

Paul Greening  
Regulatory Associate  
Legal Services Board  
One Kemble Street  
London  
WC2B 4AND



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Dear Paul

**Application from the Institute of Chartered Accountants in England and Wales for a recommendation for designation as an approved regulator and licensing authority for reserved legal activities**

Thank you for your letter of 15 August inviting the Panel to provide advice on the above application. Under the Legal Services Act 2007, the Panel is a mandatory consultee on applications from bodies to become approved regulators or licensing authorities. In deciding what advice to give, the Panel must, in particular, have regard to the likely impact on consumers of the Lord Chancellor making an order for designation as set out in the application. The Institute of Chartered Accountants in England and Wales (ICAEW) is already an approved regulator and licensing authority for probate activities, and it now wishes to extend this to all reserved legal activities specifically in relation to taxation.

Making an assessment of the likely consumer impact does not lend itself to a precise formula. The Panel applies well established consumer principles such as access, choice and redress as reference points by which to analyse the issues. In addition, we identify the risks to consumers and the type and degree of possible harm. We then make a judgement as to whether the proposed arrangements are likely to promote access and offer sufficient protection. Finally, the regulatory objectives in the Legal Services Act also underpin our assessment.

The Panel welcomes attempts to stimulate competition in the legal services market. We note the ICAEW's comments around the number of entity applications it received in respect of probate activities which exceeded its expectation. And we accept that by enabling consumers to use the same provider for various legal services there is potentially a cost saving to be made.

We also welcome the shift to ensure that the disciplinary tribunal arrangements feature a lay majority. This is something we commented on in our initial response to the ICAEW's application in respect of probate. We also note the extensive research carried out to establish whether or not firms would benefit from being able to practice in areas other than probate.

Against this background, we are broadly supportive of the ICAEW's application to become an approved regulator and licensing authority in respect of all the reserved activities, which will be ring-fenced to taxation only through the proposed regulatory regime. We have some concerns as to how this may operate in practice, and how the limitations may be communicated to consumers, and these are set out in further detail below.

### **Effective regulation**

The ICAEW, unlike the other Approved Regulators of legal services, is still one body carrying out both regulatory and representative functions. Independence of regulation is vital for ensuring consumer confidence in the legal profession, and for ensuring that regulation is carried out in the best interests of the consumer as much as the profession. While we acknowledge the ICAEW's reasoning that the current governance arrangements enable shared services and lowers the cost burden on firms, we have seen this act as a barrier to regulatory development elsewhere. It is our firm view that regulatory and representative independence is needed for effective regulation. The Panel recently urged the Competition and Markets Authority in its review of the legal services sector to consider options to improve regulatory independence. We also note that the Government has also confirmed that it would be consulting on how to improve regulatory independence. This is therefore the direction we would expect all regulators to be heading towards.

The Panel is sympathetic to an approach that balances consumer protection against unnecessary burden on firms. We acknowledge the safeguards that have been put in place to protect regulatory independence of the Legal Services Committee. While these safe guards were appropriate when the ICAEW was applying solely in respect of probate, now that there will be a broader offering of services to consumers we are concerned that this will not stand the test of time, and as such continue to support the principle of full regulatory independence.

### **Consumer information**

While the Legal Services Act does not provide for the reserved activities to be carried out in respect of specific areas of law, the ICAEW is proposing to do this through its regulations. This, along with several other requirements, will rely on information remedies such as written notices at the engagement of a service. We have not seen any evidence or research conducted by the ICAEW into who its consumers are, or how effective these remedies are or will be. This is particularly important when there needs to be a clear distinction around what the provider can and cannot do. In order to properly understand the risks posed to different types of consumers, we would urge the ICAEW to carry out further work to better inform its approach.

### **Client money**

When the ICAEW first applied to become an approved regulator and licensing authority in respect of probate, the Panel expressed its concern that client money can be placed in accounts outside the UK. We raised concerns that money placed in accounts outside the UK, and particularly outside the EU, may not have the same depositor protections as those in the UK. Although clients may be informed of this, they are unlikely to be

aware of what these risks could mean in practice or take steps to mitigate the risks. Secondly, there is no information on how currency fluctuations should be handled which could exacerbate the risk. As far as we can see, these risks remain as the proposed regulations have not changed.

Please contact Stephanie Chapman, Consumer Panel Associate, for enquiries in relation to this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Elisabeth Davies', with a horizontal line extending to the right.

Elisabeth Davies

Chair