



APPLICATION BY ICAEW TO BECOME AN APPROVED REGULATOR AND LICENSING AUTHORITY FOR PROBATE ACTIVITIES UNDER THE LEGAL SERVICES ACT 2007

ICAEW's REPRESENTATIONS, SEPTEMBER 2013

ICAEW's representations in response to the advice received from the mandatory and selected consultees

Summary

1. ICAEW is grateful for the advice received from the Lord Chief Justice (LCJ), the Office of Fair Training (OFT) and the Legal Services Consumer Panel (LSCP) (together the mandatory consultees) and the Financial Reporting Council (FRC) and the Insolvency Panel (IP) (together the selected consultees).
2. We note that the advice received from the OFT, IP and the FRC raises no issues or concerns and we are grateful to these consultees for their positive and supportive responses to our application.
3. With regard to the advice received from the Lord Chief Justice, we do not agree with the concerns that have been raised, most particularly the concern that the professional standards to which ICAEW will hold authorised persons and licensed firms may be less robust than those applied by other regulators leading to a variation in, and thus a drop in, standards.
 - A key aim of our Royal Charter is 'to maintain high standards of practice and professional conduct by all our members' and we are committed to raising professional standards worldwide. Furthermore, over the last 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency and investment business. We have robust quality assurance procedures operated through our Practice Assurance scheme and have a well-established and effective investigation and discipline system.
 - ICAEW's Code of Ethics expects members to demonstrate the highest standards of professional conduct and to take into consideration the public interest. This code sets out five fundamental principles which guide members' behaviour and these include the requirement to ensure professional competence and due care. ICAEW is committed to enforcing its Code of Ethics by disciplining members who do not meet the reasonable ethical and professional expectations of the public and other members.
 - Furthermore, ICAEW educates and trains ICAEW Chartered Accountants; our premier qualification and training programmes are respected internationally by those with the highest aspirations. We will be applying the same rigour and standards to the training and professional development of those persons authorised to carry out non-contentious probate activities.
4. With regard to the advice received from the LSCP, ICAEW believes that it has satisfactorily addressed the concerns raised and, where necessary, will keep these areas under review.

Introduction

5. In December 2012 ICAEW applied to the Legal Services Board (LSB) to become an approved regulator and licensing authority for the reserved legal activity of non-contentious probate.
6. In making its determination, the LSB is required to consult with the following mandatory consultees:
 - the OFT (representations on advice are set out in paragraphs 13 and 14);
 - the LSCP (representations on advice are set out in paragraphs 15 to 17); and
 - the LCJ (representations on advice are set out in paragraphs 18)
7. We welcome the comments of the mandatory consultees and the opportunity to respond to them. This document constitutes our written representations about the advice given

which are made in accordance with paragraph 11, schedule 4 and paragraph 9, schedule 10, Legal Services Act 2007 (the Act).

Background

8. ICAEW was founded by Royal Charter in May 1880 and received a Supplemental Charter in 1948. As a chartered body, we work in the public interest to further the profession of accountancy worldwide.
9. As a world-leading professional accountancy body, we provide leadership and practical support to over 140,000 members in more than 160 countries, working with governments, regulators and industry in the UK and abroad to ensure the highest standards are maintained. We have over 19,000 students studying for ICAEW's chartered accountant qualification.
10. We engage regularly with governments, professional membership organisations and other bodies on issues affecting the accountancy and finance profession both within the UK and around the world. We are a founding member of the Global Accounting Alliance (GAA) with over 775,000 members worldwide, and are a member of the Consultative Committee of Accountants (CCAB) which is the body for all the major professional accountancy bodies in the UK and Ireland.
11. ICAEW's application has been made with a view to extending ICAEW's regulatory expertise into legal services and to help the government in its aims of promoting competition in the market for legal services.

