit and proper persons.

I will not do anything that might compromise the integrity of probate work carried out by the firm.

I understand that if my interest in the firm ends, then approval as a non-authorised owner will cease. I understand that if I acquire a material interest in another accredited probate firm, or if I acquire another kind of material interest in this firm, I will need to submit a fresh application.

I understand that none of ICAEW, its officers, staff, members of its Council or committees can be held liable in damages for anything done or not done in dealing with any of the functions connected with registration under the Act or under the Probate Regulations or enforcing the terms of either or the monitoring of compliance with these regulations in any respect, unless the act or omission is shown to have been in bad faith.

Name	Signature of person	Date

11 Checklist

Before you return the completed application form, please check you have:	
• answered every question;	<input type="checkbox"/>
• checked that sections 9 and 10 have been signed;	<input type="checkbox"/>
• made a copy of the completed form for your records;	<input type="checkbox"/>
• attached all additional sheets; and	<input type="checkbox"/>
• attached separate fitness to own declarations for each associate.	<input type="checkbox"/>

<p>Now return your signed and completed form with any additional sheets to:</p> <p>Regulatory Support ICAEW Metropolitan House 321 Avebury Boulevard Milton Keynes MK9 2FZ UK</p> <p>We will send you an acknowledgement as soon as we receive your application.</p>	<p style="text-align: center;">Using your personal information</p> <p>We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.</p> <p>We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.</p> <p>For more information about our data protection policy please go to icaew.com/dataprotection.</p>
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DRAFT PROBATE APPLICATION FORM



PROBATE – APPLICATION FOR AFFILIATE STATUS

All principals (ie partners, members of an LLP or directors) in a firm accredited for probate by ICAEW must be either:

- members of ICAEW
- members of the Institute of Chartered Accountants of Scotland (ICAS);
- members of Chartered Accountants Ireland (CAI);
- members of another approved regulator under the Legal Services Act 2007 (the Act);
- accredited probate firms;
- registered auditors;
- DPB-licensed firms; or
- affiliates of ICAEW under the audit, DPB, Insolvency or Use of the description regulations.

If the applicant is not one of the above then please submit an application form for each principal who is to become a probate affiliate.

How to complete this application form

Fill in this form electronically, using the TAB key to move from one answer to the next.

The firm's contact partner (who will be the Head of Legal Practice in a licensed firm)	should complete sections 1 and 2 on the firm's behalf and sign section 8.
The person who is applying for affiliate status	should complete sections 3 and 4 and sign section 7.
The person's referees	should complete and sign section 5.

Where necessary, we give guidance before each section. Please read this before you complete the questions in each section.

Please complete the application form in BLOCK CAPITALS. If you need more space for an answer, please attach additional sheets.

If you have any questions as you are filling in the form, please call +44 (0)1908 546 279. This may avoid delays in dealing with your application.

If this application is in respect of an individual you must include a Disclosure and Barring Service check (see www.gov.uk/disclosure-barring-service) which was made within 6 months of the date of this application.

If you are a licensed firm you should consider if you also need to make an application for approval of a non-authorised owner. You should refer to that application form to decide if the applicant for affiliate status is also a non-authorised owner (ie, partner, member of a LLP, director or shareholder) with a material interest.

If this application is in respect of an individual who will be an authorised person, the Head of Legal Practice or the Head of Finance and Administration you need to complete that application form.

1 Firm details

Firm name	
Firm number	C00

2 Details of principal (or body) applying for affiliate status

ICAEW use A/			
Principal applying		Corporate body applying	
Title (eg, Mr, Mrs, Ms, Dr)		Name of firm	
Surname of principal		Firm address	
First names of principal			
Date of birth of principal			
Address			
Home phone number		Firm phone number	
Email (this will give you access to icaew.com)		Companies House registration number	
Address of firm's office at which affiliate will be located.			

Corporate applicants

Please set out on a separate sheet, the following details relating to the corporate applicant:

<ul style="list-style-type: none">In the case of a limited company,	please provide: <ul style="list-style-type: none">the names and addresses of the directorsthe names and addresses of the shareholders and their percentage share of the company's shareholding.
<ul style="list-style-type: none">For a limited liability partnership,	please provide the names and addresses of the members and their percentage voting rights.
<ul style="list-style-type: none">In all cases,	please indicate which directors, shareholders or members are ICAEW members.

3 Previous affiliate status

Has ICAEW granted affiliate status to this person or body on a previous occasion, eg, audit registration?	Select Y/N from list
If 'Yes', please give details of the firm in which they were a principal and the dates they were an affiliate.	
Name of previous firm	
Number of previous firm (if known)	C00
Affiliate number (if known)	
From	(dd/mm/yyyy)
To	(dd/mm/yyyy)

4 Fit and proper

Applicants for affiliate status are required to demonstrate that they are fit and proper.

Please answer the following questions and, if necessary, provide additional information in a covering letter or on a separate sheet. In the case of a corporate applicant, the answers should be in respect of each shareholder, director or member.

There is no need to mention offences which are spent for the purposes of the Rehabilitation of Offenders Act 1974, offences committed before the age of 17 (unless committed with the last 10 years) or road traffic offences that did not lead to a prison sentence.

Financial integrity and reliability		
1	Have you, within the last 10 years, in the United Kingdom or elsewhere, failed to satisfy any debt adjudged due and payable by you as a judgement - debtor under an order of a court in the United Kingdom or elsewhere, or made any compromise arrangement with your creditors or otherwise failed to satisfy creditors in full?	Select from list
	If 'Yes', please give details.	
2	Have you ever been declared bankrupt or been the subject of a bankruptcy order by a court in the United Kingdom or elsewhere or has a bankruptcy order petition ever been served on you?	Select from list
	If 'Yes', please give details.	
	If 'Yes', has this order been discharged?	Select from list
3	Have you ever signed a trust deed for a creditor, made an assignment for the benefit of creditors or made any arrangement for the payment of a composition to creditors?	Select from list
	If 'Yes', please give details.	
Convictions or civil liabilities		
4	Have you at any time pleaded guilty to or been found guilty of any offences?	Select from list
	If 'Yes', please give details.	
	If 'Yes', please give details of the court which convicted you, the offence, the penalty imposed and date of conviction and attach additional sheet if necessary.	
5	Have you, ever been the subject of any civil action relating to your professional or business activities which has resulted in a judgement or finding against you by a court, or a settlement (other than a settlement consisting only of the dismissal by consent of a claim against it and the payment of its costs) being agreed?	Select from list
	If 'Yes', please give details.	
6	Have you ever been disqualified by a court from being a director, or from acting in the management or conduct of the affairs, of any company?	Select from list
	If 'Yes', please give details.	
Good reputation and character		
7	Have you, in the United Kingdom or elsewhere, ever been refused (or been the principal in a firm that has been refused) the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	If 'Yes', please give details.	

8	Have you, in the United Kingdom or elsewhere, ever been the subject of an investigation into allegations of misconduct or malpractice in connection with your professional activities, which resulted in a formal complaint being proved but no disciplinary order being made?	Select from list
	If 'Yes', please give details.	
9	Have you, in the United Kingdom or elsewhere, ever been the subject of disciplinary procedures against you resulting in a finding by a professional body or employer?	Select from list
	If 'Yes', please give details.	
10	Have you, in the United Kingdom or elsewhere, ever been reprimanded, excluded, otherwise disciplined or publicly criticised by any professional body to which you belong or have belonged?	Select from list
	If 'Yes', please give details.	
11	Have you, in the United Kingdom or elsewhere, ever been refused entry to or excluded from membership of any profession or vocation?	Select from list
	If 'Yes', please give details.	
12	Have you, in the United Kingdom or elsewhere, ever been dismissed, or asked to resign, from any office, employment or firm?	Select from list
	If 'Yes', please give details.	
13	Have you, in the United Kingdom or elsewhere, ever been reprimanded, warned about future conduct censured, disciplined, or publicly criticised by, any regulatory authority, or any officially appointed enquiry, or any other body concerned with the regulation of a financial, professional or other business activity?	Select from list
	If 'Yes', please give details.	
14	Have you, in the United Kingdom or elsewhere, ever been the subject of a court order at the instigation of any regulatory body, or any officially appointed enquiry concerned with the regulation of a financial, professional or other business activity?	Select from list
	If 'Yes', please give details.	
15	Are you currently undergoing investigation or disciplinary procedures as described in 8, 9 or 10?	Select from list
	If 'Yes', please give details.	

Questions 11 – 15 apply to your current firm and any previous firms (including sole practices) in which you were a partner, member, director or shareholder at the time any of the events occurred.

Financial integrity and reliability		
16	In the last 10 years, did any such firm make any compromise or arrangement with its creditors, or otherwise fail to satisfy creditors in full?	Select from list
	If 'Yes', please give details.	
17	In the last 10 years, was any such firm the subject of any insolvency proceedings?	Select from list
	If 'Yes', please give details.	
Civil liabilities		
18	In the last five years, was any such firm the subject of any civil action relating to its professional or business activities which resulted in a judgement or finding against it by a court, or a settlement (other than a settlement consisting only of the dismissal	Select from list

by consent of a claim against it and the payment of its costs) being agreed?		
If 'Yes', please give details.		
Good reputation and character		
19	In the last 10 years, was any such firm:	
	a. convicted by a court of any criminal offence?	Select from list
	b. refused or restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
	c. refused entry to any professional body or trade association, or did it decide not to continue with an application?	Select from list
	d. reprimanded, warned about future conduct, disciplined or publicly criticised by any professional or regulatory body?	Select from list
	e. made the subject of a court order at the instigation of any professional or regulatory body?	Select from list
	f. investigated on allegations of misconduct or malpractice in connection with its professional or business activities that resulted in a formal complaint being proved but no disciplinary order being made?	Select from list
20	Is any such firm currently undergoing any investigation or disciplinary procedures as described above?	Select from list
If 'Yes', please give details.		
21	Is there any other information relevant to any of the above questions, which you wish to disclose to ICAEW? (If 'Yes', please supply details on a separate sheet).	Select from list

If 'Yes', please give details.

Questions 22-26 apply to corporate body applicants only

22	Has the corporate entity ever been the subject of an effective resolution passed by the shareholders (or, in the case of a limited liability partnership, by its members) for it to be wound up or has a winding-up order made against it on grounds of insolvency?	Select from list
If 'Yes', please give details.		
23	Has the corporate entity ever has an administration order made against it on grounds of insolvency?	Select from list
If 'Yes', please give details.		
24	Has the corporate entity ever had a receiver appointed by a creditor or by a court on the application of a creditor?	Select from list
If 'Yes', please give details.		
25	Has the corporate entity, in the United Kingdom or elsewhere, ever been refused the right or been restricted in the right to carry on any trade, business or profession for which a specific licence, registration or other authority is required?	Select from list
If 'Yes', please give details.		
26	Is the corporate entity currently undergoing investigation or disciplinary procedure as described in 8, 9 or 10?	Select from list
If 'Yes', please give details.		

5 Declaration by two chartered accountants

This declaration should be signed by the two most senior chartered accountant principals in the firm.

If there are only two principals in an applicant's firm, of whom one is the applicant, the chartered accountant principal and a member of ICAEW who is **not** an employee of the firm should sign the declaration and confirmation.

If the applicant is a corporate body, two independent chartered accountants will need to sign the declaration below rather than a principal within the company.

First referee

I confirm that, in my opinion, the applicant is a fit and proper person to be granted probate affiliate status with ICAEW.	
Name	
Firm name	
Member body	Select from list
Membership number	
Date of qualification (dd/mm/yyyy)	
I have known the applicant for	years
Signature	
Date	

Second referee

I confirm that, in my opinion, the applicant is a fit and proper person to be granted probate affiliate status with ICAEW.	
Name	
Firm name	
Member body	Select from list
Membership number	
Date of qualification (dd/mm/yyyy)	
I have known the applicant for	years
Signature	
Date	

6 Affiliate fees

This year's affiliate fee scale can be found at icaew.com/affiliates and you must pay your affiliate fee when you submit your application. We are unable to process applications without the appropriate fee. We will send you a receipted invoice for the first annual fee once your application has been approved. If your application is not successful, we will refund the affiliate fee.

7 Signature and confirmations of the applicant for affiliate status

I hereby apply to the council to be accepted as an affiliate of ICAEW under ICAEW's Probate Regulations.

I certify that the details provided in this application are correct.

I know of no reason why there should be any doubts regarding my being a fit and proper person to be an affiliate of ICAEW.

I undertake, if accepted as an affiliate, to comply with the Royal Charter, bye-laws and regulations which, at the time of acceptance and thereafter, are in force.

In particular, I will:

- observe and uphold the ethical and professional standards of ICAEW;
- perform faithfully and promptly any service that I am retained or employed to undertake in my professional capacity;

- provide promptly and willingly all such information and assistance as I am able, if asked to do so by ICAEW in pursuance of its duties; and
- pay the appropriate annual affiliate fee when due.

I understand that I shall not be entitled to call myself a chartered accountant and that affiliate status does not confer any rights, acknowledgements, status or designatory letters on an affiliate or entitle an affiliate to be publicly represented as having such.

I acknowledge that, if accepted as an affiliate, I shall be subject to the disciplinary processes of ICAEW for any failure to comply with its bye-laws or regulations, or the undertakings in this application.

Signature _____

Print full name of applicant _____

Date _____

8 Signature and confirmations of the firm's contact partner or Head of Legal Practice (HoLP)

I certify that, to the best of my knowledge and belief, the information in or provided with this application is a true and accurate statement of the firm's and the individual's circumstances.

Signature _____

Print full name of the firm's contact partner or HoLP _____

Date _____

9 Additional notes

The Royal Charter, bye-laws, Probate Regulations and Guidance and Code of Ethics are published at icaew.com/regulations. The probate contact partner or HoLP in your firm should keep a copy of the Probate Regulations and Guidance.

10 Submit your form

Save your completed form to your computer. Print a copy, sign it and send your application, together with a cheque payable to CHARTAC, to:

Regulatory Support
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ UK



Using your personal information

We will treat any personal information collected on this form in accordance with data protection legislation. We will use your information for administration, communication and research, so we will sometimes share it with our business partners. We will also use your information to carry out our responsibilities as a regulator and as a professional body. To do this, we will share your information with other organisations as required by law.

We may transfer your information outside the European Economic Area (EEA) eg, to one of our offices. These countries may not have similar data protection laws to the EEA, so if we do transfer your information we will take the necessary steps to ensure that your privacy rights are still protected.

For more information about our data protection policy, please go to icaew.com/dataprotection



APPENDIX P

GUIDANCE ON SENTENCING

DRAFT

icaew.com/publichearings

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1 Who is this guidance for?

This guidance is for members of:

- | | |
|-----------------------|--|
| Conduct committees | <ul style="list-style-type: none">• The Investigation Committee (IC)• The Disciplinary Committee (DC) works in tribunals, this guidance applies when a complaint is found proved either in whole or in part• The Appeal Committee (AC) works in panels; this guidance applies when a panel makes its own decision on a sentencing order. |
| Regulatory Committees | <ul style="list-style-type: none">• The Audit Registration Committee (ARC)• The Investment Business Committee (IBC) and• The Insolvency Licensing Committee (ILC).• The Probate Committee (PC) |

It explains the key decisions in the sentencing process and sets out, step-by-step, the approach these ICAEW committees must take whenever they make a sentencing order against a member, firm, affiliate or provisional member.

2 Purpose

This guidance provides a structured approach for committee members who make decisions on sentencing. ICAEW wants committee members to make their decisions and orders through a fair and reasoned process. It also wants the approach to sentencing and the sentences imposed to be consistent and proportionate. Members who are the subject of complaints and those who represent them can see the range of penalties and orders likely to be imposed and know that the same approach will be used in each case.

