

LSB assessment of market transparency action plan

Institute of Chartered Accountants in England and Wales (ICAEW)

Date action plan was published: 09 February 2018

The action plan is published [here](#).

This assessment replaces the assessment we published in October 2017 on a previous version of ICAEW's action plan. ICAEW decided to re-scope the earlier version of its plan in light of the Lord Chancellor's decision on its application to become an approved regulator and licensing authority for additional reserved activities.

LSB Assessment: SUFFICIENT.

1. ICAEW's operating context is a key factor in our assessment. ICAEW is currently an approved regulator and licensing authority for the reserved legal activity of probate. It currently regulates over 290 firms, the majority of whom serve individuals and small business consumers. There is a close alignment between the focus of the CMA's recommendations and the legal activities which ICAEW regulates. The scale and focus of ICAEW's activities in relation to legal services shape our expectations of its response to the CMA's recommendations.
2. We welcome ICAEW's commitment to ongoing collaboration with the other regulators on joint initiatives, such as the development of Legal Choices and exploring the feasibility of creating a single digital register. We also welcome the planned programme of consultation and evidence gathering to understand current level of transparency and later on check the effectiveness of the proposals.
3. We highlight the following issues in relation to the action plan:
 - ICAEW plans to produce voluntary guidance on transparency, rather than introduce mandatory requirements – at least initially. We note that voluntary guidance may not create strong enough incentives for providers to disclose the full range of information that consumers need. There is also a need to consider consistency issues given multiple regulators regulate probate services. However, we are encouraged that ICAEW

plans to review the adequacy of taking a voluntary approach in the short-term between February and August 2019 and if there is insufficient uptake it will give serious consideration to mandatory requirements. We also note that ICAEW will back this guidance up with a package of measures setting out the purpose of the guidance, a dedicated consumer area on their website and compliance monitoring. This package will also set out that doing nothing to comply with the guidance is not an option for providers.

- ICAEW's plan is to initially restrict the scope of its guidance to probate services only. Between February and August 2019 ICAEW will decide whether to extend its transparency arrangements to clearly identifiable non-reserved legal services its probate firms are carrying out following research in this area; in time these might be extended to other legal services. This phased approach is sensible as it enables ICAEW to test its transparency arrangements in probate before rolling this out to other areas. We encourage ICAEW to extend the scope of its arrangements after the initial period and hope that potential barriers it has identified, such as the impact on the compensation scheme, are surmountable. This is because the fixed list of six reserved activities in the Legal Services Act is not the result of any recent, evidence-based assessment of the benefits or risks created by those activities. Furthermore, it is uncertain whether consumers understand the distinction between the reserved and non-reserved activities. Drawing the scope too narrowly might also lead to consumer confusion as different regulators require different levels of transparency eg. for will-writing.
- We welcome the proposed approach to bundled services where it is proposed that the whole service be covered from the start.
- We are not aware of any plans for joint action by all the regulators on guidance in relation to feedback platforms. While we would welcome such an initiative, should this joint action not materialise we would ask ICAEW to produce its own guidance for providers on engaging with feedback platforms.
- We are pleased that ICAEW wishes to include Legal Ombudsman complaints data in the planned dedicated consumer area of its website along with details of disciplinary actions it has taken against regulated probate firms. ICAEW should also actively consider whether to publish first-tier complaints data. If published, this data should then be made available to comparison tools and included in the register of firms.
- We note that ICAEW plans to conduct consumer surveys jointly with other regulators in the medium term to assess the impact of the transparency

changes. While we would welcome such an initiative, we are not aware that there are currently any plans for such joint activity. Should this joint action not materialise, we would ask ICAEW to establish its own mechanisms to assess the impact of the changes it has made.