ICAEW's competence and capability to regulate non-contentious probate activities

12. ICAEW's competence and capability to regulate non-contentious probate activities is evidenced in the following paragraphs.
 - 12.1. ICAEW has a strong regulatory background. Over the last 25 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency and investment business. In January 2012 we became an accredited body under the FSA Retail Distribution Review (RDR) arrangements. Accredited body status is an opportunity for ICAEW to provide a wide range of services to members and also demonstrates our increased focus on protecting consumers.
 - 12.2. As a regulator and professional membership body, we undertake a range of activities to support members and students internationally. This includes:
 - educating and training chartered accountants;
 - facilitating members' continuing professional development; and
 - supporting members through the provision of advice and services.
 - 12.3. In discharging these duties, we are subject to oversight by the FRC's Conduct Committee, the Insolvency Service and the Financial Conduct Authority. These bodies regularly monitor our arrangements and have not identified any significant areas of concern in the way we have discharged our regulatory responsibilities to date. The FRC and Insolvency Service were selected by the LSB as consultees on our application and we welcome the comments of these selected consultees and the opportunity to respond to them.
 - 12.4. Furthermore, ICAEW has in-house experience of the development and delivery of legal education and training in addition to accountancy.
 - 12.5. ICAEW has established professional indemnity and compensation fund arrangements.

Advice from the Office of Fair Trading (OFT)

13. The OFT has a statutory duty under the Act to review applications for approved regulator status and provide the LSB with such advice as it 'thinks fit' regarding whether the

application should be granted. In providing such advice, the OFT must consider whether any given application, if granted, would (or would be likely to) prevent, restrict or distort competition within the market for reserved legal services to any significant extent.

14. In its advice of 5 March 2013, the OFT concluded: ‘...we advise that we find no evidence or theory to suggest that the ICAEW becoming an approved regulator and licensing authority for probate activities under the LSA07 would (or would be likely to) prevent, restrict or distort competition within the market.’ Rather, the OFT consider that approving ICAEW’s application ‘may strengthen competition for these services. For example, ICAEW members could act as an alternative supply to solicitors in the conduct of probate activities, especially through the accreditation of Alternative Business Services as licensed firms.’ ‘This’, the OFT states, ‘could, potentially, place competitive pressure on the pricing of these services and broaden access to justice.’ ICAEW is grateful to the OFT for its comments and for supporting its application.

Advice from the Legal Services Consumer Panel (LSCP)

15. The LSCP has a statutory duty under the Act to consider and give advice on applications from bodies to become approved regulators and licensing authorities and, when giving such advice, 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.
16. The LSCP submitted a detailed response to ICAEW when it consulted on its draft proposals and they met regularly with ICAEW officials during the last two years as ICAEW’s plans evolved. In its advice, the LSCP commends ICAEW for the level and nature of its engagement with them which has led to ICAEW’s proposals becoming more consumer focused. The LSCP’s submission and ICAEW’s response formed part of ICAEW’s application as Annexes 22B and 22C.
17. Other than changes made following the LSCP’s initial advice, ICAEW’s application has not significantly altered since this consultation stage. The advice of 5 March 2013 given by the LSCP therefore comments on ICAEW’s response to its earlier submission as set out in the following paragraphs.

Estate administration

- 17.1. Despite the LSB deciding not to recommend to the Lord Chancellor that estate administration activities should become reserved, the LSCP states that it continues to support ICAEW’s proposal to include estate administration within the scope of its regulation where this activity is conducted by an accredited probate firm.

Authorisation

- 17.2. The LSCP has commented on the fact that ICAEW’s application now includes a requirement for basic CRB checks for applicants for ‘authorised individual’ status, plus standard CRB checks for applicants for HoLP and HoFA status, and for non-authorised persons holding a material interest in a licensed firm stating that ‘the panel is satisfied with these changes, which will offer a degree of checks and balances on the suitability of key individuals’ and describing it as a sensible precautionary measure.

Continuing professional development (CPD)

- 17.3. Following the initial feedback from the LSCP, ICAEW will now be issuing guidance on areas which probate practitioners need to consider in forming their CPD plans, although we will not prescribe what CPD should be carried out. The LSCP commented that this is ‘a step in the right direction’ but remains concerned that:
- probate practitioners will be under no obligation to do any CPD linked to probate; and

- ICAEW's overall CPD regime appears light touch.