The penalties available to the IC, DC and AC are set out in Disciplinary Bye-laws 16, 22, and 23 but the IC and regulatory committees do not have a full range of powers. In particular, the IC cannot exclude members from membership and the regulatory committees can only impose financial penalties.

Although this guidance is used by all committees that can impose penalties, it has been written as if it is directed to tribunals of the DC, members and defendants.

3 Sentencing policy

When a tribunal considers:

- whether to impose a penalty; and
- what penalty to impose

it should consider a number of factors, in particular the principles which underpin sentencing policy.

ICAEW's sentencing policy is closely linked to its general objectives to:

- uphold the good name of the profession, ICAEW and the title 'chartered accountant'; and
- maintain, in the public interest, the high standards required of members of the profession.

The key principles which apply to sentencing relate to:

- maintaining the reputation of the profession;
- correcting and deterring misconduct;
- upholding the proper standards of conduct in the profession; and
- protecting the public.

3.1 Maintaining the reputation of the profession

In the case of *Bolton-v the Law Society (1994)*, Lord Bingham, emphasised that maintenance of the reputation of the profession was the primary justification for sanction and said:

‘To maintain this reputation and sustain public confidence in the integrity of the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission.....Otherwise, the whole profession and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires...’

He concluded:

‘The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.’

3.2 Correction, deterrence and upholding the proper standards of conduct in the profession

ICAEW demonstrates its commitment to high standards and to maintaining those standards through the disciplinary process and by publishing details of the orders made. Although punishment is not, in itself, a purpose, a punishment **can** act as a deterrent. Not only must the individual be deterred by the imposition of a disciplinary order, but other people must see that a particular wrong-doing will not be tolerated. In *Chohan v the Law Society* (2004), Lord Justice Morris stated that, in some circumstances it would be appropriate to use a sanction to send out a message. In this context, the sentencing order is more about deterrence than punishment.

3.3 Protecting the public

When a tribunal acts to protect the public, it should consider both members’ clients and the wider public who may be at risk. In cases where the competence of the member is also an issue, when the tribunal considers sentence, it needs to consider whether the public can be properly protected.

4 The process of determining a sentencing order

When a tribunal decides that a complaint has been proved or when a defendant admits a complaint, the tribunal must then decide what to include in its sentencing order. This list summarises the sequence of events.

The IC representative:

- outlines the relevant facts (when a defendant admits a complaint).
- tells the tribunal about any previous disciplinary record.
- makes an application for costs to be paid by the defendant.

The defendant or their representative explains any mitigating factors, relating to the facts of the complaint and to personal circumstances.

The tribunal

- considers any request that the defendant’s name is not included in publicity.
- leaves the room and considers its decision in private.

4.1 Key decisions in the sentencing process

When the tribunal decides what to include in its sentencing order, it is entitled to form its view based on the particular facts of each case. This guidance provides a step-by-step approach to help the tribunal reach a decision which is consistent, proportionate and fair.

If a tribunal decides a penalty (for example, a fine, exclusion or reprimand) is necessary, it identifies the relevant category of complaint (from those listed on pages 12-29) and the behaviour that most closely corresponds to the complaint. Although the list of complaints and behaviour is not exhaustive, we do add new details whenever they are identified.

For each type of complaint, there is a suggested starting point. The starting point is not ‘the going rate’ for that particular complaint. It simply indicates where a tribunal might start when it looks at all the factors relevant to deciding the penalty. Once the tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding, if appropriate, to reduce or increase the penalty. For each category of complaint, there are examples of mitigating and aggravating factors.

The tribunal works through the steps outlined in the tables and may decide on a more or less severe penalty than the one given as a starting point.

This structured approach is designed to help tribunals arrive at a penalty which is demonstrably proportionate to the facts of the case. The penalty should fit the underlying facts of the complaint and it should be possible to explain the rationale for choosing it. The written record of decision (which we provide to the member and make public) sets out the tribunal's reasons.

The tribunal considers the following key points in its decision-making process.

The nature and seriousness of the conduct	Where the defendant's conduct sits on the scale of seriousness
The range of penalties available	These are set out in DBL22 (page 35) and in the table of disciplinary orders on page 37.
ICAEW's obligation to protect the public	
The need to decide on a penalty that is demonstrably proportionate and which takes into account both the interests of the public and those of the member	
Any facts which aggravate or mitigate the seriousness of the conduct	For example, whether it was deliberate and/or repeated over a period of time; whether a client or a group of clients was adversely affected by the conduct; whether the conduct was inadvertent; and whether it led to adverse consequences.
Whether another regulatory body has taken disciplinary proceedings	If it has, a tribunal must fully take into account any penalties that may have been imposed and any other consequences that may have resulted. This will not prevent a tribunal from making a further order but it must be satisfied that, in all the circumstances, it is appropriate and just for it to do so.
Whether there is a previous disciplinary record and whether any past disciplinary record is relevant	The previous misconduct may have happened so long ago or may have been unrelated to the defendant's professional work and should either be discounted or given little weight by the tribunal
Any mitigating factors which are personal to the defendant	Did they report the conduct or events in question to ICAEW? Any corrective action taken by the defendant; prompt admission; expression of regret and the likely impact of any proposed penalty on a member/firm. A tribunal may consider any information about a member's personal circumstances which it believes may have a bearing on the level of penalty to be imposed. All defendants are advised to bring details of their financial means to the hearing. Mitigating factors may include events which have affected a member's ability to work, such as ill health or family tragedy.

These key tribunal questions are summarised on page 11 to help tribunals arrive at their *sentencing order*.

5 The sentencing order

The penalty (for example, a fine, reprimand or exclusion) is only one part of the sentencing order. Once the tribunal has decided on the penalty, it considers a number of ancillary orders which it may include in its sentencing order. Ancillary orders are explained in more detail in paragraphs 5.1-5.7 below.

5.1 A requirement to take advice

In appropriate cases (for example poor work, or failure to deal with a client's affairs in good time), a tribunal may consider making an order that the defendant member seek advice from a specified source, at their own cost, and implement the advice obtained.

5.2 A waiver or return of fees

A tribunal may also consider making an order that fees charged by a defendant be waived, or that fees already paid be returned.

5.3 The repayment of commission

A tribunal may also consider making an order that the member or firm pay to the complainant or client, a sum related to any commission the defendant has received or will receive. Such an order is likely to be appropriate in cases where the member or firm has been paid commission by agencies for work referred to them or for investment business advice or services that have been provided.

5.4 The complainant's expenses

If a complainant has given notice that they want to recover expenses, the tribunal may consider the request if it finds the complaint proven. However, a complainant may only recover those expenses incurred in either making the complaint in the first place, or in making representations to be considered by the IC. The maximum amount a tribunal can order a defendant to pay is £1,000. It is unlikely that a complainant will actually have incurred expenses in order to make a complaint.

5.5 Publicity

Members may ask that their name be not included in the published record of decision. Page 34 gives detailed guidance on the circumstances in which a tribunal might be prepared to make such an order.

5.6 Costs

Tribunals have the power to order that the costs incurred in investigating and considering a complaint be paid by a member or firm. The requirement to pay such costs is based on the principle that the majority of ICAEW members should not subsidise the minority who, through their own failings, find themselves within the disciplinary process. A summary of the costs incurred is sent to a member before the hearing and the covering letter explains that, if the complaint is found proven, an application will be made to the tribunal for an order for the costs to be paid. Orders for costs to be paid by a member or firm must reflect the costs reasonably incurred and must never be imposed as a penalty. The tribunal will only consider the costs element after it has reached its decision on the appropriate penalty for the complaint.

Members should always come to a hearing with some documentary proof of their financial circumstances. If members do not provide proof of financial means, a tribunal will assume that they are able to meet any financial penalty and/or costs that it orders. A tribunal may, in any case (including where the order is for exclusion), specify a time scale for paying fines and costs, but this will normally be limited to a maximum of one year.

5.7 Costs against ICAEW

Tribunals also have power to require ICAEW to contribute a specified sum towards a defendant's costs if there is a finding of 'not proved' or 'proved in part only'. This power must be exercised in accordance with the DC regulations. Unlike litigation (where an award of costs normally follows the event), a finding of 'not proved in whole or part' will not automatically trigger an award of costs.

When it decides whether to make an award of costs, a tribunal will consider all the relevant facts including the conduct of ICAEW and the defendant throughout the proceedings including the investigation. The case law relating to costs against a regulator is consistent with this approach. The Court of Appeal has agreed that normal costs rules do not apply and, unless there is dishonesty or lack of good faith, a costs order should not be made against a regulator unless there is good reason to do so.

This guidance is available at icaew.com/publichearings and we are happy to provide a hard copy to members, member firms and their representatives on request. We review the guidance each year, in the light of experience and developments. The chairmen of the IC, DC, and AC agree revisions.

This guidance first became effective on 1 March 2000. It was revised and re-issued in full on 1 October 2002, 16 February 2004, 1 January 2005, 2 May 2006, 7 September 2007, 4 February 2010, 10 February 2011 and 1 March 2012. It applies to all complaints considered after 20 September 2007 unless powers of penalty have been limited (see page 35).

6 Glossary

Affiliate	A person who is not a member but who has been granted affiliate status under clause 12A of the Supplemental Charter of 21 December 1948; or granted audit affiliate status in accordance with the Audit Regulations 2008; or insolvency affiliate status in accordance with the Insolvency Licensing Regulations 2004
Aggravating factors	Any matter which, in the opinion of the tribunal, justifies increasing the suggested level of penalty
Appeal Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Consent Order	The sentencing order made by the IC with a member's agreement where liability is admitted
Disciplinary action	An adverse finding, plus a penalty and other order
Disciplinary Bye-laws	ICAEW's Disciplinary Bye-laws
Disciplinary Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Disciplinary record	In relation to any person or body, comprises all orders, findings, fines and penalties to which he has at any time been subject, being orders, findings, fines or penalties of any description prescribed for the purposes of this definition by regulations
Investigation Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Mitigating factors	Any matter which, in the opinion of the tribunal, justifies reducing the suggested level of penalty
Panel	Appointed under Disciplinary Bye-law 27(1) to hear an appeal
Penalty	An order made in accordance with Disciplinary Bye-law 22
Provisional members	<p>A person:</p> <ul style="list-style-type: none">• who is training under a training contract; or• who has trained under such contract and is eligible either to sit for ICAEW's professional examinations; or, having successfully sat those examinations, to apply for membership <p>For the purposes of this definition only, an order under bye-law 22(7)(d) of the Disciplinary Bye-laws (concerning eligibility to sit examinations) shall be disregarded.</p>
Regulatory committee	Either the Audit Registration Committee, Insolvency Licensing Committee, or Investment Business Committee or the Probate Committee

Regulatory penalty	A fine ordered by the Audit Registration Committee, Insolvency Licensing Committee or Investment Business Committee or Probate Committee for breach of regulation by an authorised or licensed firm, or licensed insolvency practitioner
Regulated firm	A DPB licensed firm or a registered auditor or an accredited probate firm
Sentencing order	The order made by the IC (by a consent order) or a DC tribunal comprising, as appropriate, any or all of the matters set out in Disciplinary Bye-laws 22, 23, 24A (expenses), 33 (costs), or 35 (publicity)
Starting point	An indication of where a tribunal will start when it considers its decision on penalty
Tribunal	Appointed under Disciplinary Bye-law 19(1) to hear a formal complaint
Unpublicised caution	On order made by the IC in accordance with Disciplinary Bye-law 16A

7 Categories of complaint

7.1 Tribunal questions

The tribunal will use the following questions to help it make a decision on a sentencing order.

- Which category and type of behaviour corresponds to the complaint (see category index below)?
- Where does the behaviour fall on the scale of seriousness?
- What are the penalties available?
- Are there factors that aggravate or mitigate the seriousness of the behaviour?
- The tribunal will then form a preliminary view on the appropriate penalty and consider any factors personal to the defendant that should alter the penalty. It will look at the totality of the complaint, what is the member or firm's status (member employed, a firm, a sole practitioner etc). Does the member or firm have a low, medium or high turnover? Has the member or firm produced evidence of financial circumstances?
- Are there any orders in addition to penalty to be dealt with (obtain advice, waiver or return of fees, publicity, costs)?

7.2 Categories of complaint and types of behaviour

Pages 12-29 set out the starting points for determining an appropriate penalty if the case involves any of the following complaints or types of behaviour.

Acts of dishonesty/criminal convictions	12
Audit	15
Breach of bye-laws and/or regulations	17
Clients' money offences	18
Ethical	19
Failure to comply	20
Failure to cooperate	21
Financial mismanagement	22
General accountancy failings	23
Insolvency	24
Investment business/licensed firms under DPB arrangement	26
Misconduct as a company director	28
Misconduct as trustee and other positions of trust	29

[Probate](#)

8 Acts of dishonesty/criminal convictions/adverse findings by regulatory/other bodies

There is separate guidance on page 13 for convictions if behaviour occurred outside a professional context or if another regulatory body has made an adverse finding.

The tribunal works through the questions on page 11 to make its decision on a sentencing order.

Complaint

Starting point

Cases dealt with by the court

- | | |
|---|---|
| a Act(s) of dishonesty/breach of trust/money laundering | a Exclusion# (except where followed by absolute discharge) |
| b An offence other than a followed by a prison sentence (suspended or not) or community penalty | b Exclusion# |
| c An offence other than a or b committed in a professional capacity even though not followed by a prison sentence or community penalty | c Exclusion# |
| d An offence other than a , b or c not committed in a professional capacity or followed by a prison sentence or community penalty | d Reprimand. If conduct occurs outside professional work, see separate guidance on approach to sentencing. |

Adverse findings by regulatory body

- | | |
|---|--------------------|
| a Adverse findings by other regulatory bodies where the underlying conduct involves dishonesty | e Exclusion |
| b adverse finding by regulatory body not covered by other categories of complaint | |

Where exclusion is the start point and in the previous proceedings the member has been fined or a Proceeds of Crime Act order has been made, an additional financial penalty will not be appropriate. Please see guidance on page 33.

+ Aggravating factors

Very serious dishonesty; eg, systematic over long periods of time, for own gain
Fraud
Amount involved
Defendant in a position of trust; eg, as employee
Direct involvement in dishonesty, planned and calculated

- Mitigating factors

Offence not committed in a professional capacity
Admission of guilt; insight into wrong doing;
cooperation with prosecution authorities; restitution to victim.

The starting point is not a tariff

8.1 Criminal convictions where the behaviour occurs outside professional work

Conduct — not in a professional context but in a member's private life — which results in a conviction, presents issues which require a particular approach to sentencing.

When dealing with such cases, the tribunal will be aware that the defendant member has been dealt with for the offence and the criminal court has imposed its sentence. The severity of the sentence imposed by the court will not, however, be the only factor relevant to seriousness. Conversely a lenient sentence will not necessarily lead the tribunal to view the matter less severely. On the contrary, it may well have been contemplated by the court that the member was bound to be dealt with by his or her professional body at a later date. The tribunal has to deal with the complaint because the member is in breach of the Disciplinary Bye-laws. The role of the tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a chartered accountant; the need to protect the public and the good reputation of the profession against the need to impose further penalty and its consequential impact on the ability of the member to practise his or her profession.

When considering its decision on whether to impose a penalty and, if so, what, the tribunal will take into account the following questions.

- Does the offence and conviction affect the member's professional work or ability to practise as a chartered accountant in the future?
- Are future clients likely to be at risk of harm?
- Is the member's judgement sound?
- Has the member's type of work previously played a part in the conduct which led to the conviction?
- Does the public need to be protected from this member?
- Does the offence and conviction of the member diminish the good standing and reputation of ICAEW and the profession?
- Does the offence and the conviction give rise to a real probability that, if the member remains a chartered accountant, public confidence in the profession's ability and integrity to regulate itself will be undermined? If not, will an alternative, lesser penalty be appropriate?

