

Sonya Gedson
Regulatory Associate
Legal Services Board
7th Floor, Victoria House
Southampton Row
London WC1B 4AD



19 July 2013

Dear Sonya

Proposed amendments to the applications submitted by the Institute of Chartered Accountants in England and Wales (ICAEW) to become an approved regulator and licensing authority for probate activities under the Legal Services Act 2007

Thank you for your letter of 4 July inviting the Panel to provide advice on the amendments to the above application. You have asked us to consider two specific amendments which impact on client protection arrangements:

- 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
- the deletion of a regulation which gave the Probate Committee discretion to waive certain provisions.

Discretionary nature of the Probate Compensation Scheme

This is a challenging issue. Any approach will involve trade offs and will be imperfect as someone will lose out. On the one hand, a consumer would be disadvantaged if denied the full redress owed due to possible future claims on the fund which may never materialise. There is a risk of over-cautious decision-making due to a lack of experience in what will be a new scheme. Although we recognise that historically relatively few accountants hold client money, and where money is held the amounts tend to be low, ICAEW will potentially be regulating other firms, not only accountants, and will be authorising estate administration as well as probate.

On the other hand, it would be unfair for consumers to be denied redress simply because they were last in the queue and the fund had previously been exhausted by a large claim. Sharing claims over the course of the year could be fairer, but may also be unpredictable since at the start of any given period the frequency and size of claims on the fund will be unknown.

Therefore, on balance we support the proposal, on the grounds that the interests of all potential claimants should outweigh those of a single individual. We hope that decisions to restrict payouts to individuals will be rare since ICAEW already proposes to limit the maximum grant payable to £500,000 per claim as a way of managing the fund sustainably.

ICAEW should keep this policy under active review and make adjustments in order to maintain fair outcomes. This might include an option to top up payments retrospectively. Transparency is important given the highly discretionary nature of the system. Annual information should be published on claims made to the compensation fund (frequency and size), grants paid out by the scheme (frequency and size), and details of cases where grants have been refused or reduced in size because the fund would otherwise have been exhausted.

The LSB will wish to consider this advice alongside our recent report on financial protection arrangements, which includes discussion on the need for objective criteria to limit the discretionary nature of compensation funds, greater transparency around payouts, and performance monitoring.

Waivers

We do not have comments on this aspect, as the regulations affected by the new provision were already largely discretionary.

Please contact Steve Brooker, Consumer Panel Manager, for enquiries in relation to this submission.

Yours sincerely



Elisabeth Davies
Chair