ICAEW's response to these concerns

- 17.3.1. ICAEW does not agree that ICAEW's regulations and CPD requirements place no obligation on regulated persons to do any CPD linked to probate. A fundamental principle of ICAEW's Code of Ethics is professional competence and due care. Section 130 states, among other things, that members have an obligation 'to maintain professional knowledge and skill at the level required to ensure that clients or employers receive competent professional service; and to act diligently in accordance with applicable technical and professional standards when providing professional services.'
- 17.3.2. In addition, Part B (applicable to members in practice) contains section 210 on professional appointments which states among other things that:
- '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.'
- 17.3.3. Furthermore, Regulation 3 of ICAEW's Probate Regulations deals with the conduct of authorised work and imposes the following regulatory obligations on authorised persons:
- '3.1 accredited probate firms must act in accordance with the fundamental principles set out in the 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:
- 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.
- 3.2 An accredited probate firm shall only carry out authorised work which it is competent to perform.
- 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.
- 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.'
- 17.3.4. In a licensed firm, the Head of Legal Practice will be responsible for taking all reasonable steps to ensure that the licensed firm and its principals and employees comply with their duties under the Probate Regulations.

- 17.3.5. Under our CPD regulations, members are required to maintain and develop their skills throughout their career and they must confirm that they are doing so by making a CPD declaration every year. Although we do not dictate how much CPD members must do, they are required to complete sufficient development activity to ensure that they remain competent in their roles using our 'Reflect, Act, Impact, Declare' (RAID) approach.
- 17.3.6. The RAID approach requires members to consider their development needs, how they can meet them and to create a plan of action. This requires them to reflect on such matters as expectations, responsibilities and knowledge gaps and to evaluate the effectiveness of the CPD they have done and whether it has enabled them to meet their objectives.
- 17.3.7. They must also keep a record of their CPD activities as they can be selected to show evidence of compliance both by our quality assurance team through our Practice Assurance scheme and by our Learning and Professional Development Department through its annual monitoring processes.
- 17.3.8. A false declaration is a serious professional conduct issue and can affect a member's ability to practise as a chartered accountant. Furthermore, inadequate CPD exposes members to risk and potential claims which could have a serious effect on their professional indemnity insurance, a situation practitioners and firms would wish to avoid. Such issues are picked up through our quality assurance processes.
- 17.3.9. Therefore, for the reasons stated above, ICAEW's regulations, code, and CPD arrangements will place authorised probate practitioners and the authorised/licensed firm for which they work under an obligation to ensure that they or those that work for them are, and continue to be, competent to carry out probate work, most particularly in cases where such work will form a minority of their business activity. This obligation and our regulatory and quality assurance processes carried out by our Learning and Professional Development Department and Quality Assurance Department ensure that our CPD regime is most definitely not light touch.

Client money

- 17.4. The LSCP has confirmed that, after discussion with ICAEW, it considers that the safeguards ICAEW has in place in the Clients' Money Regulations are likely to be adequate but stressed that consent needs to be obtained on the basis of an informed decision.

ICAEW's response to this advice

- 17.4.1. We confirm that ICAEW will issue guidance to ensure that authorised/licensed persons use their best endeavours to make clients aware of what the risks are in practice and do not simply give them large amounts of information to take away which they may never read or may not fully understand.

Professional Indemnity Insurance (PII) and compensation for claims for negligence

- 17.5. In its initial advice on ICAEW's draft application, the LSCP commented that ICAEW's financial protection arrangements 'seem comprehensive overall' but sought assurances that nothing will fall through the gaps between professional indemnity insurance and the proposed compensation scheme. It also expressed

a preference that licensed firms be required to purchase a minimum of six years' run-off cover, as solicitors are currently required to do, and stated that firms should be required to inform clients that their PII is capped and the level of the cap.

ICAEW's response to these concerns

Level of PII cover

17.5.1. In response to the LSCPs initial feedback, ICAEW inserted guidance to the effect that firms must inform the client in cases where the value of the estate is likely to exceed the level of PII cover. The panel has stated that it 'welcomes this change' but emphasises that how this is done is important. We acknowledge that the client must understand the implications of what they are being informed about and will ensure that our guidance makes this clear.

Run-off cover and compensation for claims of negligence

17.5.2. ICAEW is aware of the need to ensure that consumers are able to obtain recompense for loss due to negligence and would emphasise that our current arrangements ensure that such recompense is possible through PII insurance either through the assigned risk pool or run-off cover.

17.5.3. ICAEW's PII Regulations require firms that cease to practise to have run-off cover for two years and then to use their 'best endeavours' to arrange run-off cover for a further four years.