8.2 The nature of the offence; for what offence has the member been convicted?

- theft
- offence against the person
- criminal damage
- sexual
- road traffic
- miscellaneous:
 - affray
 - possession/supply of drugs
 - firearms (possession of)
 - perverting the course of justice.

8.3 The gravity of the offence

- How serious?
- Is it gross?
- Is it shocking?
- Does it cause offence?

8.4 The circumstances surrounding the offence

- Was it planned?
- Was it committed over an extended period of time, repeated?
- Was there a victim?
- Was the victim vulnerable?
 - a child
 - sick
- Has the victim suffered; are there any short-term or lasting consequences?
- What was the member's initial response to the offence at the time?
- What was the member's response to the prosecution for the offence?
- What sentence was imposed by the criminal court?
- Were there any particular aggravating factors before the court before sentencing?
- Is there a history of offending and a likelihood of further offences?
- In the light of all the circumstances, what is the proportional, appropriate penalty?

A financial penalty will rarely be appropriate, particularly if the court has imposed a fine. Similarly, if action has been taken under the Proceeds of Crime Act for recovery and confiscation, this should be taken into account when deciding whether to impose a fine as part of the sentencing order. The tribunal's discretion in relation to costs applies as in any other case.

9 Audit

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a Acting as auditor when not registered
- b Audit work of a seriously defective nature
- c Lesser forms of bad audit work
- d Failure to prevent firm taking audit appointment - when firm not registered
- e Audit reports signed by a non-RI
- e¹ Deliberate/knowning not authorised or reckless
- e² Uncertain/signs without making proper enquiries
- e³ Some technical irregularity
- f Wrong, unqualified auditor's report:
- f¹ Serious/defective audit work

- f² Less serious defective audit work
- g Annual return incorrect/mis-statement

Individual

- g¹ Deliberate
- g² Reckless/serious negligence
- g³ Inadvertent

Firm

- g¹ Deliberate
- g² Reckless/serious negligence
- g³ Inadvertent

Starting point

- a Exclusion plus a fine of £10,000(if it is sole practitioner or responsible individual (RI))
- b **Firm**
Severe reprimand and a fine equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed. RI/second review partner
Exclusion and a fine of £5,000-£10,000
- c **Firm**
Reprimand and a fine equal to half audit fee. RI/second review partner.
Reprimand and a fine of £2,500-£5,500.
- d Severe reprimand and 1.5 x audit fee or £5,500
- e
- e¹ Severe reprimand and fine of £5,500 or 1.5 x the audit fee
- e² Reprimand and fine of £3,000 or fine equal to half the audit fee
- e³ Reprimand and fine of £2,000
- f
- f¹ Severe reprimand and a fine equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed.
- f² Reprimand and half the audit fee
- g **Individual**
g¹ Exclusion
g² Severe reprimand and a fine of £3,000.
g³ Reprimand and a fine of £1,500.
Firm
g¹ Severe reprimand and a fine of £10,500.
g² Severe reprimand and a fine of £5,500.
g³ Reprimand and a fine of £3,000.

<p>h Refusing/failing to cooperate with or accept a QAD visit</p> <p>i Failure to comply with restrictions/conditions</p> <p>Individual</p> <p>i¹ deliberate</p> <p>i² reckless/serious negligence</p> <p>i³ inadvertent</p> <p>Firm</p> <p>i¹ deliberate</p> <p>i² reckless/serious negligence</p> <p>i³ inadvertent</p> <p>j Breach of undertaking</p> <p>Individual</p> <p>j¹ deliberate</p> <p>j² reckless/serious negligence</p> <p>j³ inadvertent</p> <p>Firm</p> <p>j¹ deliberate</p> <p>j² reckless/serious negligence</p> <p>j³ inadvertent</p> <p>k Breach of eligibility requirements</p>	<p>h Severe reprimand and a fine of £5,500 (£5,500 to be used as a multiplier for each partner in the firm)</p> <p>Individual</p> <p>i¹ Exclusion</p> <p>i² Severe reprimand and a fine of £5,500</p> <p>i³ Reprimand and a fine of £3,000</p> <p>Firm</p> <p>i¹ Severe reprimand and a fine of £10,500</p> <p>i² Severe reprimand and a fine of £5,500</p> <p>i³ Reprimand and a fine of £3,000</p> <p>Individual</p> <p>j¹ Exclusion</p> <p>j² Severe reprimand and a fine of £5,500</p> <p>j³ Reprimand and a fine of £3,000</p> <p>Firm</p> <p>j¹ Severe reprimand and a fine of £10,500</p> <p>i² Severe reprimand and a fine of £5,500</p> <p>j³ Reprimand and a fine of £3,000</p> <p>k Firm</p> <p>Reprimand and a fine based on fees saved by failure to comply x by number of years.</p>
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Lack of audit independence, **see Ethical**

+ Aggravating factors

Audit of plc
Multiple accounts audited over extensive period of time
Intention to mislead
Whether anyone lost money
Failure to follow recommendations after a QAD inspection

Refusal or failure to cooperate with the QAD and the Audit Registration Committee is likely to lead to regulatory action including withdrawal of audit registration.

- Mitigating factors

Inadvertent/breach of requirements which has no consequences
Steps taken to put matters right
Subsequent audits found to comply with the requirements

The starting point is not a tariff

10 Breach of bye-laws and/or regulations

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point	
a	Engaging in public practice without a practising certificate	a	
a¹	Deliberate or reckless	a¹	Exclusion* and a fine of £5,000
a²	Inadvertent	a²	Severe reprimand and a fine of £2,000
b	Failure to hold PII	b	Exclusion and a fine of £5,000
b¹	Deliberate or reckless	b¹	Exclusion and a fine of £5,000
b²	Inadvertent	b²	Severe reprimand and a fine of £2,000
c	Failure to declare CPD	c	Reprimand and a fine of £750 each year (up to a maximum of 4 years)
d	Breach of the Money Laundering Regulations (not falling under category for dishonesty or criminal convictions; nb, the regulations are not made under the DBLs)	d	
d¹	Failure to report	d¹	Severe reprimand and a fine of £5,000
d²	Tipping off	d²	Severe reprimand and a fine of £5,000
d³	Failure to follow procedures, eg, maintain records	d³	Severe reprimand and a fine of £5,000
e	Practice Assurance	e	
e¹	Failure to cooperate with arranging or following a PA visit	e¹	Severe reprimand and a fine of £5,000 Consider withdrawal of practising certificate
e²	Failure to complete annual return	e²	Reprimand and a fine of £2,850
e³	Errors in annual return	e³	Reprimand and a fine of £1,150
e⁴	Failure to comply with undertaking made to PAC	e⁴	Reprimand and a fine of £1,500
e⁵	Failure to advise ICAEW of changes to a practice	e⁵	Reprimand and a fine of £1,000
e⁶	Failure to comply with DBL11, firm to deal with complaints	e⁶	Reprimand and a fine of £1,000
e⁷	Breach of Provision of Services Regulations 2009 (eg, failure to provide P11 details to client)	e⁷	Reprimand and a fine of £1,000

+ Aggravating factors

Extensive practice (repeated and on numerous occasions)
Over significant period of time
Continued offence after became aware
Wilful failure

* See guidance on [page 33](#).

- Mitigating factors

Minimal work carried out, no fees charged/very short period of time
Relied on another to ensure in place
Steps taken after became aware, retroactive cover obtained

The starting point is not a tariff

11 Clients' money offences

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Money held in firm account which was in credit or not held in designated client account:	a
a¹ Small sums for short period	a¹ Reprimand and a fine of £1,150
a² Small sums for long periods or repeated holding of small sums or large sum held for a short period	a² Reprimand and a fine of £1,750
a³ Large sum for long period	a³ Reprimand and a fine of £5,750
a⁴ Very large sum for short period	a⁴ Severe reprimand and a fine of £8,250
a⁵ Very large sum for long period	a⁵ Severe reprimand and a fine of £11,500
b Client money held in overdrawn firm account:	b
b¹ Small sums for short period	b¹ Severe reprimand and a fine of £2,300
b² Small sums for long periods or repeated holding of small sums or large sum for a short period	b² Severe reprimand and a fine of £3,450
b³ Large sum for long period	b³ Severe reprimand and a fine of £11,500
b⁴ Very large sum for a short period	b⁴ Severe reprimand and a fine of £17,250
b⁵ Very large sum for long period	b⁵ Severe reprimand and a fine of £23,000

+ Aggravating factors

Large numbers of clients involved
Failure to deal promptly with the matter following notification of the complaint
Significant benefit to the defendant resulting from improper retention of funds

Key

Small sums	£20,000
Medium sums	£20,000 - £100,000
Large sums	£100,001 - £500,000
Very large sums	£500,001 upwards
Short period	one month or less
Long period	one month or more

- Mitigating factors

Matters put right immediately following complaint
Procedures introduced to avoid recurrence
Clients compensated for lost interest

The starting point is not a tariff

12 Ethical

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Lack of independence due to personal/family relationship/previous material professional relationship/pecuniary interest:	a
a¹ Very serious – blatant	a¹ Exclusion* and a fine of £25,000. Withdraw registration of firm. (Exclude engagement partner, if separately charged, where there was collusion. Otherwise, consider withdrawal of practising certificate)
a² Serious	a² Severe reprimand and fine £14,500
a³ Less serious (tenuous link technical breach)	a³ Reprimand and fine £5,750
b Conflict of interest	b
b¹ Very serious/blatant	b¹ As in a¹ above
b² Serious	b² Severe reprimand and fine of £14,500
b³ Less serious; eg, inadvertent	b³ Reprimand and fine £5,750
c Providing false or misleading information	c Exclusion* and a fine of £5,750
d Breach of fiduciary duty (not otherwise covered):	d
d¹ Very serious	d¹ Exclusion* and a fine of £25,000
d² Serious	d² Severe reprimand and a fine of £14,500
d³ Inadvertent	d³ Reprimand and a fine of £5,750
e Breach of confidentiality	e
e¹ Misuse of confidential information	e¹ Exclusion* and fine
e² Wrongful disclosure	e² Exclusion* and fine
e³ Any other disclosure/misuse, inadvertent	e³ Reprimand and fine £5,750
f¹ Failure to communicate/cooperate with existing appointment holder/failure to provide handover information, lien wrongly exercised	f¹ Severe reprimand and fine £3,450
f² Other departure from fundamental principles, Code of Ethics without justification	f² Reprimand and fine £2,300
g Persistent or repeated aggressive course of conduct and/or the use of obscene and grossly offensive language/similar	g Severe reprimand and a fine of £2,300
h Unethical promotion practices	h Reprimand and a fine of £1,150

+ Aggravating factors

Lack of independence where public interest issues are involved or associated with collapse of company
Significant level of public attention or high public importance

Business – occurred in the course of
Deliberate
Fraud

Amount involved substantial
Defendant in a position of trust, eg, as employee
Deliberate act to gain personal advantage
Whether any loss suffered as a result

* See guidance on [page 33](#).

- Mitigating factors

No loss suffered
Information provided accidentally rather than deliberately
Reprehensible conduct/correspondence on the part of the client
Action taken at request of client/took professional advice
Compensation paid to the client

13 Failure to comply with an order of the IC, DC or AC

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Failure to take advice, for example from Practice Support Services
- b** Failure to comply with an order made for waiver or repayment of fees
- c** Failure to comply with a remedial order
- d** Other cases where a member has failed to act or acted belatedly to obligations upon him

Starting point

- a** Severe reprimand and a fine of £5,750
- b** Severe reprimand and a fine of £5,750
- c** Severe reprimand and a fine of £5,750
- d** Reprimand and a fine of £1,150

+ Aggravating factors

Blatant disregard, total absence of effort made to comply
Nature of inefficiency and effect on clients
Any other similar complaints in last five years

- Mitigating factors

Improvements made in the practice
No client disadvantaged

14 Failure to cooperate generally and to comply with DBL13 requirement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Failure to respond at all or promptly to client letters, telephone calls, emails	a Reprimand and a fine of £1,150
b Delay/failure to pass information to succeeding accountant (see also Ethical)	b Reprimand and a fine of £1,150
c Refusal to provide information (blatant obstruction) without good cause	c Exclusion* and a fine of £5,750
d Failure to reply to a letter sent in accordance with Disciplinary Bye-law 13 where:	d
ia the response has been difficult and tedious rather than calculated to obstruct and the information has been provided between the date of the IC preferring the complaint and the date of the hearing	ia Reprimand and a fine of £1,150
ib there has been a response but not all the information has been provided	ib Severe reprimand and a fine of £2,350
ic there has been a response that the information will be provided but it is not	ic Severe reprimand and a fine of £2,850
id there has been no response at all	id Severe reprimand and a fine of £3,450
ii Second such complaint within five years but	ii
iiia the information has been produced between the date of the IC preferring the complaint and the hearing	iiia Severe reprimand and a fine of £3,450
iiib there has been a response but not all the information is provided and	iiib Severe reprimand and a fine of £4,000
iiic there has been a response that the information will be provided but it has not	iiic Severe reprimand and a fine of £4,600
iiid no response at all	iiid Severe reprimand and a fine of £5,750
iii Third such complaint within five years	iii
iiia The information has been produced between the date of the IC preferring the complaint and the hearing	iiia Severe reprimand and a fine of £5,750
iiib A response but not all the information is provided	iiib Exclusion*
iiic there has been a response that the information will be provided but it has not	iiic Exclusion*
iiid No response at all	iiid Exclusion*

+ Aggravating factors

The information is produced at the last possible moment.
The investigation of a serious complaint; eg, fraud is frustrated and no adequate explanation is given.

* See guidance on [page 33](#).

- Mitigating factors

Difficulty accessing information, dependent on another, efforts made in attempt to provide information or respond.

The starting point is not a tariff

15 Financial mismanagement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Failing to account for VAT/income tax
- b** Multiple acts of financial mismanagement or second complaint in three years
- c** Failing to comply with terms of voluntary arrangements with creditors or other matters charged against a defendant in an individual voluntary arrangement
- d** Member or principal of firm or LLP which enters insolvency procedure, as list in DBL 4 (2) (e) and (f), for example, CVA or PVA
- d¹** as a result of member's gross financial mismanagement
- d²** as a result of misfortune
- e** Non-payment of judgment debt or dishonoured cheque
- f** Entry into an IVA

Starting point

- a** Exclusion* and a fine of £ 5,750
- b** Exclusion* and a fine of £ 5,750
- c** Exclusion*
- d**
- d¹** Severe reprimand
- d²** Reprimand
- e** Reprimand and a fine of £ 2,300 (if solvent)
- f** No order but contribution to costs

+ Aggravating factors

- Personal assets/income available
- Failure to disclose/or to disclose accurately assets to supervisor
- Making unfairly small contribution to IVA when substantial personal assets available
- Making substantial drawings in excess of profits in period prior to entry into IVA
- Preferring personal creditors to business creditors
- Preferring creditors of one business rather than another
- Disposing of assets at an under value with the object of personal gain
- Lack of integrity in business dealings

* See guidance on [page 33](#).

