

# Introduction of approved regulator regulatory arrangements for probate activities

Under Part 3 of Schedule 4 to the Legal Services Act 2007

Application by ACCA

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## 1. EXECUTIVE SUMMARY

### About ACCA

- 1.1 **ACCA** (the Association of Chartered Certified Accountants) is the global body for professional accountants. We aim to offer business-relevant, first-choice qualifications to people of application, ability and ambition around the world who seek a rewarding career in accountancy, finance and management.
- 1.2 Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We seek to open up the profession to people of all backgrounds and remove artificial barriers, innovating our qualifications and their delivery to meet the diverse needs of trainee professionals and their employers.
- 1.3 To achieve this we work with global bodies such as the International Federation of Accountants (**IFAC**) and with over 80 global partnerships. Above all, we seek to bring long-term value to economies in which we develop and support professional accountants.
- 1.4 We support our 198,000 members and 486,000 students in 180 countries, helping them to develop successful careers in accounting and business, with the skills required by employers. We work through a network of 101 offices and centres and more than 7,200 Approved Employers worldwide, who provide high standards of employee learning and development. Through our public interest remit, we promote appropriate regulation of accounting and conduct relevant research to ensure accountancy continues to grow in reputation and influence.
- 1.5 ACCA works in the public interest, assuring that its members are appropriately regulated for the work they carry out, and promoting principles-based approaches to regulation. We actively seek to enhance the public value of accounting in society through international research and we take a progressive stance on global issues.

### Statement of application

- 1.6 ACCA became an approved regulator (**AR**) in respect of probate activities under the Legal Services Act 2007 (**the Act**), and was included on the list of ARs in the table in paragraph 1 of Schedule 4 to the Act, as a result of the Legal Services Act 2007 (Approved Regulators) Order 2009.
- 1.7 ACCA wishes to apply for approval of new regulatory arrangements for probate activities. Our application is made in accordance with Part 3 of Schedule 4 to the Act, which enables the Legal Services Board (**LSB**) to make an order to approve an alteration, or alterations, of the regulatory arrangements of an AR.

### Structure of the application

- 1.8 This application provides a comprehensive overview of ACCA's regulatory activities and our proposed regulatory arrangements for probate services. It contains

information on our current structure, governance arrangements and regulatory processes. It explains how ACCA will authorise individuals and firms to carry out probate work, and the procedures we will implement to meet the requirements of the LSB and the Act, and to ensure the regulatory objectives and regulatory principles are upheld. It addresses each of the Act's requirements and explains how our Royal Charter and bye-laws, internal governance arrangements, proposed regulations and procedures for probate are consistent with the Act and the LSB's rules and guidance. It also addresses the risk of regulatory conflict, provides information on our resources as an AR, and discusses the stakeholder engagement activities undertaken by ACCA.

- 1.9 Terms and abbreviations used in this document appear in **bold** when they are first used. The Glossary in Chapter 10 explains the meanings of frequently used terms and abbreviations.

### **Proposed scope of authorisation**

- 1.10 'Probate activities' are defined in Schedule 2 of the Act as 'preparing any probate papers for the purposes of the law of England and Wales or in relation to any proceedings in England and Wales'. For the purposes of this application, 'probate activities' and 'probate services' are deemed to include preparing any papers on which to found a grant of probate or a grant of letters of administration for, or in expectation of, any fee, gain or reward.
- 1.11 The scope of this application covers the authorisation of individuals and firms wishing to apply for a grant of probate or letters of administration only (ie non-contentious probate). ACCA is not seeking to authorise those wishing to oppose a grant of probate or letters of administration (ie contentious probate), and the Legal Activities Regulations 2018 (**the Regulations**) will restrict the authorisation of individuals and firms accordingly.

### **Charter and statutory powers**

- 1.12 ACCA has determined that its existing powers, under its Royal Charter of 1974 and its bye-laws, enable ACCA to discharge its functions as an AR for probate activities. Any future amendments to ACCA's constitutional documents will be shared with the LSB. ACCA has powers to obtain, retain and relinquish recognitions for activities reserved by law or regulation in the United Kingdom or elsewhere, and to make all such regulations as it shall consider necessary or desirable in connection with ACCA's recognitions.