17.5.4. Under the PII Regulations, if firms are unable to obtain insurance for ongoing work or run-off cover, they can enter the assigned risks pool. Although such cover is limited to a period of two years, there is a discretionary power to allow firms to remain in the assigned risks pool beyond this period.

17.5.5. Furthermore, ICAEW proactively monitors firms through a system of annual returns and monitoring visits which include reviews of the PII cover held. If this is considered insufficient, recommendations are made to the firm to increase PII cover. Our reviews of those firms that are probate authorised will be in the context of the value of the estates that firms are acting for. We will also monitor those probate authorised firms that cease practise to ensure that they have run-off cover, or enter the assigned risks pool, for a period of six years. If they do not, this is a breach of our professional conduct rules and they could lose their right to practice as a chartered accountant.

17.5.6. The risk of firms being uninsured for negligence is therefore extremely small. If firms cannot obtain run-off cover, they will be able to enter the assigned risks pool as set out above.

17.5.7. We believe the arrangements set out above will provide the cover that the LSCP is seeking.

Probate compensation scheme

17.6. As a consequence of advice received, ICAEW amended its application by inserting a new regulation into the Probate Compensation Scheme Regulations giving the Probate Committee the ability to refuse to make a grant if payment could exhaust all the funds available for payment. We also deleted a regulation which gave the Probate Committee discretion to waive certain provisions. The LSCP's advice on these amendments and our response is set out below.

- 17.6.1. The LSCP has confirmed in its advice dated 19 July 2013 that it does not have any comments on the deletion of the regulation related to waivers as the regulations affected by this removal were largely discretionary.
- 17.6.2. In response to the insertion of the new regulation, the LSCP stated that this is a challenging issue and therefore any approach will involve trade-offs and will be imperfect as someone will lose out. Therefore, on balance, the LSCP support these changes on the grounds that the interests of all potential claimants should outweigh those of a single individual. The LSCP does, however, request that we keep this policy under review and make adjustments in order to maintain fair outcomes.

ICAEW's response to this advice

- 17.6.2.1. ICAEW notes the LSCP's request that it keep this policy under review and we confirm that we will do so and will make those adjustments deemed necessary to maintain fair outcomes.
- 17.6.2.2. We acknowledge that transparency is important given the highly discretionary nature of the system and confirm that annual information will 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.

Complaints

- 17.7. In relation to complaints, the LSCP comments that 'ICAEW has softened the tone of its guidance in relation to requiring firms to notify insurers about all complaints and to also provide insurers advance notice of offers to resolve complaints. The new guidance makes clear that in the case of serious complaints, firms should bear in mind their obligations and duties under its PII cover. This revised wording represents a welcome change in emphasis.'

Governance

- 17.8. Following the LSCP's initial feedback, ICAEW proposed a new composition structure for its Probate Committee of 10 members with a 50:50 split between lay and non-lay members and for the chair to be a lay person and to have a casting vote. We have also modified our definition of a lay person to exclude anyone who has legal training or who has qualified or practised as a professional accountant.
- 17.9. The LSCP has responded that they 'would ideally have preferred a clear lay majority on the Probate Committee in line with requirements on applicable approved regulators. However recognise that ICAEW has made significant changes to its original proposals to meet their concerns.'
- 17.10. The LSCP does, however, express its disappointment that ICAEW does not propose to alter the membership of its Disciplinary Committee at this time stating that they 'remain strongly of the view that this creates the impression of accountants/lawyers judging their own and damages public confidence.' They do, however, note that ICAEW has publicly committed to a full-scale review of its regulatory arrangements, with changes taking effect in 2014.

ICAEW's response to these concerns

- 17.10.1. The panel quite rightly draws attention to the Internal Governance rules for approved regulators. However the LSB guidelines on these also make allowance for a less demanding structure where there is

perceived to be a lower risk and where there are adequate alternative safeguards to secure the public interest. Probate is a low-risk service for the accounting profession, given the successful delivery of ancillary work such as estate administration in the last few years, and safeguards include the quality assurance programme it operates. Although the panel make the case for lay majority being best practice, the approach in other regulated areas such as the medical profession makes clear that the balance between lay and professional input is a finely judged one. ICAEW has nevertheless made a significant change in moving the ratios of the Probate Committee to 50:50 from the 25% base which has been historically applied in its regulatory committees.