- Mitigating factors

- Effective arrangements made to make good deficiency
- Problem resulted from deliberate act by properly supervised/trusted member of staff

The starting point is not a tariff

16 General accountancy failings

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Poor work on accounts
 - i Serious
 - ii Other cases less serious
- b** Accounts not in statutory format
 - i Serious
 - ii Less serious
- c** Wrongly signed report/inaccurate report, accounts do not comply with Solicitor's Accounts Rules or similar
- d** Second offence **a**, **b**, or **c** within two years
- e** General neglect of client affairs
 - i Single/first instance
 - ii Multiple clients or lengthy neglect
 - iii Second finding of guilt in relation to i and/or ii above in three years
- f** Lack of attention/delay on client's affairs
- g** Bad advice on client's affairs/tax
- h** Failing to respond properly to professional enquiry or handover (also see Ethical)

+ Aggravating factors

Nature of inefficient or incompetent work, eg, failure to reconcile client ledger balances with funds available to meet them
Collusion to cover up deficiencies
The client has lost money
Effect on client, eg, subject to penalties, loss of business opportunity

Starting point

- a**
 - i Severe reprimand, fine £5,750 or 1.5 x fee if greater than £5,750. Consider PRS referral
 - ii Reprimand, fine £2,850 or 0.5 x fee if greater than £2 850
- b**
 - i Severe reprimand, fine £ 2,350 or 1.5 x fee charged – if successive years fee x by number of years
 - ii Reprimand, fine £ 1,150
- c** Severe reprimand, fine £2,350. Consider fees charged if greater for fine and/or return or waiver
- d** Severe reprimand, fine £11 500. Consider withdrawal of practising certificate and consider fees charged if greater for fine and/or return or waiver
- e**
 - i Severe reprimand and a fine of £2,350. Consider fee waiver/return
 - ii Severe reprimand and fine of £5,750
 - iii Exclusion or severe reprimand, fine of £11,500 . Consider fee waiver/return. Consider withdrawal of practising certificate or referral to Practice Support Services (PSS). Consider using fee charged as multiplier in all above
- f** Reprimand, fine £1,150 or fee charged if greater. Consider waiver/return of fees
- g** Reprimand, fine £1,150 or fee charged if greater. Waiver return of fees, withdrawal of practising certificate, referral to PRS
- h** Severe reprimand, fine of £ 3 450

- Mitigating factors

Client deceived the defendant
Turnover on client account and proportion and size of deficiencies
Client unhelpful in providing records or information; gave misleading information.
Files lost through natural catastrophe, eg, fire, flood

The starting point is not a tariff

17 Insolvency

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Acting as insolvency practitioner without licence	a Exclusion* and a fine of £10,000
In each case listed below consider fine equal to or 1.5 x fee charged	
b	b
b¹ Unauthorised diversion of funds to own account, other estates or third parties	b¹ Exclusion* and a fine of £15,000
b² Drawing unauthorised remuneration:	b²
b^{2a} not subsequently authorised, and	b^{2a} Severe reprimand and a fine of fee so drawn or
b^{2b} subsequently authorised	b^{2b} Severe reprimand and a fine of 50% of fee so drawn
c Refusing to cooperate with or accept a QAD visit	c Severe reprimand and a fine of £5,000
d Failure to comply with an order of the Insolvency Licensing Committee	d Severe reprimand and a fine of £7,500
e Failure to comply with the requirements of the Insolvency Act, rules and regulations and best practice (SIPS)/ethical guidance	e
e¹ Major, eg, total failure to submit returns (eg, CDDA returns). Failure to convene key creditor meetings (e.g. S 23 IA 86)	e¹ Severe reprimand and a fine of £5,000
e² Minor, eg, small delay in submitting returns. Delay in convening annual meetings	e² Reprimand and a fine of £500
f Failure to perform duties as Nominee or Supervisor of an IVA, PVA or CVA, Trustee in Bankruptcy, Liquidator, Receiver or Administrator	Reprimand and a fine of £5,000
g Delay re IVA, PVA or CVA as nominee or supervisor, trustee in bankruptcy, liquidator, receiver or administrator	Reprimand and a fine of £2,500
h Delay/failure to pay money into Insolvency Services Account	Delay – reprimand and a fine of £1,000 Failure – severe reprimand and a fine of £2,500
i Lack of independence Failure to comply with ethical guidance – See Ethical	

* See guidance on [page 33](#).

+ Aggravating factors

Persistent course of conduct
Evidence that creditors have suffered additional loss as a result of defendant's actions
Extent of any personal benefit to defendant
Defendant still unlicensed
Poor record keeping, for example minutes of creditors meetings
Failings over long period of time

Refusal or failure to cooperate with the QAD and Insolvency Licensing Committee is likely to lead to regulatory action, including withdrawal of licence.

- Mitigating factors

Prompt application for licence
Prompt completion of outstanding work
Isolated incident
Sum involved small

The starting point is not a tariff

18 Investment business/licensed firms under DPB arrangement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Carrying on investment business without authorisation	a Exclusion* and a fine of £10,000
b Breach or breaches of Investment Business Regulations or Designated Professional Body Handbook Regulations	b Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
c Refusal to cooperate with or accept a QAD visit	c Severe reprimand and a fine of £5,000 (with £5,000 as a multiplier for each partner in the firm)
d Failure to rectify faults discovered on QAD inspection	d Severe reprimand and a fine of £5,000
e Failure to comply with an order of the Investment Business Committee	e Severe reprimand and a fine of £7,500
f Failure by firm to investigate complaint concerning investment business	f Reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
g Charging excessive fees/commission	g Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
h Seriously negligent/reckless investment advice	h Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
i Annual return failure to submit, incorrect mis-statement	i
Individual	Individual
i¹ Deliberate	i¹ Exclusion*
i² Reckless/serious negligence	i² Severe reprimand and a fine of £2,500
i³ Inadvertent	i³ Reprimand and a fine of £1,000
Firm	Firm
i¹ Deliberate	i¹ Severe reprimand and a fine of £10,000
i² Reckless/serious negligence	i² Severe reprimand and a fine of £5,000
i³ Inadvertent	i³ Reprimand and a fine of £2,500
j Breach of eligibility requirements	j
Firm	Firm
	Reprimand and a fine based on annual fees saved x by number of years
Pre-N2 complaints	
k Conduct of investment business outside authorisation category or licence	k Severe reprimand and a fine of £5,000
l Holding investment business clients monies in excess of £50,000 without bonding	l Severe reprimand and a fine of £5,000
m¹ Pension advice without taking required steps	m¹ Severe reprimand and a fine of £5,000
m² Failure to complete pension transfer and opt-outs review	m² Severe reprimand and a fine of £2,500

* See guidance on [page 33](#).

+ Aggravating factors

Advised numerous clients/conducted numerous transactions without authorisation
Failure to make client aware of risks
Failure to pass on risk warnings in product literature
Failure to document/record justification for advice/recommendation
High value of commission earned
Breach repeated/continued over time

Refusal or failure to cooperate with the QAD or the Investment Business Committee is likely to lead to regulatory action including withdrawal of DPB licence.

- Mitigating factors

Steps taken on behalf of client to recover loss
Steps taken to tighten up/improve office procedures
QAD recommendations since implemented
Technical breach, no clients involved

The starting point is not a tariff

19 Misconduct as a company director

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Disqualification including by undertaking as company director	a
i Disqualification 11-15 years	i Exclusion*
ii Disqualification 6-10 years	ii Exclusion*
iii Disqualification 2-5 years	iii Exclusion/severe reprimand and a fine of £ 1,150
b Misuse of company funds	b Exclusion*
c Issue of post-dated cheques, dishonoured when presented	c Exclusion*
d Approving defective accounts	d
i Deliberate	i Exclusion
ii Reckless or serious negligence	ii Severe reprimand and a fine of £ 5,750
iii Inadvertent	iii Reprimand and a fine of £ 2,300

+ Aggravating factors

Misuse of company funds deliberate/for personal gain
Nature of conduct rendering member unfit to be concerned in the management of the company
Carrying on business with intent to defraud creditors
Making fraudulent preferences
Amount of deficiency of the insolvent company
Systematic failure to submit returns
Conduct during the insolvency, eg, giving false explanations, concealment of assets
Length of disqualification imposed by the court

- Mitigating factors

Length of disqualification
Existence of dominant other director or proprietor of company

Periods of disqualification are divided into three levels:

1. Disqualification for periods over 10 years; reserved for particularly serious cases.
2. The middle level, 6-10 years, is applied to serious cases which do not merit the top level.
3. The lowest level, 2-5 years, is applied if a case is not very serious based on the decision in the case re Sevenoaks Stationers (Retail) Limited.

* See guidance on [page 33](#).

The starting point is not a tariff

20 Misconduct as trustee and other positions of trust

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Misappropriation of funds from trust or employer
- b** Trustee acts contrary to beneficiaries' interests
- c** Serious failings/errors in administration of a trust
- d** Delay/lack of attention as executor

Starting point

- a** Exclusion* and a fine of £25,000
- b** Severe reprimand and a fine of £ 5,750
- c** Severe reprimand and a fine of £ 5,750
- d** Severe reprimand and a fine of £ 5,750

+ Aggravating factors

Distress caused to beneficiaries over a long period of time.

- Mitigating factors

Contribution to delay by others or lack of attention.
Errors corrected.
No cost to estate/trust.

* See guidance on [page 33](#).

The starting point is not a tariff

21 Probate

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a. In the case of an *Accredited Probate Firm*, continuing to carry out *probate work* in breach of the eligibility requirements and/or continuing obligations set out in the Probate Regulations
- b. In the case of an *Accredited Probate Firm* continuing to carry out *probate work* in circumstances where it has failed to ensure that those individuals undertaking or controlling the undertaking of *probate work* are *Authorised Individuals* or as required under the *Probate Regulations*
- c. In the case of an *Authorised Individual* carrying out *probate work* in breach of the eligibility requirements and/or continuing obligations under the Probate Regulations
- d. *Probate work* of a seriously defective nature.
- e. Unauthorised diversion of funds
- f. Drawing unauthorised remuneration (1) Not subsequently authorised; (2) Subsequently authorised;
- g. Refusing/failing to cooperate with or accept a QAD visit
- h. Failure to comply with restrictions or conditions on authorisation or any other decision or order of the Probate Committee or the Probate Regulations.

Starting point

[Further consideration and discussion is required before these starting points can be finalised]

+ Aggravating factors

Acting for multiple clients without authorisation
Intention to mislead
Financial Loss
Vulnerable client/abuse of position
Failure to cooperate with QAD or follow Recommendations

- Mitigating factors

No intention to mislead
No financial loss or loss reimbursed
Steps taken to put matters right
Isolated failure

21.222 Guidance to disciplinary tribunals – fine and/or reprimand or severe reprimand

21.122.1 Fines

Where a fine is considered by a tribunal to be appropriate, the first consideration will be seriousness of the misconduct and aggravating and mitigating factors. The second consideration will be the circumstances of the defendant and his/her means to pay a fine. There are a number of specific matters which influence general approach and will be taken into account by a tribunal when deciding on the level of fine:

- The extent to which the conduct has fallen below the required standard.
- The existence and amount of any economic gain resulting from the conduct.
- If the defendant is a corporate entity, all aspects of means to pay are relevant including profitability and liquidity.
- If no, or inadequate, information is produced to demonstrate financial circumstances, a tribunal can assume the defendant can pay whatever fine is ordered.
- If a fine is imposed with an order for exclusion and a request is made for time to pay, a tribunal can direct that the fine be paid by instalments. Ideally an instalment plan should not extend beyond 12 months.

21.222.2 Reprimand or severe reprimand

A reprimand is equated by some other regulatory bodies to a warning or a ticking off (Brian Harris, Disciplinary and Regulatory Proceedings 2006). A severe reprimand is viewed very much as a final warning.

The GMC (Indicative Sanctions Guidance) suggests that if fitness to practice is found not to be impaired, a warning may be given. The following are relevant considerations when deciding whether to give a warning:

- Evidence that behaviour would not have caused direct or indirect harm.
- Insight into failings.
- Isolated incident that was not deliberate.
- Genuine expression of regret/apologies.
- Evidence of duress.
- Previous good record.
- No repetition of behaviour since incident.
- Rehabilitative/corrective steps taken.
- Relevant and appropriate references.

Equally, the absence of such considerations may influence a decision to impose a severe reprimand or exclusion.

2223 Guidance to disciplinary tribunals – withdrawal of practising certificates

In addition to penalty, tribunals may specify as part of its order, the time for which a member should remain without a practising certificate.

22.123.1 Practising certificates

The Disciplinary Bye-laws give tribunals the power to order:

- 22(3)(b) that his practising certificate be withdrawn either permanently or for a specified period
- 22(3)(e) that he be ineligible for a practising certificate, either permanently or for a specified period.

The Learning and Professional Development Board has responsibility for deciding whether or not a member should be given a practising certificate. In reaching their decision on an application where a practising certificate has been withdrawn, the board would find it helpful to have the minimum period for withdrawal specified. If a practising certificate is withdrawn for less than four years (unless the tribunal orders that the member be ineligible), it will be returned when a member signs a declaration that he has maintained competence in his area of practice, has PII cover and that he understands ICAEW's ethical code, in particular Fundamental Principle 3. If a practising certificate is withdrawn for more than four years, a member will have to satisfy the Board as to his competence before it can be returned.

If the tribunal withdraws a practising certificate for less than four years and are of the view that the member's competence should also be re-assessed before a practising certificate is issued, they should order that the member be ineligible for the same period fixed for withdrawal.

2324 Guidance on exclusion

Disciplinary Bye-law 22(8) provides that where a member is excluded, the order may include a **recommendation** that no application for his readmission be entertained before the end of a specified period.

In order to avoid former members making premature applications for readmission, it would assist the Investigation Readmissions Sub-Committee if the tribunal made a recommendation on when it believes it might be appropriate for an application to be considered. It should be noted that tribunals will only be recommending the period which in its opinion, taking into account all the circumstances surrounding the behaviour which is the subject of the complaint, is the appropriate period within which an application for readmission should not be considered.

It does not follow that an application after the specified period will be approved. A tribunal does not have power under the Disciplinary Bye-laws to make an order for exclusion for a specified period. Accordingly it must be made clear to a defendant when announcing an order and in the tribunal's written record of decision that an application for readmission after the specified period will not necessarily be approved and will be considered by the Readmissions Sub-Committee on all its merits. In order to avoid creating any misunderstanding, a tribunal should also make clear to a defendant in the most serious cases involving dishonesty that save in the most exceptional circumstances he/she is unlikely to be re-admitted.

Against this background, tribunals should normally make the following recommendations, without prejudice to an adjustment either way in the light of the facts of a particular case:

Complaint	Recommended period/No application for readmission
Dishonesty (whether or not prosecuted and whether or not followed by an immediate custodial sentence)	Ten years
Criminal offence followed by an immediate custodial sentence	Five years
Other exclusion orders	Two years

Where an order for exclusion is made on a complaint that a member has been disqualified from acting as a company director, the period recommended should match the length of disqualification. In all cases, a tribunal will take account of the date of the disqualification and the expiration of the period of disqualification.

A tribunal does have the power to impose more than one penalty for the same offence. A fine may be imposed in addition to an order for exclusion in appropriate circumstances, for example, where the defendant has clearly benefited financially as a result of the misconduct.

A fine with exclusion will only be appropriate in the most exceptional cases where the misconduct is very serious so that in addition to loss of membership a financial penalty is necessary. In this narrow context a fine is part of the punishment which in turn should be a deterrent. Before ordering a fine with exclusion, a tribunal will need to consider not only whether a member has benefited financially from the wrong doing but whether he or she has the means to pay not only at the time of the hearing but following loss of membership. Where there have been criminal proceedings, a tribunal should enquire as to whether there have been confiscation and compensation orders made.

2425 Publicity

When a tribunal makes an adverse finding and order, the record of its decision will be published in such manner as it thinks fit. This means there will be publicity in all cases where a finding and order are made (Disciplinary Bye-law 35(1)).

Where a tribunal dismisses a complaint, a record of that decision will be published only if the member requests (Disciplinary Bye-law 35(2)).

Publicity involves a press release which is made up of the detail from the record of decision, which is circulated to ICAEW's Council. The press release is also sent to *economia*, ICAEW's member magazine and it is then a matter of editorial discretion whether the case is actually published.

