

Table of mandatory and selected consultees advice and ICAEW representations

Consultee	Advice	ICAEW Representation
OFT		
<p>If granted, would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent (Schedule 4 Part 2 Section 6(2) of the Act.</p>	<p>OFT's default position is that unless there is compelling evidence to show a significant detriment to competition, the OFT is unlikely to raise any substantive concerns.</p> <p>The OFT therefore had no objections to the application and considered that allowing ICAEW members authorisation to deliver probate services as accredited probate firms, may strengthen competition for these services. E.g. ICAEW members could act as an alternative supplier to solicitors in the conduct of probate activities, especially as an ABS.</p>	<p>ICAEW welcomed the advice from the OFT.</p>
Consumer Panel		
<p>The likely impact on consumers of the Lord Chancellor making an order for designation in accordance with a recommendation from the LSB.</p>	<p>General: The Panel acknowledged the progress made by ICAEW in taking on early comments from the Panel in relation to the draft application; this has resulted in the proposals being more consumer focussed.</p> <p>The Panel were overall satisfied with the ICAEW proposals in relation to: the inclusion of estate administration in the client</p>	<p>ICAEW welcomed the comments from the Panel.</p>

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	<p>protection arrangements; authorisation; client money; complaints.</p> <p>The Panel had specific comments in relation to:</p> <p>CPD – the regime seems light touch and should be kept under review.</p> <p>PII - gap if a firm does not hold PII or run-off has expired or not been purchased, the consumer will not be able to obtain redress in cases of negligence - Panel wants this gap closed.</p> <p>Compensation - Compensation Fund does not address that gap highlighted in PII above. LSB must seek confirmation that ICAEW sought confirmation from its broker that CF will respond in cases of fraud and bankruptcy where the firm's PII is invalidated.</p> <p>Governance – pleased that the lay-chair has the casting vote; inclusion of ‘those without legal training’ in the lay definition; 50:50 lay vs. non-lay split. LSB to send strongest possible signal that ICAEW's independence review should result in a lay</p>	<p>Do not agree that their regulations and CPD place no obligation on regulated persons to do CPD linked to probate; they are not light touch; maintenance of professional knowledge and skills is a part of the Code of Ethics. CPD regulations must be declared; CPD records may be subject to investigation by PA Scheme.</p> <p>ICAEW inserted guidance to the effect that firms must inform clients in cases where value of estate is likely to exceed the level of PII cover. Guidance makes it clear that client must understand the implications and what they are being informed about.</p> <p>Gap in PII in terms of negligence is explained above.</p> <p>All ICAEW committees are subject to an independent review by Sir Christopher Kelly and group, due to report later in 2013; recommendations implemented in spring 2014.</p>

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	majority on Disciplinary Committee and other regulatory committees.	
<p>Supplementary request for advice on minor amendments to the ICAEW's proposed regulations for client protection i.e.</p> <p>a new regulation giving the Probate Committee the ability to refuse to make a grant if payment could exhaust all the funds available for payment and, deletion of a regulation which gave the PC discretion to waive certain provisions.</p>	<p>On balance supports the proposal on the grounds that the interests of all potential claimants should outweigh those of a single individual. No further comment on the deletion of the waiver as the regulations were already discretionary.</p>	<p>ICAEW intends to keep this under review and will make adjustments where necessary to maintain fair outcomes. ICAEW will publish claims made to the compensation fund (freq and size), grant paid out, details of case where grants refused or reduced in size because the fund would have been exhausted.</p>
LCJ		
<p>The likely impact on the courts of England and Wales if the application were granted.</p>	<p>General: LSB must assess professional standards to which ICAEW will hold regulated persons and licensed firms are equally robust, ensure highest professional competency as applied by other regulators of non-contentious probate. If absence of certainty - the application should not be granted.</p> <p>He expressed the following concerns in relation to the applications:</p>	<p>ICAEW responded to the LCJ's specific concerns below.</p> <p>Do not agree with the concern that</p>

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	<p>Standards: Overarching concern competition will have a detrimental effect on standards, that a variation in standards between regulators is inappropriate in principle, and that a variation on standards may bring about a drive to the bottom.</p>	<p>professional standards will drop and is less than that of other regulators for following reasons:</p> <ul style="list-style-type: none"> • ICAEW charter maintains high standards of practice and professional conduct by members; • ICAEW has strong regulatory background regulating in other areas of work; • ICAEW Code of Ethics expects highest standard of conduct by its members and is enforced by disciplining members who are in breach of the Code; • ICAEW's existing education system is internationally respected and, education and training for probate is fit for purpose – based on existing skills accountants already have. <p>To ensure that there is no variation in standards, a full review was carried out of the education and training requirements of the Solicitors Regulatory Authority (SRA) for trainee solicitors for the areas of wills, probate and estate administration as set out in the Legal Practice Course (LPC) Learning Outcomes 2011 and Information for Providers of Legal Practice Courses – May 2012.</p> <p>A comparison of the LPC and ACA qualifications was also carried out to ascertain which of the SRA's education and training requirements relating to wills, probate and estate administration are covered by the ACA qualification.</p> <p>In the light of these reviews, further consideration was given to the work involved in both contentious and non-contentious probate, and learning outcomes were developed as criteria for assessing courses on wills, probate and estate administration to ensure that our authorised</p>