- 17.10.2. The composition of all ICAEW's regulatory committees is, of course, the subject of an independent review by a group chaired by Sir Christopher Kelly that is due to report later this year. This will have assessed the appropriateness of the lay role and representation across these committees (including the Disciplinary Committee) and the recommendations are likely to be implemented concurrently with the commencement of licensing in the spring of 2014. We would observe, however, that the balances of lay members applied will depend on the weighted consideration of the independent review based on best practice and outcomes, rather than the direct preferences of the panel.

Advice of the Lord Chief Justice

18. The Lord Chief Justice (LCJ) has a statutory duty under the Act to consider and give advice on applications from bodies to become approved regulators and licensing authorities and, in particular, to have regard to the likely impact on the courts in England and Wales if the application were to be granted. In his advice dated 4 September, the LCJ states that he has concerns in the following areas:
- standards of professional skill and care;
 - ICAEW's understanding of the definition and scope of non-contentious probate and of the role of the courts;
 - inconsistency with ICAEW's application processes; and
 - ICAEW's Code of Ethics and enforcement mechanisms.

Standards of professional skill and care; and ICAEW's understanding of the definition and scope of non-contentious probate and of the role of the courts

ICAEW's response to these concerns

- 18.1. ICAEW agrees with the LCJ that high standards of professional skill and care are important for the functioning of the court but strongly disagrees that regulatory competition will have a detrimental effect on standards caused by a variation in standards between regulators.
- 18.2. As stated in our application, the educational platform for the effective delivery of probate services is important to ensure both the quality and integrity of service, and protection for the consumer. ICAEW considers that the training and existing skills and competencies of chartered accountants makes them well placed to conduct non-contentious probate work which essentially involves an assessment of the assets and liabilities of a deceased's estate, completion and filing of IHT returns and the completion of the application of a grant of probate or letters of administration.
- 18.3. The LCJ perhaps underestimates the amount of work that is already carried out by accountants in the area of estate administration which is closely linked to the issues here. In its consultations on the proposed reservation of estate administration, the LSB was able to gain a wider understanding of the role of

accountants in this market, and noted the checks and balances operated by ICAEW in ensuring customer protection. One of these is the Code of Ethics itself (repeated in the Probate Regulation 3.1) which requires accountants only to undertake work that they are competent to do.

- 18.4. We agree with the LCJ that a variation in the standards of professional skill and care is inappropriate and we have therefore ensured that the standards of those practitioners that we intend to regulate and license are, as a minimum, of the same standard of practising solicitors.
- 18.5. 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*. During this review, it was noted that the SRA states that: 'Wills and Administration of Estates continues to be a part of the compulsory LPC, because it is a reserved practice area. Note, however, that the outcomes for this area are at a higher level of generality than for the three core practice areas; in other words students should have an overview of wills, grants of representation and administration and should be familiar with the relevant documents.'
- 18.6. 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. The LSB was provided with a copy of this comparison together with information relating to the general transferable professional skills that are covered in every examination and assessment of the ACA and how such skills were examined.
- 18.7. 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 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.
- 18.8. We noted, however, that in the SRA's learning outcomes we could find no reference to, or requirement for, trainee solicitors to have knowledge or understanding of contentious probate or opposed non-contentious cases. Nonetheless, there is sufficient coverage in ICAEW's learning outcomes of these areas to ensure that those we authorise practise to the required high standards.
- 18.9. Our 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.
- 18.10. 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.
- 18.11. ICAEW is therefore of the opinion that our proposed training and assessment is comparable with those of the SRA's for trainee solicitors. Furthermore, having assessed the skills and competencies required to supply non-contentious probate services, ICAEW considers that the rigorous professional training of a chartered accountant, culminating in the award of the prestigious ACA qualification, provides most of the essential ethical, technical and administrative skills

necessary to deliver this service, and that a course in wills, probate and estate administration that covers our required learning outcomes will provide the necessary technical layer to enable the probate practitioner to deliver a professional and efficient service.