In all cases of exclusion or withdrawal of practising certificate, the press release is sent to a newspaper local to the member, and the local district society is informed. The district society is also informed if membership ceases for non-payment of disciplinary fines and costs.

Unless a tribunal otherwise directs, a record of decision (which forms the basis of the press release) must state the name of the defendant and describe the finding and order or orders (if any) made against him. There is a power available to the tribunal to direct the omission of the defendant's name (Disciplinary Bye-law 35(3)). The discretion not to publish the name of a defendant is rarely exercised.

There are a number of reasons why the name of the defendant will normally be included, namely:

- ICAEW members should be aware of the decision of the disciplinary tribunal
- it is desirable that the public should have confidence in the disciplinary procedures employed by ICAEW
- such confidence is best promoted by openness in respect of the findings and orders made by disciplinary tribunals.

Since the year 2000, (leaving aside consent orders made in respect of entry into an IVA), out of all relevant cases considered by tribunals, an order directing the omission of a defendant's name has been made only on 10 occasions. By reference to those 10 cases, it is possible to identify features which influenced the decision to treat them as exceptional, in particular:

- the conduct in question was not serious misconduct and
- there may have been an adverse impact on innocent third parties or
- the effect of publication on the defendant himself would have had an adverse impact on his health or safety such that publication would have been unduly harsh.

These features will be relevant to consideration of whether a hearing should be held in private. Where a hearing or part of a hearing is held in private, it will not automatically follow that the defendant's name will not be published. This will always be considered as a separate matter by the tribunal if a request is made by a defendant for his name not to be published.

2526 Disciplinary Bye-law 22

Powers of tribunal

- 22(1) If the tribunal appointed to hear a formal complaint is of the opinion that the complaint has been proved in whole or in part, it shall make a finding to that effect; but if it is not of that opinion, it shall dismiss the complaint.
- 22(2) If the tribunal finds that the formal complaint has been proved in whole or in part, it may (unless it is of the opinion that in all the circumstances it is inappropriate to do so) make against the defendant such one or more of the orders available against him under the following provisions of these bye-laws, namely:
- (a) paragraph (3), (4), (5), (6) or (7) of this bye-law, as the case may be and
 - (b) bye-laws 23 (waiver etc. of fees), 24 (remedial action) and 24A (expenses), as it considers appropriate, having regard to the past disciplinary record, if any, of the defendant, the tribunal's views as to the nature and seriousness of the formal complaint (so far as proved), and any other circumstances which the tribunal considers relevant.
- 22(3) If the defendant is a member, the orders available against him are:
- (a) that he be excluded from membership
 - (b) that his practising certificate be withdrawn either permanently or for a specified period
 - (c) that any insolvency licence held by him be withdrawn
 - (d) that he be ineligible for an insolvency licence
 - (e) that he be ineligible for a practising certificate, either permanently or for a specified period
 - (f) that he be severely reprimanded
 - (g) that he be reprimanded
 - (h) that he be fined a specified sum.
- 22(4) If the defendant is a member firm, the orders available against it are:
- (a) that it be prohibited from using the description 'chartered accountants' for a specified period
 - (b) that it be severely reprimanded
 - (c) that it be reprimanded
 - (d) that it be fined a specified sum.
- 22(5) If the defendant is an authorised firm, the orders available against it are:
- (a) that it shall cease to be authorised by ICAEW to carry on exempt regulated services under the Financial Services and Markets Act 2000
 - (b) that it be severely reprimanded
 - (c) that it be reprimanded
 - (d) that it be fined a specified sum.
- 22(6) If the defendant is a registered auditor, the orders available against it are:
- (a) that its registration granted at the instance of ICAEW under the Companies Act 1989 be withdrawn
 - (b) that it be severely reprimanded
 - (c) that it be reprimanded
 - (d) that it be fined a specified sum.

- 22(7) If the defendant is a provisional member, the orders available against him are:
- (a) that he be declared unfit to become a member
 - (b) that he cease to be a provisional member and be ineligible for re-registration as a provisional member for a specified period not exceeding two years
 - (c) that the registration of his training contract be suspended for a period not exceeding two years
 - (d) that for a specified period not exceeding two years he be ineligible to sit for such one or more of ICAEW's examinations as may be specified or for any specified part of any of those examinations
 - (e) that he be disqualified from such one or more of ICAEW's examinations as may be specified or from any specified part of any of those examinations, not being an examination or part the result of which was duly notified to him by ICAEW before the date of the order
 - (f) that he be severely reprimanded
 - (g) that he be reprimanded.
- 22(8) An order under this bye-law may include such terms and conditions (if any) as the tribunal considers appropriate including, in the case of an order for exclusion from membership made against a member, a recommendation that no application for his readmission be entertained before the end of a specified period.
- 22(9) An order under this bye-law against a member, member firm or regulated firm may include a direction requiring him (at his own expense) to obtain advice from a specified source and to implement the advice obtained.
- 22(10) In this bye-law 'specified', in relation to any order or direction under this bye-law, means specified in the order or direction.

2627 Table of disciplinary orders – powers of tribunals

Complaint relates to conduct before 19 December 1990	Exclusion Censure Reprimand Admonishment Fine limited to £1,000 Costs limited to £1,000
Complaint relates to conduct from 19 December 1990 to 18 December 1991	Exclusion Censure Reprimand Admonishment Fine unlimited Costs unlimited
Complaint relates to conduct from 19 December 1991	Exclusion Severe reprimand Reprimand Fine unlimited Costs unlimited

Date of PC allowance	Bye-law	Change
19 December 1990	Bye-law 83(a)(A)(x)	£1,000 limit on fine changed to unlimited
19 December 1990	Bye-law 88(a)	£1,000 limit on costs changed to unlimited
19 December 1991	Bye-law 83(a)(A)(vi), Bye-law 83(a)(A)(vii), Bye-law 83(a)(A)(ix)	Removal of censure and admonishment substituted by severe reprimand, reprimand (members & students)

Since 8 February 1994, ICAEW has been able to discipline member firms as well as members.

2728 Unpublicised cautions

Unpublicised cautions are only available to the IC.

When the IC finds that there is a prima facie case for disciplinary action it may, if it considers it appropriate in all the circumstances, offer to the member as a penalty, an unpublicised caution. If the offer is not accepted, and the IC is not prepared to alter its finding, the complaint will be preferred to the DC. The DC does not have power to impose an unpublicised caution.

The caution is intended to be a more serious step than 'no further action' but less serious than a consent order or referral to the DC. The IC may include in the order a requirement to pay a sum towards costs. This will be a figure for the actual costs incurred up to a maximum of £2,000.

A caution will constitute part of a member's record and result in cessation of eligibility to be a member of council. ICAEW will not pass details of the caution to the press for publication but it will be entitled to inform a complainant, other regulators and those making a specific request.

The procedure and form of notice relating to unpublicised cautions is set out in Disciplinary By-law 16(1)(A) and Investigation Committee Regulations 19, 20 and 21.



APPENDIX Q

GUIDANCE ON SENTENCING

DRAFT

icaew.com/publichearings

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1 Who is this guidance for?

This guidance is for members of:

- | | |
|-----------------------|--|
| Conduct committees | <ul style="list-style-type: none">• The Investigation Committee (IC)• The Disciplinary Committee (DC) works in tribunals, this guidance applies when a complaint is found proved either in whole or in part• The Appeal Committee (AC) works in panels; this guidance applies when a panel makes its own decision on a sentencing order. |
| Regulatory Committees | <ul style="list-style-type: none">• The Audit Registration Committee (ARC)• The Investment Business Committee (IBC) and• The Insolvency Licensing Committee (ILC).• The Probate Committee (PC) |

It explains the key decisions in the sentencing process and sets out, step-by-step, the approach these ICAEW committees must take whenever they make a sentencing order against a member, firm, affiliate or provisional member.

2 Purpose

This guidance provides a structured approach for committee members who make decisions on sentencing. ICAEW wants committee members to make their decisions and orders through a fair and reasoned process. It also wants the approach to sentencing and the sentences imposed to be consistent and proportionate. Members who are the subject of complaints and those who represent them can see the range of penalties and orders likely to be imposed and know that the same approach will be used in each case.

The penalties available to the IC, DC and AC are set out in Disciplinary Bye-laws 16, 22, and 23 but the IC and regulatory committees do not have a full range of powers. In particular, the IC cannot exclude members from membership and the regulatory committees can only impose financial penalties.

Although this guidance is used by all committees that can impose penalties, it has been written as if it is directed to tribunals of the DC, members and defendants.

3 Sentencing policy

When a tribunal considers:

- whether to impose a penalty; and
- what penalty to impose

it should consider a number of factors, in particular the principles which underpin sentencing policy.

ICAEW's sentencing policy is closely linked to its general objectives to:

- uphold the good name of the profession, ICAEW and the title 'chartered accountant'; and
- maintain, in the public interest, the high standards required of members of the profession.

The key principles which apply to sentencing relate to:

- maintaining the reputation of the profession;
- correcting and deterring misconduct;
- upholding the proper standards of conduct in the profession; and
- protecting the public.

3.1 Maintaining the reputation of the profession

In the case of *Bolton-v the Law Society (1994)*, Lord Bingham, emphasised that maintenance of the reputation of the profession was the primary justification for sanction and said:

‘To maintain this reputation and sustain public confidence in the integrity of the profession, it is often necessary that those guilty of serious lapses are not only expelled but denied readmission.....Otherwise, the whole profession and the public as a whole, is injured. A profession’s most valuable asset is its collective reputation and the confidence which that inspires...’

He concluded:

‘The reputation of the profession is more important than the fortunes of any individual member. Membership of a profession brings many benefits, but that is a part of the price.’

3.2 Correction, deterrence and upholding the proper standards of conduct in the profession

ICAEW demonstrates its commitment to high standards and to maintaining those standards through the disciplinary process and by publishing details of the orders made. Although punishment is not, in itself, a purpose, a punishment **can** act as a deterrent. Not only must the individual be deterred by the imposition of a disciplinary order, but other people must see that a particular wrong-doing will not be tolerated. In *Chohan v the Law Society* (2004), Lord Justice Morris stated that, in some circumstances it would be appropriate to use a sanction to send out a message. In this context, the sentencing order is more about deterrence than punishment.

3.3 Protecting the public

When a tribunal acts to protect the public, it should consider both members’ clients and the wider public who may be at risk. In cases where the competence of the member is also an issue, when the tribunal considers sentence, it needs to consider whether the public can be properly protected.

4 The process of determining a sentencing order

When a tribunal decides that a complaint has been proved or when a defendant admits a complaint, the tribunal must then decide what to include in its sentencing order. This list summarises the sequence of events.

The IC representative:

- outlines the relevant facts (when a defendant admits a complaint).
- tells the tribunal about any previous disciplinary record.
- makes an application for costs to be paid by the defendant.

The defendant or their representative explains any mitigating factors, relating to the facts of the complaint and to personal circumstances.

The tribunal

- considers any request that the defendant’s name is not included in publicity.
- leaves the room and considers its decision in private.

4.1 Key decisions in the sentencing process

When the tribunal decides what to include in its sentencing order, it is entitled to form its view based on the particular facts of each case. This guidance provides a step-by-step approach to help the tribunal reach a decision which is consistent, proportionate and fair.

If a tribunal decides a penalty (for example, a fine, exclusion or reprimand) is necessary, it identifies the relevant category of complaint (from those listed on pages 12-29) and the behaviour that most closely corresponds to the complaint. Although the list of complaints and behaviour is not exhaustive, we do add new details whenever they are identified.

For each type of complaint, there is a suggested starting point. The starting point is not ‘the going rate’ for that particular complaint. It simply indicates where a tribunal might start when it looks at all the factors relevant to deciding the penalty. Once the tribunal has agreed the most appropriate starting point, it takes into account any aggravating and mitigating factors before deciding, if appropriate, to reduce or increase the penalty. For each category of complaint, there are examples of mitigating and aggravating factors.

The tribunal works through the steps outlined in the tables and may decide on a more or less severe penalty than the one given as a starting point.

This structured approach is designed to help tribunals arrive at a penalty which is demonstrably proportionate to the facts of the case. The penalty should fit the underlying facts of the complaint and it should be possible to explain the rationale for choosing it. The written record of decision (which we provide to the member and make public) sets out the tribunal's reasons.

The tribunal considers the following key points in its decision-making process.

The nature and seriousness of the conduct	Where the defendant's conduct sits on the scale of seriousness
The range of penalties available	These are set out in DBL22 (page 35) and in the table of disciplinary orders on page 37.
ICAEW's obligation to protect the public	
The need to decide on a penalty that is demonstrably proportionate and which takes into account both the interests of the public and those of the member	
Any facts which aggravate or mitigate the seriousness of the conduct	For example, whether it was deliberate and/or repeated over a period of time; whether a client or a group of clients was adversely affected by the conduct; whether the conduct was inadvertent; and whether it led to adverse consequences.
Whether another regulatory body has taken disciplinary proceedings	If it has, a tribunal must fully take into account any penalties that may have been imposed and any other consequences that may have resulted. This will not prevent a tribunal from making a further order but it must be satisfied that, in all the circumstances, it is appropriate and just for it to do so.
Whether there is a previous disciplinary record and whether any past disciplinary record is relevant	The previous misconduct may have happened so long ago or may have been unrelated to the defendant's professional work and should either be discounted or given little weight by the tribunal
Any mitigating factors which are personal to the defendant	Did they report the conduct or events in question to ICAEW? Any corrective action taken by the defendant; prompt admission; expression of regret and the likely impact of any proposed penalty on a member/firm. A tribunal may consider any information about a member's personal circumstances which it believes may have a bearing on the level of penalty to be imposed. All defendants are advised to bring details of their financial means to the hearing. Mitigating factors may include events which have affected a member's ability to work, such as ill health or family tragedy.

These key tribunal questions are summarised on page 11 to help tribunals arrive at their *sentencing order*.

5 The sentencing order

The penalty (for example, a fine, reprimand or exclusion) is only one part of the sentencing order. Once the tribunal has decided on the penalty, it considers a number of ancillary orders which it may include in its sentencing order. Ancillary orders are explained in more detail in paragraphs 5.1-5.7 below.

5.1 A requirement to take advice

In appropriate cases (for example poor work, or failure to deal with a client's affairs in good time), a tribunal may consider making an order that the defendant member seek advice from a specified source, at their own cost, and implement the advice obtained.

5.2 A waiver or return of fees

A tribunal may also consider making an order that fees charged by a defendant be waived, or that fees already paid be returned.

5.3 The repayment of commission

A tribunal may also consider making an order that the member or firm pay to the complainant or client, a sum related to any commission the defendant has received or will receive. Such an order is likely to be appropriate in cases where the member or firm has been paid commission by agencies for work referred to them or for investment business advice or services that have been provided.

5.4 The complainant's expenses

If a complainant has given notice that they want to recover expenses, the tribunal may consider the request if it finds the complaint proven. However, a complainant may only recover those expenses incurred in either making the complaint in the first place, or in making representations to be considered by the IC. The maximum amount a tribunal can order a defendant to pay is £1,000. It is unlikely that a complainant will actually have incurred expenses in order to make a complaint.

5.5 Publicity

Members may ask that their name be not included in the published record of decision. Page 34 gives detailed guidance on the circumstances in which a tribunal might be prepared to make such an order.

5.6 Costs

Tribunals have the power to order that the costs incurred in investigating and considering a complaint be paid by a member or firm. The requirement to pay such costs is based on the principle that the majority of ICAEW members should not subsidise the minority who, through their own failings, find themselves within the disciplinary process. A summary of the costs incurred is sent to a member before the hearing and the covering letter explains that, if the complaint is found proven, an application will be made to the tribunal for an order for the costs to be paid. Orders for costs to be paid by a member or firm must reflect the costs reasonably incurred and must never be imposed as a penalty. The tribunal will only consider the costs element after it has reached its decision on the appropriate penalty for the complaint.

