

Table indicating a summary of The Law Society's (TLS) letter regarding the ICAEW's application to become an approved regulator and licensing authority

TLS issue	ICAEW response
<p>Timing of letter</p> <ul style="list-style-type: none"> • Did not think it appropriate to comment at early stages but signalled an interest. 	<ul style="list-style-type: none"> • ICAEW have adhered to the LSB's requirement for proposals to be publically consulted on, TLS were also notified as a matter of courtesy at the time of the consultation. • Received a letter from TLS advising they did not intend to respond at the point of consultation, ICAEW were puzzled at this as TLS are not a part of the list of subsequent consultees required under the Act.
<p>Not in favour of approval</p> <ul style="list-style-type: none"> • Significant concerns about the final application, believe it should not be approved. 	<ul style="list-style-type: none"> • Some of TLS's observations are inconsistent with the objectives of the Act or are disproportionate to the relevant consumer and public risk.
<p>Independence</p> <ul style="list-style-type: none"> • Probate Committee is answerable to Professional Board (which sits under the Council) – the Committee and Board do not have a lay majority. • Disciplinary Committee and Investigations Committees do not have lay majorities. • Contrasts TLS, Bar Council, CILEX, arrangements with lay majorities and independence from Councils. • Must ensure public confidence with independent regulation in the public interest. • Supporting arguments are unconvincing; suggest smaller regulator with small number of firms – contrast later in application where expect to increase number of probate suppliers to improve competition and access to justice. • Probate firms will be competing with other firms regulated by other ARs; consumers need consistent regulatory assurance across all providers. • Indicates its review of overall governance arrangements may be 	<ul style="list-style-type: none"> • Mechanism described by TLS is erroneous. • Probate Committee has accountability to the LSB and not ICAEW as the AR (ref: para.8.14-8.15 and ToR for PC in Annex 19). • Public interest is written into the 1880 founding Charter, not a new concept introduced by the LSA.

TLS issue	ICAEW response
<p>appropriate but application should wait until that is complete.</p> <ul style="list-style-type: none"> • Risk that professional self-interest may overcome the public interest. • LSB approval would indicate a willingness to countenance revised arrangements for ARs closer to the ICAEW model. 	
<p>Limitation to non-contentious probate work</p> <ul style="list-style-type: none"> • Under-estimates the range of work undertaken in non-contentious probate. • No reference to commonly found situations – lifetime gifts, pre-owned assets, guardianship issues, or claims by dependents or disappointed beneficiaries. • Non-contentious matters may be later disputed i.e. validity of wills; interpretation of the effect of the will, the matter will fall outside the scope of the authorisation – public experience delay and lack of expertise. • Distinction between non-contentious and litigious work is not discussed and not as clear cut as suggested by applications. • Suggestion of no need to hold client monies may not be correct – realisation of shares, ISAs or real property held by deceased to be disbursed to multiple beneficiaries. • Level of probate activity is low, not sure why it is becoming an AR? If accountant chose instead to be regulated by TLS as an ABS, benefit from regulatory experience from a long-standing body. For ICAEW is a non-mainstream activity with very small proportion of members – do not believe it is in public interest for probate to be regulated in this way. 	<ul style="list-style-type: none"> • Code of Ethics and Draft probate Regulation 3.1, requires accountants to only undertake work that they are competent to do. • Concede that application does not make clear that a key part of the induction training will be demarcation between two areas and consumer protection. Accredited probate firm must comply with PA standards, requiring firms to notify risks and options in the letter of engagement. • Disagree with comments of low activity not justifying entry as a regulator. RO – Access to Justice, competition, diversity not easily achieved were this to be accepted as a reason for not accepting a new AR – therefore not allow new regulators to emerge and frustrating the RO.
<p>Regulatory requirements</p> <ul style="list-style-type: none"> • Regulatory standards for self-assessment include the following, which ICAEW appear not to have included: <ul style="list-style-type: none"> ○ Outcome focussed code or handbook 	<ul style="list-style-type: none"> • Application not built around these concepts per se, cross-reference to LSB's checklists in Annex 23 plus commentary around RO in Section 8 gives assurance that can meet those objectives.

TLS issue	ICAEW response
<ul style="list-style-type: none"> ○ Risk identification framework ○ Proportionate supervision targeted at risk ○ Appropriate approach to compliance and enforcement. 	<ul style="list-style-type: none"> ● Practice Assurance (PA) review firms receive visits every 8 years, with additional risk visits where required (more rigorous than most other ARs).
<p>Unregulated activities</p> <ul style="list-style-type: none"> ● Inadequately deals with other legal work undertaken by accountants i.e. ancillary to probate work such as will-writing ● Confusion for consumers about how to/whom to complain to about poor service. ● Serious consideration other legal work by accountants to be brought within the ambit of regulation under LSA. 	<ul style="list-style-type: none"> ● Do not see role of AR to regulate activities not currently regulated by law. S85(7) allows for restrictions on non-reserved activities, not intended as a carte blanche to extend reservation through the back door. ● Section 5.141 makes clear it does not place any restriction on unreserved activities conducted by accredited probate firm – such impositions create an imbalance in the market place and conflict with RO. ● Estate Administration (EA) fall within PA scheme where forms significant part of firm's fee income, and PII, compensation.
<p>Scope of regulation</p> <ul style="list-style-type: none"> ● Confusion for clients about other types of services provided by accountancy firms and what can be considered by LeO. 	<ul style="list-style-type: none"> ● Equivalent appeals process for authorised and licensed firms. ● Letter of engagement set out different complaint remedies to be agreed with LeO.
<p>Regulation of non-accountants</p> <ul style="list-style-type: none"> ● No mechanism for it to assess suitability of non-accountancy firms. LSB unable to ensure competence in this area. 	<ul style="list-style-type: none"> ● Deemed competent by other oversight bodies – FRC, IS, FCA to regulate reserved activities – audit, insolvency, financial advice, can apply same rigour to accountancy and non-accountancy firms. Inconsistent if SRA able licence accountancy firms yet reverse not able to be applied.
<p>Education & training</p> <ul style="list-style-type: none"> ● Clarify criteria used to authorise people who are neither ICAEW/other accountancy body members, holders of probate qualifications. Case-by-case basis is insufficient. ● Training concentrates on non-contentious probate – concerned about narrow focus, lack of broader knowledge of many applicants to identify issues i.e. if a Will, other legal documents, background factors to the 	<ul style="list-style-type: none"> ● Education and training will cover contentious and non-contentious probate and practice steps to manage, identify, advise on e.g. potential claims against an estate and likelihood of arising, defective will (how to remedy if possible), interpretation and effect of a will, possible disputes as to its validity. ● Those without ACA qualifications and authorisation from other bodies – rigorous approach and require