- 18.12. The focus of ICAEW's application has been around the authorising and licensing of member firms of ICAEW to carry out the activity of probate. In this respect the ACA qualification combined with a relevant course (regulation 4.1(a)) or other qualifications recognised by another approved regulator (regulation 4.2(b)) are expected to be the prime qualification assessment of applicants.
- 18.13. In respect of those without the ACA qualification, and without the recognition of other bodies (regulation 4.1. (c)), the approach is likely to be rigorous and will require evidence that an applicant's qualification has ensured that they have the skills and knowledge required to practice in non-contentious probate. We will therefore look to ensure that they have the relevant knowledge and skills acquired by applicants applying under Probate regulation 4.1(a).
- 18.14. Therefore ICAEW's rigorous training and quality assurance procedures, as set out in paragraphs 17.3 above, will ensure that those practitioners that we authorise are able to and will practice to the high standard required and at the very least equal to those applied by other regulators of non-contentious work.

Inconsistency with ICAEW's application processes

- 18.15. The LCJ has also stated that he is concerned about an apparent inconsistency in ICAEW's application stating 'I note that with respect to its application to become an approved regulator of individuals, ICAEW intends only to regulate its members to conduct probate activities (or members of other international institutes whose chartered accountancy qualifications ICAEW recognises), because *"this is a vital component in ensuring that the consumer and public interest is protected and that probate work is conducted by persons of sufficient competence"* (application para 4.26) However, with respect to its application to become a licensing authority for alternative business structures, ICAEW does not restrict its application to bodies which are led by accountants or ICAEW members (application para 4.13). If ICAEW membership plays an important part in safeguarding the public interests in relation to regulation of individuals, then ICAEW membership by business leaders must be of similar importance in relation to the licensing of alternative business structures. It is of concern that, with respect to its licencing authority application, this requirement is lacking.'

ICAEW's response to these concerns

- 18.15.1. The LCJ's advice on our application process is incorrect. Although he is correct that paragraph 4.26 of our application, which relates to authorisation, states that ICAEW will limit the category of applicants that can apply for accreditation via a short course on wills, probate and estate administration (regulation 4.1(a)) to ICAEW members and members of other institutes whose chartered accountancy qualifications we recognise. Paragraph 4.26 then goes on to state that those who are not ICAEW members or equivalent can apply if they are authorised to carry out probate work by another regulator (regulation 4.1(b)) or hold other appropriate qualifications and/or experience (regulation 4.1(c)). Our application criteria for authorising individuals is therefore not restricted to ICAEW members or those with a recognised equivalent qualification.
- 18.15.2. Applicants applying for authorisation under regulation 4.1(a) of ICAEW's Probate Regulations must provide evidence that they have passed the ACA qualification (or its recognised equivalent) and have

attended an assessed course in wills, probate and administration that covered the subjects set out in that regulation and have passed its assessment. Applicants applying under regulation 4.1(a) are restricted to ICAEW members and those with an equivalent recognised qualification as the learning outcomes for short courses on wills, probate and estate administration have been developed to build upon the relevant knowledge and skills members have already acquired through the ACA qualification as explained in paragraphs 18.1 – 18.14 above.

- 18.15.3. The categories of applicants applying for authorisation under regulations 4.1(b) and 4.1(c) are not restricted to ICAEW members and members of other institutes whose chartered accountancy qualifications we recognise. Rather, regulations 4.1(b) restricts applications to those made by applicants who hold a qualification issued or recognised by an approved regulator (other than ICAEW) that entitles the individual to undertake probate work. Regulation 4.1(c) restricts applications to those made by applicants who are otherwise qualified to undertake probate work so as to satisfy ICAEW that it should approve their designation as authorised individuals.
- 18.15.4. The last sentence in paragraph 4.26 which states: 'We consider that this is a vital component in ensuring that the consumer and public interest is protected and that probate work is conducted by persons of sufficient competence' relates to all categories of applicants permitted under regulation 4.1 not just those permitted under 4.1(a).
- 18.15.5. The LCJ correctly states that paragraph 4.13, which relates to the licensing of alternative business structures, does not restrict applications to bodies which are led by accountants or ICAEW members and this is because our process for authorising individuals under regulation 4.1 has no such restriction. As explained above, there is no inconsistency in our regulations and processes.
- 18.15.6. Furthermore, our draft application initially restricted the regulation to accountancy firms. However, upon further consideration of the wider statutory objectives, particularly those of increased competition and access to justice, we have made provision to include non-accountants as applicants. We are deemed competent by our oversight bodies (the Financial Reporting Council, the Insolvency Service and the Financial Conduct Authority) to regulate the substantial reserved activities of audit, insolvency and financial advice, and believe that we can apply the same rigour to both accountancy and non-accountancy firms for the reserved legal activity of probate. In addition there would seem to be some inconsistency if the SRA were able to license accountancy firms and yet the reverse was not able to be applied.