Members should always come to a hearing with some documentary proof of their financial circumstances. If members do not provide proof of financial means, a tribunal will assume that they are able to meet any financial penalty and/or costs that it orders. A tribunal may, in any case (including where the order is for exclusion), specify a time scale for paying fines and costs, but this will normally be limited to a maximum of one year.

5.7 Costs against ICAEW

Tribunals also have power to require ICAEW to contribute a specified sum towards a defendant's costs if there is a finding of 'not proved' or 'proved in part only'. This power must be exercised in accordance with the DC regulations. Unlike litigation (where an award of costs normally follows the event), a finding of 'not proved in whole or part' will not automatically trigger an award of costs.

When it decides whether to make an award of costs, a tribunal will consider all the relevant facts including the conduct of ICAEW and the defendant throughout the proceedings including the investigation. The case law relating to costs against a regulator is consistent with this approach. The Court of Appeal has agreed that normal costs rules do not apply and, unless there is dishonesty or lack of good faith, a costs order should not be made against a regulator unless there is good reason to do so.

This guidance is available at icaew.com/publichearings and we are happy to provide a hard copy to members, member firms and their representatives on request. We review the guidance each year, in the light of experience and developments. The chairmen of the IC, DC, and AC agree revisions.

This guidance first became effective on 1 March 2000. It was revised and re-issued in full on 1 October 2002, 16 February 2004, 1 January 2005, 2 May 2006, 7 September 2007, 4 February 2010, 10 February 2011 and 1 March 2012. It applies to all complaints considered after 20 September 2007 unless powers of penalty have been limited (see page 35).

6 Glossary

Affiliate	A person who is not a member but who has been granted affiliate status under clause 12A of the Supplemental Charter of 21 December 1948; or granted audit affiliate status in accordance with the Audit Regulations 2008; or insolvency affiliate status in accordance with the Insolvency Licensing Regulations 2004
Aggravating factors	Any matter which, in the opinion of the tribunal, justifies increasing the suggested level of penalty
Appeal Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Consent Order	The sentencing order made by the IC with a member's agreement where liability is admitted
Disciplinary action	An adverse finding, plus a penalty and other order
Disciplinary Bye-laws	ICAEW's Disciplinary Bye-laws
Disciplinary Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Disciplinary record	In relation to any person or body, comprises all orders, findings, fines and penalties to which he has at any time been subject, being orders, findings, fines or penalties of any description prescribed for the purposes of this definition by regulations
Investigation Committee	Appointed by the council under the schedule to the Disciplinary Bye-laws (appointment of IC, DC and AC)
Mitigating factors	Any matter which, in the opinion of the tribunal, justifies reducing the suggested level of penalty
Panel	Appointed under Disciplinary Bye-law 27(1) to hear an appeal
Penalty	An order made in accordance with Disciplinary Bye-law 22
Provisional members	<p>A person:</p> <ul style="list-style-type: none">• who is training under a training contract; or• who has trained under such contract and is eligible either to sit for ICAEW's professional examinations; or, having successfully sat those examinations, to apply for membership <p>For the purposes of this definition only, an order under bye-law 22(7)(d) of the Disciplinary Bye-laws (concerning eligibility to sit examinations) shall be disregarded.</p>
Regulatory committee	Either the Audit Registration Committee, Insolvency Licensing Committee, Investment Business Committee or the Probate Committee

Regulatory penalty	A fine ordered by the Audit Registration Committee, Insolvency Licensing Committee Investment Business Committee or Probate Committee for breach of regulation by an authorised or licensed firm, or licensed insolvency practitioner
Regulated firm	A DPB licensed firm or a registered auditor or an accredited probate firm
Sentencing order	The order made by the IC (by a consent order) or a DC tribunal comprising, as appropriate, any or all of the matters set out in Disciplinary Bye-laws 22, 23, 24A (expenses), 33 (costs), or 35 (publicity)
Starting point	An indication of where a tribunal will start when it considers its decision on penalty
Tribunal	Appointed under Disciplinary Bye-law 19(1) to hear a formal complaint
Unpublicised caution	On order made by the IC in accordance with Disciplinary Bye-law 16A

7 Categories of complaint

7.1 Tribunal questions

The tribunal will use the following questions to help it make a decision on a sentencing order.

- Which category and type of behaviour corresponds to the complaint (see category index below)?
- Where does the behaviour fall on the scale of seriousness?
- What are the penalties available?
- Are there factors that aggravate or mitigate the seriousness of the behaviour?
- The tribunal will then form a preliminary view on the appropriate penalty and consider any factors personal to the defendant that should alter the penalty. It will look at the totality of the complaint, what is the member or firm's status (member employed, a firm, a sole practitioner etc). Does the member or firm have a low, medium or high turnover? Has the member or firm produced evidence of financial circumstances?
- Are there any orders in addition to penalty to be dealt with (obtain advice, waiver or return of fees, publicity, costs)?

7.2 Categories of complaint and types of behaviour

Pages 12-29 set out the starting points for determining an appropriate penalty if the case involves any of the following complaints or types of behaviour.

Acts of dishonesty/criminal convictions	12
Audit	15
Breach of bye-laws and/or regulations	17
Clients' money offences	18
Ethical	19
Failure to comply	20
Failure to cooperate	21
Financial mismanagement	22
General accountancy failings	23
Insolvency	24
Investment business/licensed firms under DPB arrangement	26
Misconduct as a company director	28
Misconduct as trustee and other positions of trust	29
Probate	

8 Acts of dishonesty/criminal convictions/adverse findings by regulatory/other bodies

There is separate guidance on page 13 for convictions if behaviour occurred outside a professional context or if another regulatory body has made an adverse finding.

The tribunal works through the questions on page 11 to make its decision on a sentencing order.

Complaint

Starting point

Cases dealt with by the court

- | | |
|---|---|
| a Act(s) of dishonesty/breach of trust/money laundering | a Exclusion# (except where followed by absolute discharge) |
| b An offence other than a followed by a prison sentence (suspended or not) or community penalty | b Exclusion# |
| c An offence other than a or b committed in a professional capacity even though not followed by a prison sentence or community penalty | c Exclusion# |
| d An offence other than a , b or c not committed in a professional capacity or followed by a prison sentence or community penalty | d Reprimand. If conduct occurs outside professional work, see separate guidance on approach to sentencing. |

Adverse findings by regulatory body

- | | |
|---|--------------------|
| a Adverse findings by other regulatory bodies where the underlying conduct involves dishonesty | e Exclusion |
| b adverse finding by regulatory body not covered by other categories of complaint | |

Where exclusion is the start point and in the previous proceedings the member has been fined or a Proceeds of Crime Act order has been made, an additional financial penalty will not be appropriate. Please see guidance on page 33.

+ Aggravating factors

Very serious dishonesty; eg, systematic over long periods of time, for own gain
Fraud
Amount involved
Defendant in a position of trust; eg, as employee
Direct involvement in dishonesty, planned and calculated

- Mitigating factors

Offence not committed in a professional capacity
Admission of guilt; insight into wrong doing;
cooperation with prosecution authorities; restitution to victim.

The starting point is not a tariff

8.1 Criminal convictions where the behaviour occurs outside professional work

Conduct — not in a professional context but in a member's private life — which results in a conviction, presents issues which require a particular approach to sentencing.

When dealing with such cases, the tribunal will be aware that the defendant member has been dealt with for the offence and the criminal court has imposed its sentence. The severity of the sentence imposed by the court will not, however, be the only factor relevant to seriousness. Conversely a lenient sentence will not necessarily lead the tribunal to view the matter less severely. On the contrary, it may well have been contemplated by the court that the member was bound to be dealt with by his or her professional body at a later date. The tribunal has to deal with the complaint because the member is in breach of the Disciplinary Bye-laws. The role of the tribunal is to balance the nature and gravity of the offence and its bearing, if any, on the member's fitness to practise as a chartered accountant; the need to protect the public and the good reputation of the profession against the need to impose further penalty and its consequential impact on the ability of the member to practise his or her profession.

When considering its decision on whether to impose a penalty and, if so, what, the tribunal will take into account the following questions.

- Does the offence and conviction affect the member's professional work or ability to practise as a chartered accountant in the future?
- Are future clients likely to be at risk of harm?
- Is the member's judgement sound?
- Has the member's type of work previously played a part in the conduct which led to the conviction?
- Does the public need to be protected from this member?
- Does the offence and conviction of the member diminish the good standing and reputation of ICAEW and the profession?
- Does the offence and the conviction give rise to a real probability that, if the member remains a chartered accountant, public confidence in the profession's ability and integrity to regulate itself will be undermined? If not, will an alternative, lesser penalty be appropriate?

8.2 The nature of the offence; for what offence has the member been convicted?

- theft
- offence against the person
- criminal damage
- sexual
- road traffic
- miscellaneous:
 - affray
 - possession/supply of drugs
 - firearms (possession of)
 - perverting the course of justice.

8.3 The gravity of the offence

- How serious?
- Is it gross?
- Is it shocking?
- Does it cause offence?

8.4 The circumstances surrounding the offence

- Was it planned?
- Was it committed over an extended period of time, repeated?
- Was there a victim?
- Was the victim vulnerable?
 - a child
 - sick
- Has the victim suffered; are there any short-term or lasting consequences?
- What was the member's initial response to the offence at the time?
- What was the member's response to the prosecution for the offence?
- What sentence was imposed by the criminal court?
- Were there any particular aggravating factors before the court before sentencing?
- Is there a history of offending and a likelihood of further offences?
- In the light of all the circumstances, what is the proportional, appropriate penalty?

A financial penalty will rarely be appropriate, particularly if the court has imposed a fine. Similarly, if action has been taken under the Proceeds of Crime Act for recovery and confiscation, this should be taken into account when deciding whether to impose a fine as part of the sentencing order. The tribunal's discretion in relation to costs applies as in any other case.

9 Audit

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a Acting as auditor when not registered
- b Audit work of a seriously defective nature
- c Lesser forms of bad audit work
- d Failure to prevent firm taking audit appointment - when firm not registered
- e Audit reports signed by a non-RI
- e¹ Deliberate/knowning not authorised or reckless
- e² Uncertain/signs without making proper enquiries
- e³ Some technical irregularity
- f Wrong, unqualified auditor's report:
- f¹ Serious/defective audit work

- f² Less serious defective audit work
- g Annual return incorrect/mis-statement

Individual

- g¹ Deliberate
- g² Reckless/serious negligence
- g³ Inadvertent

Firm

- g¹ Deliberate
- g² Reckless/serious negligence
- g³ Inadvertent

Starting point

- a Exclusion plus a fine of £10,000(if it is sole practitioner or responsible individual (RI))
- b **Firm**
Severe reprimand and a fine equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed. RI/second review partner
Exclusion and a fine of £5,000-£10,000
- c **Firm**
Reprimand and a fine equal to half audit fee. RI/second review partner.
Reprimand and a fine of £2,500-£5,500.
- d Severe reprimand and 1.5 x audit fee or £5,500
- e
- e¹ Severe reprimand and fine of £5,500 or 1.5 x the audit fee
- e² Reprimand and fine of £3,000 or fine equal to half the audit fee
- e³ Reprimand and fine of £2,000
- f
- f¹ Severe reprimand and a fine equal to 1.5 x audit fee. Adjust upwards if audit fee inadequate or if company subsequently collapsed.
- f² Reprimand and half the audit fee
- g
- Individual**
- g¹ Exclusion
- g² Severe reprimand and a fine of £3,000.
- g³ Reprimand and a fine of £1,500.
- Firm**
- g¹ Severe reprimand and a fine of £10,500.
- g² Severe reprimand and a fine of £5,500.
- g³ Reprimand and a fine of £3,000.

<p>h Refusing/failing to cooperate with or accept a QAD visit</p> <p>i Failure to comply with restrictions/conditions</p> <p>Individual</p> <p>i¹ deliberate</p> <p>i² reckless/serious negligence</p> <p>i³ inadvertent</p> <p>Firm</p> <p>i¹ deliberate</p> <p>i² reckless/serious negligence</p> <p>i³ inadvertent</p> <p>j Breach of undertaking</p> <p>Individual</p> <p>j¹ deliberate</p> <p>j² reckless/serious negligence</p> <p>j³ inadvertent</p> <p>Firm</p> <p>j¹ deliberate</p> <p>j² reckless/serious negligence</p> <p>j³ inadvertent</p> <p>k Breach of eligibility requirements</p>	<p>h Severe reprimand and a fine of £5,500 (£5,500 to be used as a multiplier for each partner in the firm)</p> <p>Individual</p> <p>i¹ Exclusion</p> <p>i² Severe reprimand and a fine of £5,500</p> <p>i³ Reprimand and a fine of £3,000</p> <p>Firm</p> <p>i¹ Severe reprimand and a fine of £10,500</p> <p>i² Severe reprimand and a fine of £5,500</p> <p>i³ Reprimand and a fine of £3,000</p> <p>Individual</p> <p>j¹ Exclusion</p> <p>j² Severe reprimand and a fine of £5,500</p> <p>j³ Reprimand and a fine of £3,000</p> <p>Firm</p> <p>j¹ Severe reprimand and a fine of £10,500</p> <p>i² Severe reprimand and a fine of £5,500</p> <p>j³ Reprimand and a fine of £3,000</p> <p>k Firm</p> <p>Reprimand and a fine based on fees saved by failure to comply x by number of years.</p>
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Lack of audit independence, **see Ethical**

+ Aggravating factors

Audit of plc
Multiple accounts audited over extensive period of time
Intention to mislead
Whether anyone lost money
Failure to follow recommendations after a QAD inspection

- Mitigating factors

Inadvertent/breach of requirements which has no consequences
Steps taken to put matters right
Subsequent audits found to comply with the requirements

Refusal or failure to cooperate with the QAD and the Audit Registration Committee is likely to lead to regulatory action including withdrawal of audit registration.

The starting point is not a tariff

10 Breach of bye-laws and/or regulations

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint		Starting point	
a	Engaging in public practice without a practising certificate	a	
a¹	Deliberate or reckless	a¹	Exclusion* and a fine of £5,000
a²	Inadvertent	a²	Severe reprimand and a fine of £2,000
b	Failure to hold PII	b	Exclusion and a fine of £5,000
b¹	Deliberate or reckless	b¹	Exclusion and a fine of £5,000
b²	Inadvertent	b²	Severe reprimand and a fine of £2,000
c	Failure to declare CPD	c	Reprimand and a fine of £750 each year (up to a maximum of 4 years)
d	Breach of the Money Laundering Regulations (not falling under category for dishonesty or criminal convictions; nb, the regulations are not made under the DBLs)	d	
d¹	Failure to report	d¹	Severe reprimand and a fine of £5,000
d²	Tipping off	d²	Severe reprimand and a fine of £5,000
d³	Failure to follow procedures, eg, maintain records	d³	Severe reprimand and a fine of £5,000
e	Practice Assurance	e	
e¹	Failure to cooperate with arranging or following a PA visit	e¹	Severe reprimand and a fine of £5,000 Consider withdrawal of practising certificate
e²	Failure to complete annual return	e²	Reprimand and a fine of £2,850
e³	Errors in annual return	e³	Reprimand and a fine of £1,150
e⁴	Failure to comply with undertaking made to PAC	e⁴	Reprimand and a fine of £1,500
e⁵	Failure to advise ICAEW of changes to a practice	e⁵	Reprimand and a fine of £1,000
e⁶	Failure to comply with DBL11, firm to deal with complaints	e⁶	Reprimand and a fine of £1,000
e⁷	Breach of Provision of Services Regulations 2009 (eg, failure to provide P11 details to client)	e⁷	Reprimand and a fine of £1,000

+ Aggravating factors

Extensive practice (repeated and on numerous occasions)
Over significant period of time
Continued offence after became aware
Wilful failure

* See guidance on [page 33](#).