TLS issue	ICAEW response
<p>case present more complex and potentially contentious issue?</p>	<p>evidence to do non-contentious probate. Covered under Probate Regulation 4.1(a).</p>
<p>PII</p> <ul style="list-style-type: none"> • Minimum level of indemnity not be set on firm's turnover but reflect liability for the work undertaken. • TLS figures show wills and EA accounts for third highest number of PII claims; minimum cover is inadequate. • Consumer detriment and uninsured loss by capping the total amount paid under the policy. • Two year mandatory run off in contrast to six years required by most ARs – should adopt the 6 years until the Panel have completed their research. 	<ul style="list-style-type: none"> • TLS have confused the regulations for authorised firms (non-probate) and probate firms. • Probate firms must carry £500K per claim in relation to probate and EA. Irrespective of the minimum, firms must carry out a risk assessment to determine what PII level is appropriate. • Question translation of legal profession experience of PII claims to accountancy - claims history for EA has been historically low.
<p>Compensation Scheme</p> <ul style="list-style-type: none"> • Race to claim because of payouts capped at £500K per estate and an aggregate of £5M per year. Unless there is some form of prioritisation. 	<ul style="list-style-type: none"> • Designed with low claims history in mind, not boundless but offers consumer protection in this area, consumer will make informed choice through information provided in the engagement letter – proportionate to consumer risk.
<p>Code of ethics</p> <ul style="list-style-type: none"> • Confusing statement on principles of the Code with a comparison to the SRA code. • Referrals to an independent professional with no tied arrangement – this does not appear to have been considered. • Code makes no reference to equality/diversity (E&D), managing your business, cooperating with regulator. 	<ul style="list-style-type: none"> • RO set out in the LSA for public interest and consumer protection, with no one taking precedence over the other. SRA code places them alongside each other. Notes the approach of ICAEW whom public interest has been an overriding factor of their Charter. • Section 240 of the Ethical Code in Appendix 8 – mirrors international standards set by IESBA – i.e. conflict of interests with tied arrangements. • E&D considered in sections 5.46-5.52 and draft application form at section 21 – and natural outcome of Ethical Standard 150 on behaviour. • Cooperating with regulator is at Probate Regulations, chapter 2 and 3. • Management of business – disciplinary bye-laws, ethical standards and probate regulations and practice management regulations of ICAEW.

TLS issue	ICAEW response
<p>Client money regulations</p> <ul style="list-style-type: none"> • De minimis payment to charity where a client cannot be traced is too high (£10,000 should be £250). • Regulation to specify administrative steps a firm should take if figure exceeds this. Guidance to clarify steps to be taken by a firm to trace a client. • Regulations on how jointly held accounts should be managed and when firm shares operation of the clients account. 	<ul style="list-style-type: none"> • £10K is appropriate – is applied across all ICAEW regulatory sectors including insolvency and finance; oversight regulators are content with the arrangements. • Guidance on tracing a client is simply whatever is deemed reasonable i.e. common sense. • Joint held accounts not a feature of accountancy firm arrangements; abilities to sign on client account are monitored through the annual return and addressed para.4; Annex 12.
<p>Fit & proper for owners & HOLPs</p> <ul style="list-style-type: none"> • Spent convictions of non-accountants. 	<ul style="list-style-type: none"> • DBC checks for individuals authorised for probate (not include spent convictions). • ICAEW have an exemption from Rehabilitation of Offenders Act 1974 to run checks on HoLP, HoFA and NAP status as a licensing authority.
<p>Intervention</p> <ul style="list-style-type: none"> • Intervention powers must be in place before become AR. • No consideration given to long term file storage, distributing client money, returning files, ensuring client work continues. 	<ul style="list-style-type: none"> • Additional powers secured concurrently with the application. • Other minor points have been addressed by the ICAEW by providing direct references to the regulations or application.
<p>Complaints</p> <ul style="list-style-type: none"> • Does not distinguish between service and disciplinary complaints. • Resolution of service complaints by conciliation is role for LeO. 	<ul style="list-style-type: none"> • Erroneous comment by TLS. • LeO will have jurisdiction for determining all complaints about legal activities carried on by accredited probate firms. • TLS reference is to ICAEW's complaint process for non-legal complaints.