ICAEW's Code of Ethics and enforcement mechanisms

- 18.16. Finally in his advice, the LCJ states that he is 'concerned about the absence of a clear statement in ICAEW's Code of ethics (see section 110 and 130 in particular) 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 question whether the enforcement mechanisms detailed are sufficient to enforce the requirement of only acting when competent to do so.'

ICAEW's response to this concern

- 18.16.1. The code does not refer to most of the types of work that our members undertake specifically, instead taking a general approach that its principles apply to all professional and business activities.
- 18.16.2. In addition to the principles in the code relating to competence and due care set out in paragraphs 17.3 above, 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:
- (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.'
- 18.16.3. With regard to the concern raised about our enforcement mechanisms, in addition to the monitoring and disciplinary processes set out in paragraphs 17.3 above, ICAEW and the Probate Committee will have the power to take regulatory action against a firm if they consider that the firm is not complying with the probate regulations, or that regulatory action is required to protect the interests of clients or the public interest.
- 18.16.4. Under the probate regulations, ICAEW has the power to:
- impose conditions or restrictions on the way in which an accredited probate firm conducts probate work;
 - suspend accreditation;
 - withdraw accreditation; and
 - impose regulatory penalties with the firm's consent.
- 18.16.5. Conditions may require authorised individuals to undergo further training or receive enhanced supervision, or require firms to introduce more rigorous processes to ensure their compliance with the probate regulations. Similarly a firm may be barred from carrying out certain types of probate work, or from accepting instructions from specific categories of client. The regulations make it clear that, if a condition or restriction is imposed by ICAEW, a firm will need to undertake to comply with its terms and that failure to comply may result in disciplinary action being taken against the firm. In more serious cases we have the power to suspend or withdraw accreditation completely.
- 18.16.6. Furthermore, if the Probate Committee considers that a matter could give rise to possible disciplinary action and should be investigated, it will be required to refer matters to the Investigation Committee or Disciplinary Committee for consideration. The Disciplinary Committee has the power to impose the following sanctions:
- to reprimand or severely reprimand the accredited probate firm or individual;
 - to impose fines;
 - to withdraw accreditation; or
 - to exclude membership.

Advice from the Financial Reporting Council (FRC)

19. As an audit regulator, ICAEW is subject to oversight by the FRC's Conduct Committee. In its response to our application dated 8 April 2013 the FRC has stated 'we can confirm that, in our opinion, the ICAEW takes its regulatory obligations very seriously, devotes considerable resources to this function and we have never found failings so serious as to call into question their continued recognition as an audit regulator. Inevitably perhaps, we continue to make specific recommendations as to how they might strengthen their processes and also find examples where they have failed to apply their processes as effectively as we would like. We are satisfied that the ICAEW take our recommendations seriously.'
20. Overall we are satisfied that the ICAEW is a competent regulator of statutory auditors and would note that much of the regulatory system that applies to auditors, for example handling of complaints and discipline, is also applicable to members more generally.'

ICAEW's response to this advice

21. ICAEW is grateful to the FRC for the comments given and for supporting our application. As stated by the FRC, we take our regulatory obligations very seriously as we do the recommendations made by our regulators for the strengthening of our processes.

Advice from the Insolvency Service (IS)

22. ICAEW is regulated by the IS as a Recognised Professional body (RPB). The IS carries out regular monitoring visits on all the RPBs and has stated in its advice of 10 April 2013 that there 'have been no significant issues identified on monitoring visits to the ICAEW.' The IS's advice therefore states: 'The Insolvency Service is happy to support the applications made by ICAEW.'

ICAEW response to this advice

23. We are grateful to the IS for supporting our application.