- Mitigating factors

Minimal work carried out, no fees charged/very short period of time
Relied on another to ensure in place
Steps taken after became aware, retroactive cover obtained

The starting point is not a tariff

11 Clients' money offences

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Money held in firm account which was in credit or not held in designated client account:	a
a¹ Small sums for short period	a¹ Reprimand and a fine of £1,150
a² Small sums for long periods or repeated holding of small sums or large sum held for a short period	a² Reprimand and a fine of £1,750
a³ Large sum for long period	a³ Reprimand and a fine of £5,750
a⁴ Very large sum for short period	a⁴ Severe reprimand and a fine of £8,250
a⁵ Very large sum for long period	a⁵ Severe reprimand and a fine of £11,500
b Client money held in overdrawn firm account:	b
b¹ Small sums for short period	b¹ Severe reprimand and a fine of £2,300
b² Small sums for long periods or repeated holding of small sums or large sum for a short period	b² Severe reprimand and a fine of £3,450
b³ Large sum for long period	b³ Severe reprimand and a fine of £11,500
b⁴ Very large sum for a short period	b⁴ Severe reprimand and a fine of £17,250
b⁵ Very large sum for long period	b⁵ Severe reprimand and a fine of £23,000

+ Aggravating factors

Large numbers of clients involved
Failure to deal promptly with the matter following notification of the complaint
Significant benefit to the defendant resulting from improper retention of funds

- Mitigating factors

Matters put right immediately following complaint
Procedures introduced to avoid recurrence
Clients compensated for lost interest

Key

Small sums	£20,000
Medium sums	£20,000 - £100,000
Large sums	£100,001 - £500,000
Very large sums	£500,001 upwards
Short period	one month or less
Long period	one month or more

The starting point is not a tariff

12 Ethical

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Lack of independence due to personal/family relationship/previous material professional relationship/pecuniary interest:	a
a¹ Very serious – blatant	a¹ Exclusion* and a fine of £25,000. Withdraw registration of firm. (Exclude engagement partner, if separately charged, where there was collusion. Otherwise, consider withdrawal of practising certificate)
a² Serious	a² Severe reprimand and fine £14,500
a³ Less serious (tenuous link technical breach)	a³ Reprimand and fine £5,750
b Conflict of interest	b
b¹ Very serious/blatant	b¹ As in a¹ above
b² Serious	b² Severe reprimand and fine of £14,500
b³ Less serious; eg, inadvertent	b³ Reprimand and fine £5,750
c Providing false or misleading information	c Exclusion* and a fine of £5,750
d Breach of fiduciary duty (not otherwise covered):	d
d¹ Very serious	d¹ Exclusion* and a fine of £25,000
d² Serious	d² Severe reprimand and a fine of £14,500
d³ Inadvertent	d³ Reprimand and a fine of £5,750
e Breach of confidentiality	e
e¹ Misuse of confidential information	e¹ Exclusion* and fine
e² Wrongful disclosure	e² Exclusion* and fine
e³ Any other disclosure/misuse, inadvertent	e³ Reprimand and fine £5,750
f¹ Failure to communicate/cooperate with existing appointment holder/failure to provide handover information, lien wrongly exercised	f¹ Severe reprimand and fine £3,450
f² Other departure from fundamental principles, Code of Ethics without justification	f² Reprimand and fine £2,300
g Persistent or repeated aggressive course of conduct and/or the use of obscene and grossly offensive language/similar	g Severe reprimand and a fine of £2,300
h Unethical promotion practices	h Reprimand and a fine of £1,150

+ Aggravating factors

Lack of independence where public interest issues are involved or associated with collapse of company
Significant level of public attention or high public importance

Business – occurred in the course of
Deliberate
Fraud

Amount involved substantial
Defendant in a position of trust, eg, as employee
Deliberate act to gain personal advantage
Whether any loss suffered as a result

* See guidance on [page 33](#).

- Mitigating factors

No loss suffered
Information provided accidentally rather than deliberately
Reprehensible conduct/correspondence on the part of the client
Action taken at request of client/took professional advice
Compensation paid to the client

13 Failure to comply with an order of the IC, DC or AC

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Failure to take advice, for example from Practice Support Services
- b** Failure to comply with an order made for waiver or repayment of fees
- c** Failure to comply with a remedial order
- d** Other cases where a member has failed to act or acted belatedly to obligations upon him

Starting point

- a** Severe reprimand and a fine of £5,750
- b** Severe reprimand and a fine of £5,750
- c** Severe reprimand and a fine of £5,750
- d** Reprimand and a fine of £1,150

+ Aggravating factors

Blatant disregard, total absence of effort made to comply
Nature of inefficiency and effect on clients
Any other similar complaints in last five years

- Mitigating factors

Improvements made in the practice
No client disadvantaged

14 Failure to cooperate generally and to comply with DBL13 requirement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Failure to respond at all or promptly to client letters, telephone calls, emails	a Reprimand and a fine of £1,150
b Delay/failure to pass information to succeeding accountant (see also Ethical)	b Reprimand and a fine of £1,150
c Refusal to provide information (blatant obstruction) without good cause	c Exclusion* and a fine of £5,750
d Failure to reply to a letter sent in accordance with Disciplinary Bye-law 13 where:	d
ia the response has been difficult and tedious rather than calculated to obstruct and the information has been provided between the date of the IC preferring the complaint and the date of the hearing	ia Reprimand and a fine of £1,150
ib there has been a response but not all the information has been provided	ib Severe reprimand and a fine of £2,350
ic there has been a response that the information will be provided but it is not	ic Severe reprimand and a fine of £2,850
id there has been no response at all	id Severe reprimand and a fine of £3,450
ii Second such complaint within five years but	ii
iiia the information has been produced between the date of the IC preferring the complaint and the hearing	iiia Severe reprimand and a fine of £3,450
iiib there has been a response but not all the information is provided and	iiib Severe reprimand and a fine of £4,000
iiic there has been a response that the information will be provided but it has not	iiic Severe reprimand and a fine of £4,600
iiid no response at all	iiid Severe reprimand and a fine of £5,750
iii Third such complaint within five years	iii
iiia The information has been produced between the date of the IC preferring the complaint and the hearing	iiia Severe reprimand and a fine of £5,750
iiib A response but not all the information is provided	iiib Exclusion*
iiic there has been a response that the information will be provided but it has not	iiic Exclusion*
iiid No response at all	iiid Exclusion*

+ Aggravating factors

The information is produced at the last possible moment.
The investigation of a serious complaint; eg, fraud is frustrated and no adequate explanation is given.

* See guidance on [page 33](#).

- Mitigating factors

Difficulty accessing information, dependent on another, efforts made in attempt to provide information or respond.

The starting point is not a tariff

15 Financial mismanagement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Failing to account for VAT/income tax
- b** Multiple acts of financial mismanagement or second complaint in three years
- c** Failing to comply with terms of voluntary arrangements with creditors or other matters charged against a defendant in an individual voluntary arrangement
- d** Member or principal of firm or LLP which enters insolvency procedure, as list in DBL 4 (2) (e) and (f), for example, CVA or PVA
- d¹** as a result of member's gross financial mismanagement
- d²** as a result of misfortune
- e** Non-payment of judgment debt or dishonoured cheque
- f** Entry into an IVA

Starting point

- a** Exclusion* and a fine of £ 5,750
- b** Exclusion* and a fine of £ 5,750
- c** Exclusion*
- d**
- d¹** Severe reprimand
- d²** Reprimand
- e** Reprimand and a fine of £ 2,300 (if solvent)
- f** No order but contribution to costs

+ Aggravating factors

- Personal assets/income available
- Failure to disclose/or to disclose accurately assets to supervisor
- Making unfairly small contribution to IVA when substantial personal assets available
- Making substantial drawings in excess of profits in period prior to entry into IVA
- Preferring personal creditors to business creditors
- Preferring creditors of one business rather than another
- Disposing of assets at an under value with the object of personal gain
- Lack of integrity in business dealings

* See guidance on [page 33](#).

- Mitigating factors

- Effective arrangements made to make good deficiency
- Problem resulted from deliberate act by properly supervised/trusted member of staff

The starting point is not a tariff

16 General accountancy failings

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Poor work on accounts
 - i Serious
 - ii Other cases less serious
- b** Accounts not in statutory format
 - i Serious
 - ii Less serious
- c** Wrongly signed report/inaccurate report, accounts do not comply with Solicitor's Accounts Rules or similar
- d** Second offence **a**, **b**, or **c** within two years
- e** General neglect of client affairs
 - i Single/first instance
 - ii Multiple clients or lengthy neglect
 - iii Second finding of guilt in relation to i and/or ii above in three years
- f** Lack of attention/delay on client's affairs
- g** Bad advice on client's affairs/tax
- h** Failing to respond properly to professional enquiry or handover (also see Ethical)

+ Aggravating factors

Nature of inefficient or incompetent work, eg, failure to reconcile client ledger balances with funds available to meet them

Collusion to cover up deficiencies

The client has lost money

Effect on client, eg, subject to penalties, loss of business opportunity

Starting point

- a**
 - i Severe reprimand, fine £5,750 or 1.5 x fee if greater than £5,750. Consider PRS referral
 - ii Reprimand, fine £2,850 or 0.5 x fee if greater than £2 850
- b**
 - i Severe reprimand, fine £ 2,350 or 1.5 x fee charged – if successive years fee x by number of years
 - ii Reprimand, fine £ 1,150
- c** Severe reprimand, fine £2,350. Consider fees charged if greater for fine and/or return or waiver
- d** Severe reprimand, fine £11 500. Consider withdrawal of practising certificate and consider fees charged if greater for fine and/or return or waiver
- e**
 - i Severe reprimand and a fine of £2,350. Consider fee waiver/return
 - ii Severe reprimand and fine of £5,750
 - iii Exclusion or severe reprimand, fine of £11,500 . Consider fee waiver/return. Consider withdrawal of practising certificate or referral to Practice Support Services (PSS). Consider using fee charged as multiplier in all above
- f** Reprimand, fine £1,150 or fee charged if greater. Consider waiver/return of fees
- g** Reprimand, fine £1,150 or fee charged if greater. Waiver return of fees, withdrawal of practising certificate, referral to PRS
- h** Severe reprimand, fine of £ 3 450

- Mitigating factors

Client deceived the defendant

Turnover on client account and proportion and size of deficiencies

Client unhelpful in providing records or information; gave misleading information.

Files lost through natural catastrophe, eg, fire, flood

The starting point is not a tariff

17 Insolvency

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Acting as insolvency practitioner without licence	a Exclusion* and a fine of £10,000
In each case listed below consider fine equal to or 1.5 x fee charged	
b	b
b¹ Unauthorised diversion of funds to own account, other estates or third parties	b¹ Exclusion* and a fine of £15,000
b² Drawing unauthorised remuneration:	b²
b^{2a} not subsequently authorised, and	b^{2a} Severe reprimand and a fine of fee so drawn or
b^{2b} subsequently authorised	b^{2b} Severe reprimand and a fine of 50% of fee so drawn
c Refusing to cooperate with or accept a QAD visit	c Severe reprimand and a fine of £5,000
d Failure to comply with an order of the Insolvency Licensing Committee	d Severe reprimand and a fine of £7,500
e Failure to comply with the requirements of the Insolvency Act, rules and regulations and best practice (SIPS)/ethical guidance	e
e¹ Major, eg, total failure to submit returns (eg, CDDA returns). Failure to convene key creditor meetings (e.g. S 23 IA 86)	e¹ Severe reprimand and a fine of £5,000
e² Minor, eg, small delay in submitting returns. Delay in convening annual meetings	e² Reprimand and a fine of £500
f Failure to perform duties as Nominee or Supervisor of an IVA, PVA or CVA, Trustee in Bankruptcy, Liquidator, Receiver or Administrator	Reprimand and a fine of £5,000
g Delay re IVA, PVA or CVA as nominee or supervisor, trustee in bankruptcy, liquidator, receiver or administrator	Reprimand and a fine of £2,500
h Delay/failure to pay money into Insolvency Services Account	Delay – reprimand and a fine of £1,000 Failure – severe reprimand and a fine of £2,500
i Lack of independence Failure to comply with ethical guidance – See Ethical	

* See guidance on [page 33](#).

+ Aggravating factors

Persistent course of conduct
Evidence that creditors have suffered additional loss as a result of defendant's actions
Extent of any personal benefit to defendant
Defendant still unlicensed
Poor record keeping, for example minutes of creditors meetings
Failings over long period of time

Refusal or failure to cooperate with the QAD and Insolvency Licensing Committee is likely to lead to regulatory action, including withdrawal of licence.

- Mitigating factors

Prompt application for licence
Prompt completion of outstanding work
Isolated incident
Sum involved small

The starting point is not a tariff

18 Investment business/licensed firms under DPB arrangement

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Carrying on investment business without authorisation	a Exclusion* and a fine of £10,000
b Breach or breaches of Investment Business Regulations or Designated Professional Body Handbook Regulations	b Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
c Refusal to cooperate with or accept a QAD visit	c Severe reprimand and a fine of £5,000 (with £5,000 as a multiplier for each partner in the firm)
d Failure to rectify faults discovered on QAD inspection	d Severe reprimand and a fine of £5,000
e Failure to comply with an order of the Investment Business Committee	e Severe reprimand and a fine of £7,500
f Failure by firm to investigate complaint concerning investment business	f Reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
g Charging excessive fees/commission	g Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
h Seriously negligent/reckless investment advice	h Severe reprimand and a fine of £5,000. Consider order of waiver or return of related remuneration or commission
i Annual return failure to submit, incorrect mis-statement	i
Individual	Individual
i¹ Deliberate	i¹ Exclusion*
i² Reckless/serious negligence	i² Severe reprimand and a fine of £2,500
i³ Inadvertent	i³ Reprimand and a fine of £1,000
Firm	Firm
i¹ Deliberate	i¹ Severe reprimand and a fine of £10,000
i² Reckless/serious negligence	i² Severe reprimand and a fine of £5,000
i³ Inadvertent	i³ Reprimand and a fine of £2,500
j Breach of eligibility requirements	j
Firm	Firm
	Reprimand and a fine based on annual fees saved x by number of years
Pre-N2 complaints	
k Conduct of investment business outside authorisation category or licence	k Severe reprimand and a fine of £5,000
l Holding investment business clients monies in excess of £50,000 without bonding	l Severe reprimand and a fine of £5,000
m¹ Pension advice without taking required steps	m¹ Severe reprimand and a fine of £5,000
m² Failure to complete pension transfer and opt-outs review	m² Severe reprimand and a fine of £2,500

* See guidance on [page 33](#).

+ Aggravating factors

Advised numerous clients/conducted numerous transactions without authorisation
Failure to make client aware of risks
Failure to pass on risk warnings in product literature
Failure to document/record justification for advice/recommendation
High value of commission earned
Breach repeated/continued over time

Refusal or failure to cooperate with the QAD or the Investment Business Committee is likely to lead to regulatory action including withdrawal of DPB licence.