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	<p>Non-contentious probate work: Concerns that ICAEW underestimated work required within non-contentious probate work. Non-contentious probate practitioners therefore of relevance to administration of justice and the operation of the courts. Regulators must ensure practitioners have the highest level of professional integrity and competence for the work undertaken. ICAEW does</p>	<p>practitioners who successfully complete the ACA qualification or an equivalent qualification are trained, as a minimum, in the same areas and to the same standard as trainee solicitors.</p> <p>In addition, ICAEW learning outcomes therefore cover, in addition to non-contentious probate, those areas of contentious probate that a practitioner will require knowledge of in order for them to be able to make appropriate enquiries and obtain sufficient information in order to ascertain at the time of initial engagement of a client whether a claim will or is likely to become contentious or a non-contentious claim be opposed and to advise and act accordingly.</p> <p>Furthermore, the training will cover the necessity for the practitioner to make it clear on engagement that the service that can be provided is in respect of non-contentious probate work only and therefore, if the matter were to become contentious, a solicitor would have to be instructed.</p> <p>ICAEW is therefore of the opinion that our proposed training and assessment is comparable with those of the SRA's for trainee solicitors.</p> <p>It appears that LCJ underestimates amount of work carried out by accountant in estate administration.</p> <p>The ICAEW's definition of non-contentious probate includes: assessment of assets & liabilities of an estate, completion & filing of IHT returns, completion of application of grant of probate or letter of administration.</p> <p>The ICAEW's Probate Regulation 3.1 requires accountants to only undertake work they are competent to do.</p>

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	<p>not acknowledge the role of the court in the application</p> <p>Code of Ethics: absence of a lack of a clear statement in ICAEW's Code of Ethics (the Code) that those working in non-contentious probate must not recklessly or knowingly mislead the court and must only act when competent to do so, and questions whether the enforcement mechanisms are sufficient to enforce such a requirement.</p>	<p>The Code does not refer to the types of work that members undertake specifically but takes a general approach that its principals apply to all professional and business activities.</p> <p>The Code expects members to demonstrate the highest standards of professional conduct and to take into consideration the public interest. The Code sets out five fundamental principles which guide members' behaviour and these include the requirement to ensure professional competence and due care.</p> <p>Part B of the Code which is applicable to members in practice, contains section 210 on professional appointments which states among other things that:</p> <p>'The fundamental principle of professional competence and due care imposes an obligation on a professional accountant in public practice to provide only those services that the professional accountant in public practice is competent to perform. Before accepting a specific client engagement, a professional accountant in public practice shall determine whether acceptance would create any threats to compliance with the fundamental principles. For example, a self-interest threat to professional competence and due care is created if the engagement team does not possess, or cannot acquire, the competencies necessary to properly carry out the engagement.'</p> <p>Furthermore, Regulation 3 of ICAEW's Probate Regulations deals with the conduct of authorised work and imposes the following regulatory obligations on authorised persons:</p> <p>Regulation 3.1 accredited probate firms must act in accordance with the fundamental principles set out in the</p>

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		<p>Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its principles and employees comply with these regulations and the professional principles set out in the Act to:</p> <ul style="list-style-type: none"> 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. <p>Regulation 3.2 An accredited probate firm shall only carry out authorised work, which it is competent to perform.</p> <p>Regulation 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.</p> <p>Regulation 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.'</p> <p>Another fundamental principle of the Code is integrity. Section 110 relates to this and states among other things, that members 'shall not knowingly be associated with reports, returns, communications or other information where the professional accountant believes that the information:</p> <ul style="list-style-type: none"> (a) contains a materially false or misleading statement; (b) contains statements or information furnished recklessly; or (c) omits or obscures information required to be included where such omission or obscurity would be misleading.' <p>ICAEW is committed to enforcing the Code by disciplining members who do</p>

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	<p>Enforcement: questions around whether the enforcement mechanisms detailed are sufficient to enforce their requirements of only acting when competent to do so.</p> <p>ICAEW membership: It is concern that ICAEW does not intend to restrict its application to bodies which are led by accountants or ICAEW members. If ICAEW is a key safeguard for public interests in relation to the regulation of individuals, ICAEW membership by business leaders must be of similar importance in relation to the licensing ABS. It is a concern that with respect to the LA application that this requirement is lacking.</p>	<p>not meet the reasonable ethical and professional expectations of the public and other members. ICAEW and the PC also have the power to take regulatory action against a firm if a firm does not comply with the probate regulations; ICAEW may also impose conditions or restrictions on a firm, who will need to comply and failure to do so would result in disciplinary action against the firm.</p> <p>This is incorrect; applicants may apply under: 4.1a - Passed ACA qualification (or recognised equivalent) and attended short course - this is restricted to ICAEW members and equivalent recognised qualification. 4.1b and 4.1c are not restricted to ICAEW members and members of other accountancy institutes; 4.1b refers to qualifications from another AR; 4.1c refers to restricted to those otherwise qualified to undertake probate. 4.13 relates to ABS and does not restrict applications led by ICAEW members or accountants this is because ICAEW process for authorising individuals under 4.1 has no such restriction. There are no inconsistencies. In comparison to SRA, it would appear inconsistent if SRA were able to license accountancy firms and yet the reverse was not possible.</p>
FRC		
<p>Advice on whether ICAEW is a competent regulator in the areas they currently regulate under oversight of the FRC.</p>	<p>Overall satisfied that ICAEW is a competent regulator of statutory auditors and would note that much of the regulatory system that applies to auditors, e.g. Handling of complaints and discipline, is also applicable to members more generally.</p>	<p>ICAEW grateful for comments given by FRC.</p>

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IS		
Advice on whether ICAEW is a competent regulator in the areas they currently regulate under oversight of the IS.	Happy to support the applications made by ICAEW and can confirm that we are satisfied with the ICAEW's performance as a Recognised Professional Body (RPB).	ICAEW are grateful to the IS for supporting the application.