### **Structure and governance**

- 1.13 ACCA has the appropriate structures in place – internal governance arrangements enhanced by independent oversight arrangements in the public interest – to ensure that its regulatory functions are not prejudiced by any of its representative functions. In this application we explain that ACCA meets the definition of an AR, as set out in the LSB's Internal Governance Rules (**IGRs**), and not that of an applicable approved regulator (**AAR**). Our governance arrangements are compliant with rules 6 and 7 of the IGRs.

- 1.14 ACCA's established structure, as a professional body of accountants that regulates its members in the public interest, ensures appropriate rigour, quality and independence. In particular, ACCA's Regulatory Board (**the Board**) and other public interest oversight boards operate independently of ACCA's representative functions.

## **Regulatory arrangements for probate activities**

### ***Legal Activities Regulations 2018***

- 1.15 ACCA will establish regulatory arrangements for probate activities that are proportionate and in the public interest. The Regulations will be contained within the *ACCA Rulebook* and will form part of the UK annex to the Chartered Certified Accountants' Global Practising Regulations 2003 (**GPRs**). The Regulations will only apply to the reserved legal activity of probate activities and the grant of probate or letters of administration in England and Wales, extending to non-contentious probate business only.

### ***Qualification***

- 1.16 ACCA acknowledges its responsibility to ensure that probate activities are only delivered by regulated persons of appropriate skill and competence. Many of the safeguards necessary to ensure that individuals providing probate services to the public are competent to do so, and observe the required ethical standards, are contained within the existing provisions of the *ACCA Rulebook*, including ACCA's Code of Ethics and Conduct (**the Code**).
- 1.17 Individuals applying for authorisation for probate activities will be required to satisfy specific qualification requirements, and hold a practising certificate (**PC**) which entitles them to practise accountancy. The qualification requirements will comprise the completion of a relevant course and an assessment covering specific aspects of probate work. An individual authorised by ACCA will have achieved the technical knowledge required from a training provider whose probate syllabus has been approved by ACCA or another AR for probate activities. A probate qualification will be accepted by ACCA on receipt of evidence – from the training provider or from another AR for probate activities – that the course has been completed by the individual, and his or her competence has been assessed to be of the required standard.
- 1.18 Individuals authorised for probate will be required to maintain their competence in probate and will be expected to undertake probate-related continuing professional development (**CPD**). ACCA will provide probate-related CPD courses, and will include in its regulatory procedures measures to ensure that authorised individuals undertake sufficient and relevant CPD to maintain competence in the provision of probate services.

### ***Authorisation***

- 1.19 ACCA will implement authorisation procedures to assess the eligibility of individuals and firms to undertake probate activities. These procedures will ensure that authorised individuals hold a PC, have met the qualification requirements for probate, and are fit and proper persons. ACCA's Admissions and Licensing Committee is responsible for the issue of ACCA licences and certificates. The constitution of the Admissions and Licensing Committee is set out within the Chartered Certified Accountants' Regulatory Board and Committee Regulations

2014. Non-contentious applications are delegated to ACCA's Authorisations team to process administratively.

- 1.20 Initially, ACCA will only be able to authorise a firm for probate activities where all the **managers** of the firm are individually authorised for reserved legal activities. ACCA is not currently seeking authorisation to become a **licensing authority** for probate activities, although it intends to apply for licensing authority status in 2018.

#### ***Internal complaints-handling***

- 1.21 Firms authorised for probate activities will be required to operate fair, efficient and effective internal complaints-handling processes which comply with the requirements of the Act, the Legal Ombudsman (**LeO**) and LSB guidance.

#### ***Compensation and indemnification***

- 1.22 Firms authorised for probate activities will be required to satisfy strict practising requirements, which include mandatory professional indemnity insurance (**PII**) and, in the case of all but the smallest firms, fidelity guarantee insurance (**FGI**). The level of PII and FGI cover must be in accordance with the GPRs. ACCA is not proposing to operate a compensation scheme, due to the requirement to hold FGI, unless an authorised individual is a sole practitioner with no employees, as well as PII.

#### ***Quality assurance***

- 1.23 ACCA will adapt its existing monitoring procedures in order to inspect probate work undertaken by firms authorised by ACCA for probate activities. Practitioners will be required to submit a return containing details specific to their probate practice, and monitoring will be targeted using a risk-based approach. Reviews of probate work will be conducted on a cyclical basis and, wherever possible, combined with other monitoring activities. Issues with conduct that pose a risk to the public interest, breaches of the Regulations relating to eligibility, and poor conduct of probate work will be subject to regulatory action, which may include the withdrawal or suspension of probate authorisation.