- Mitigating factors

Steps taken on behalf of client to recover loss
Steps taken to tighten up/improve office procedures
QAD recommendations since implemented
Technical breach, no clients involved

The starting point is not a tariff

19 Misconduct as a company director

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint	Starting point
a Disqualification including by undertaking as company director	a
i Disqualification 11-15 years	i Exclusion*
ii Disqualification 6-10 years	ii Exclusion*
iii Disqualification 2-5 years	iii Exclusion/severe reprimand and a fine of £ 1,150
b Misuse of company funds	b Exclusion*
c Issue of post-dated cheques, dishonoured when presented	c Exclusion*
d Approving defective accounts	d
i Deliberate	i Exclusion
ii Reckless or serious negligence	ii Severe reprimand and a fine of £ 5,750
iii Inadvertent	iii Reprimand and a fine of £ 2,300

+ Aggravating factors

Misuse of company funds deliberate/for personal gain
Nature of conduct rendering member unfit to be concerned in the management of the company
Carrying on business with intent to defraud creditors
Making fraudulent preferences
Amount of deficiency of the insolvent company
Systematic failure to submit returns
Conduct during the insolvency, eg, giving false explanations, concealment of assets
Length of disqualification imposed by the court

- Mitigating factors

Length of disqualification
Existence of dominant other director or proprietor of company

Periods of disqualification are divided into three levels:

1. Disqualification for periods over 10 years; reserved for particularly serious cases.
2. The middle level, 6-10 years, is applied to serious cases which do not merit the top level.
3. The lowest level, 2-5 years, is applied if a case is not very serious based on the decision in the case re Sevenoaks Stationers (Retail) Limited.

* See guidance on [page 33](#).

The starting point is not a tariff

20 Misconduct as trustee and other positions of trust

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a** Misappropriation of funds from trust or employer
- b** Trustee acts contrary to beneficiaries' interests
- c** Serious failings/errors in administration of a trust
- d** Delay/lack of attention as executor

Starting point

- a** Exclusion* and a fine of £25,000
- b** Severe reprimand and a fine of £ 5,750
- c** Severe reprimand and a fine of £ 5,750
- d** Severe reprimand and a fine of £ 5,750

+ Aggravating factors

Distress caused to beneficiaries over a long period of time.

- Mitigating factors

Contribution to delay by others or lack of attention.
Errors corrected.
No cost to estate/trust.

* See guidance on [page 33](#).

The starting point is not a tariff

21 Probate

The tribunal works through the questions on page 10 to make its decision on a sentencing order.

Complaint

- a. In the case of an *Accredited Probate Firm*, continuing to carry out *probate work* in breach of the eligibility requirements and/or continuing obligations set out in the Probate Regulations
- b. In the case of an *Accredited Probate Firm* continuing to carry out *probate work* in circumstances where it has failed to ensure that those individuals undertaking or controlling the undertaking of *probate work* are *Authorised Individuals* or as required under the *Probate Regulations*
- c. In the case of an *Authorised Individual* carrying out *probate work* in breach of the eligibility requirements and/or continuing obligations under the Probate Regulations
- d. *Probate work* of a seriously defective nature.
- e. Unauthorised diversion of funds
- f. Drawing unauthorised remuneration (1) Not subsequently authorised; (2) Subsequently authorised;
- g. Refusing/failing to cooperate with or accept a QAD visit
- h. Failure to comply with restrictions or conditions on authorisation or any other decision or order of the Probate Committee or the Probate Regulations.

Starting point

[Further consideration and discussion is required before these starting points can be finalised]

+ Aggravating factors

Acting for multiple clients without authorisation
Intention to mislead
Financial Loss
Vulnerable client/abuse of position
Failure to cooperate with QAD or follow Recommendations

- Mitigating factors

No intention to mislead
No financial loss or loss reimbursed
Steps taken to put matters right
Isolated failure

The starting point is not a tariff

22 Guidance to disciplinary tribunals – fine and/or reprimand or severe reprimand

22.1 Fines

Where a fine is considered by a tribunal to be appropriate, the first consideration will be seriousness of the misconduct and aggravating and mitigating factors. The second consideration will be the circumstances of the defendant and his/her means to pay a fine. There are a number of specific matters which influence general approach and will be taken into account by a tribunal when deciding on the level of fine:

- The extent to which the conduct has fallen below the required standard.
- The existence and amount of any economic gain resulting from the conduct.
- If the defendant is a corporate entity, all aspects of means to pay are relevant including profitability and liquidity.
- If no, or inadequate, information is produced to demonstrate financial circumstances, a tribunal can assume the defendant can pay whatever fine is ordered.
- If a fine is imposed with an order for exclusion and a request is made for time to pay, a tribunal can direct that the fine be paid by instalments. Ideally an instalment plan should not extend beyond 12 months.

22.2 Reprimand or severe reprimand

A reprimand is equated by some other regulatory bodies to a warning or a ticking off (Brian Harris, Disciplinary and Regulatory Proceedings 2006). A severe reprimand is viewed very much as a final warning.

The GMC (Indicative Sanctions Guidance) suggests that if fitness to practice is found not to be impaired, a warning may be given. The following are relevant considerations when deciding whether to give a warning:

- Evidence that behaviour would not have caused direct or indirect harm.
- Insight into failings.
- Isolated incident that was not deliberate.
- Genuine expression of regret/apologies.
- Evidence of duress.
- Previous good record.
- No repetition of behaviour since incident.
- Rehabilitative/corrective steps taken.
- Relevant and appropriate references.

Equally, the absence of such considerations may influence a decision to impose a severe reprimand or exclusion.

23 Guidance to disciplinary tribunals – withdrawal of practising certificates

In addition to penalty, tribunals may specify as part of its order, the time for which a member should remain without a practising certificate.

23.1 Practising certificates

The Disciplinary Bye-laws give tribunals the power to order:

- 22(3)(b) that his practising certificate be withdrawn either permanently or for a specified period
- 22(3)(e) that he be ineligible for a practising certificate, either permanently or for a specified period.

The Learning and Professional Development Board has responsibility for deciding whether or not a member should be given a practising certificate. In reaching their decision on an application where a practising certificate has been withdrawn, the board would find it helpful to have the minimum period for withdrawal specified. If a practising certificate is withdrawn for less than four years (unless the tribunal orders that the member be ineligible), it will be returned when a member signs a declaration that he has maintained competence in his area of practice, has PII cover and that he understands ICAEW's ethical code, in particular Fundamental Principle 3. If a practising certificate is withdrawn for more than four years, a member will have to satisfy the Board as to his competence before it can be returned.

If the tribunal withdraws a practising certificate for less than four years and are of the view that the member's competence should also be re-assessed before a practising certificate is issued, they should order that the member be ineligible for the same period fixed for withdrawal.

24 Guidance on exclusion

Disciplinary Bye-law 22(8) provides that where a member is excluded, the order may include a **recommendation** that no application for his readmission be entertained before the end of a specified period.

In order to avoid former members making premature applications for readmission, it would assist the Investigation Readmissions Sub-Committee if the tribunal made a recommendation on when it believes it might be appropriate for an application to be considered. It should be noted that tribunals will only be recommending the period which in its opinion, taking into account all the circumstances surrounding the behaviour which is the subject of the complaint, is the appropriate period within which an application for readmission should not be considered.

It does not follow that an application after the specified period will be approved. A tribunal does not have power under the Disciplinary Bye-laws to make an order for exclusion for a specified period. Accordingly it must be made clear to a defendant when announcing an order and in the tribunal's written record of decision that an application for readmission after the specified period will not necessarily be approved and will be considered by the Readmissions Sub-Committee on all its merits. In order to avoid creating any misunderstanding, a tribunal should also make clear to a defendant in the most serious cases involving dishonesty that save in the most exceptional circumstances he/she is unlikely to be re-admitted.

Against this background, tribunals should normally make the following recommendations, without prejudice to an adjustment either way in the light of the facts of a particular case:

Complaint	Recommended period/No application for readmission
Dishonesty (whether or not prosecuted and whether or not followed by an immediate custodial sentence)	Ten years
Criminal offence followed by an immediate custodial sentence	Five years
Other exclusion orders	Two years

Where an order for exclusion is made on a complaint that a member has been disqualified from acting as a company director, the period recommended should match the length of disqualification. In all cases, a tribunal will take account of the date of the disqualification and the expiration of the period of disqualification.

A tribunal does have the power to impose more than one penalty for the same offence. A fine may be imposed in addition to an order for exclusion in appropriate circumstances, for example, where the defendant has clearly benefited financially as a result of the misconduct.

A fine with exclusion will only be appropriate in the most exceptional cases where the misconduct is very serious so that in addition to loss of membership a financial penalty is necessary. In this narrow context a fine is part of the punishment which in turn should be a deterrent. Before ordering a fine with exclusion, a tribunal will need to consider not only whether a member has benefited financially from the wrong doing but whether he or she has the means to pay not only at the time of the hearing but following loss of membership. Where there have been criminal proceedings, a tribunal should enquire as to whether there have been confiscation and compensation orders made.

25 Publicity

When a tribunal makes an adverse finding and order, the record of its decision will be published in such manner as it thinks fit. This means there will be publicity in all cases where a finding and order are made (Disciplinary Bye-law 35(1)).

Where a tribunal dismisses a complaint, a record of that decision will be published only if the member requests (Disciplinary Bye-law 35(2)).

Publicity involves a press release which is made up of the detail from the record of decision, which is circulated to ICAEW's Council. The press release is also sent to *economia*, ICAEW's member magazine and it is then a matter of editorial discretion whether the case is actually published.

In all cases of exclusion or withdrawal of practising certificate, the press release is sent to a newspaper local to the member, and the local district society is informed. The district society is also informed if membership ceases for non-payment of disciplinary fines and costs.

Unless a tribunal otherwise directs, a record of decision (which forms the basis of the press release) must state the name of the defendant and describe the finding and order or orders (if any) made against him. There is a power available to the tribunal to direct the omission of the defendant's name (Disciplinary Bye-law 35(3)). The discretion not to publish the name of a defendant is rarely exercised.

There are a number of reasons why the name of the defendant will normally be included, namely:

- ICAEW members should be aware of the decision of the disciplinary tribunal
- it is desirable that the public should have confidence in the disciplinary procedures employed by ICAEW
- such confidence is best promoted by openness in respect of the findings and orders made by disciplinary tribunals.

Since the year 2000, (leaving aside consent orders made in respect of entry into an IVA), out of all relevant cases considered by tribunals, an order directing the omission of a defendant's name has been made only on 10 occasions. By reference to those 10 cases, it is possible to identify features which influenced the decision to treat them as exceptional, in particular:

- the conduct in question was not serious misconduct and
- there may have been an adverse impact on innocent third parties or
- the effect of publication on the defendant himself would have had an adverse impact on his health or safety such that publication would have been unduly harsh.

These features will be relevant to consideration of whether a hearing should be held in private. Where a hearing or part of a hearing is held in private, it will not automatically follow that the defendant's name will not be published. This will always be considered as a separate matter by the tribunal if a request is made by a defendant for his name not to be published.

26 Disciplinary Bye-law 22

Powers of tribunal

- 22(1) If the tribunal appointed to hear a formal complaint is of the opinion that the complaint has been proved in whole or in part, it shall make a finding to that effect; but if it is not of that opinion, it shall dismiss the complaint.
- 22(2) If the tribunal finds that the formal complaint has been proved in whole or in part, it may (unless it is of the opinion that in all the circumstances it is inappropriate to do so) make against the defendant such one or more of the orders available against him under the following provisions of these bye-laws, namely:
- (a) paragraph (3), (4), (5), (6) or (7) of this bye-law, as the case may be and
 - (b) bye-laws 23 (waiver etc. of fees), 24 (remedial action) and 24A (expenses), as it considers appropriate, having regard to the past disciplinary record, if any, of the defendant, the tribunal's views as to the nature and seriousness of the formal complaint (so far as proved), and any other circumstances which the tribunal considers relevant.
- 22(3) If the defendant is a member, the orders available against him are:
- (a) that he be excluded from membership
 - (b) that his practising certificate be withdrawn either permanently or for a specified period
 - (c) that any insolvency licence held by him be withdrawn
 - (d) that he be ineligible for an insolvency licence
 - (e) that he be ineligible for a practising certificate, either permanently or for a specified period
 - (f) that he be severely reprimanded
 - (g) that he be reprimanded
 - (h) that he be fined a specified sum.
- 22(4) If the defendant is a member firm, the orders available against it are:
- (a) that it be prohibited from using the description 'chartered accountants' for a specified period
 - (b) that it be severely reprimanded
 - (c) that it be reprimanded
 - (d) that it be fined a specified sum.
- 22(5) If the defendant is an authorised firm, the orders available against it are:
- (a) that it shall cease to be authorised by ICAEW to carry on exempt regulated services under the Financial Services and Markets Act 2000
 - (b) that it be severely reprimanded
 - (c) that it be reprimanded
 - (d) that it be fined a specified sum.
- 22(6) If the defendant is a registered auditor, the orders available against it are:
- (a) that its registration granted at the instance of ICAEW under the Companies Act 1989 be withdrawn
 - (b) that it be severely reprimanded
 - (c) that it be reprimanded
 - (d) that it be fined a specified sum.

- 22(7) If the defendant is a provisional member, the orders available against him are:
- (a) that he be declared unfit to become a member
 - (b) that he cease to be a provisional member and be ineligible for re-registration as a provisional member for a specified period not exceeding two years
 - (c) that the registration of his training contract be suspended for a period not exceeding two years
 - (d) that for a specified period not exceeding two years he be ineligible to sit for such one or more of ICAEW's examinations as may be specified or for any specified part of any of those examinations
 - (e) that he be disqualified from such one or more of ICAEW's examinations as may be specified or from any specified part of any of those examinations, not being an examination or part the result of which was duly notified to him by ICAEW before the date of the order
 - (f) that he be severely reprimanded
 - (g) that he be reprimanded.
- 22(8) An order under this bye-law may include such terms and conditions (if any) as the tribunal considers appropriate including, in the case of an order for exclusion from membership made against a member, a recommendation that no application for his readmission be entertained before the end of a specified period.
- 22(9) An order under this bye-law against a member, member firm or regulated firm may include a direction requiring him (at his own expense) to obtain advice from a specified source and to implement the advice obtained.
- 22(10) In this bye-law 'specified', in relation to any order or direction under this bye-law, means specified in the order or direction.

27 Table of disciplinary orders – powers of tribunals

Complaint relates to conduct before 19 December 1990	Exclusion Censure Reprimand Admonishment Fine limited to £1,000 Costs limited to £1,000
Complaint relates to conduct from 19 December 1990 to 18 December 1991	Exclusion Censure Reprimand Admonishment Fine unlimited Costs unlimited
Complaint relates to conduct from 19 December 1991	Exclusion Severe reprimand Reprimand Fine unlimited Costs unlimited

Date of PC allowance	Bye-law	Change
19 December 1990	Bye-law 83(a)(A)(x)	£1,000 limit on fine changed to unlimited
19 December 1990	Bye-law 88(a)	£1,000 limit on costs changed to unlimited
19 December 1991	Bye-law 83(a)(A)(vi), Bye-law 83(a)(A)(vii), Bye-law 83(a)(A)(ix)	Removal of censure and admonishment substituted by severe reprimand, reprimand (members & students)

Since 8 February 1994, ICAEW has been able to discipline member firms as well as members.

28 Unpublicised cautions

Unpublicised cautions are only available to the IC.

When the IC finds that there is a prima facie case for disciplinary action it may, if it considers it appropriate in all the circumstances, offer to the member as a penalty, an unpublicised caution. If the offer is not accepted, and the IC is not prepared to alter its finding, the complaint will be preferred to the DC. The DC does not have power to impose an unpublicised caution.

The caution is intended to be a more serious step than 'no further action' but less serious than a consent order or referral to the DC. The IC may include in the order a requirement to pay a sum towards costs. This will be a figure for the actual costs incurred up to a maximum of £2,000.

A caution will constitute part of a member's record and result in cessation of eligibility to be a member of council. ICAEW will not pass details of the caution to the press for publication but it will be entitled to inform a complainant, other regulators and those making a specific request.

The procedure and form of notice relating to unpublicised cautions is set out in Disciplinary Byelaw 16(1)(A) and Investigation Committee Regulations 19, 20 and 21.