#### ***Investigation and discipline***

- 1.24 ACCA will also adapt its existing investigation and disciplinary arrangements in order to assess and, when appropriate, investigate complaints relating to probate work. Instances of misconduct and breaches of the Regulations will be subject to ACCA's disciplinary processes, which may include the imposition of sanctions by ACCA's Disciplinary Committee.

#### ***Competence and resources***

- 1.25 ACCA has assessed the impact of regulating probate activities on its staff and financial resources, and is satisfied that it will remain capable of meeting its regulatory obligations. We are prepared to recruit additional staff with relevant expertise, and to consider outsourcing to suitably qualified professionals in order to be able to process investigations in a timely and effective manner. In this application we provide details of the key staff involved in the regulatory processes for probate. ACCA will ensure these staff receive appropriate training and remain competent to perform these activities. ACCA's financial commitment to the cost of regulation is a measure of the seriousness with which it approaches its responsibilities. ACCA



carries sufficient reserves to ensure that unexpected costs can be met, and budget reviews are carried out on a regular basis.

### **Rationale for the proposed introduction of regulatory arrangements and impact**

- 1.26 ACCA is looking at the future needs of small and medium sized practices and how our regulatory framework can support the sector. Given the rise in audit thresholds, many firms are withdrawing from audit and seeking new forms of work. We are therefore exploring new activities and opportunities for our practising members in areas where professional accountants can add value to society. As part of this process we have considered the costs and benefits, for a wide range of stakeholders, of introducing regulatory arrangements for probate activities.
- 1.27 Accountants in public practice provide a range of services for their clients and often have an intimate knowledge of their clients' financial affairs. A high level of trust is established by such clients in their accountants and, therefore, the accountant would often be the natural choice to guide a bereaved individual or family through the probate process.
- 1.28 The ability to provide probate services complements the professional services that professional accountants already provide to clients, such as inheritance tax, estate planning and wealth management. Many clients have long and close relationships with their accountants and would appreciate being able to engage that same accountant for probate work, rather than have their affairs dealt with by a solicitor with whom they may be less familiar. Clients would therefore benefit from a firm's ability to offer continuity of service, thereby reducing costs, inconvenience and stress.
- 1.29 As qualified accountants, many ACCA members have knowledge and expertise in probate-related work such as estate planning and inheritance tax, and their knowledge of clients' financial and taxation affairs allows them to provide an effective and efficient service to their personal clients.
- 1.30 From a public interest perspective, ACCA members and firms are in a position to be able to offer a high quality of service in probate work. This also serves the public interest in terms of client choice and increased competition, while ensuring that clients are protected by high professional standards and effective regulation.
- 1.31 We have established, from ACCA practitioners, that there is sufficient demand for probate authorisation to justify the costs of regulating probate activities. ACCA can implement a proportionate and sustainable framework for probate regulation through its existing regulatory and disciplinary systems. We are therefore confident that ACCA, as an experienced regulator of the provision of professional services, is in a position to exercise effective control over the conduct of probate work by individuals and firms.

### **Statement in respect of regulatory objectives**

- 1.32 ACCA will discharge its regulatory functions as an AR for probate activities in accordance with the regulatory objectives which are set out in the Act. In preparing this application, ACCA has considered how we actively contribute to the achievement of the regulatory objectives, and we have not identified any adverse

impacts upon any of the objectives as a result of the introduction of regulatory arrangements for probate activities. ACCA believes that its proposed regulatory arrangements for probate activities support the regulatory objectives, and we provide a more detailed assessment of how we will contribute to the regulatory objectives within this application.

### **Statement in respect of the regulatory principles**

- 1.33 The *ACCA Rulebook* and the regulatory processes that flow from it are underpinned by the regulatory principles, which are enshrined within the Legislative and Regulatory Reform Act 2006. In preparing this application, ACCA has had due regard for the principles of proportionality, accountability, consistency, transparency and targeting. We believe that our proposed regulatory arrangements for probate activities are consistent with these regulatory principles, and we provide a more detailed assessment of how we satisfy the principles within this application.

### **Statement in relation to desired outcome**

- 1.34 The desired outcome in relation to our application to introduce new regulatory arrangements for probate activities is for ACCA to authorise individuals and firms for probate services, in furtherance of the regulatory objectives set out within section 1 of the Act, and in accordance with the regulatory principles.
- 1.35 ACCA's Regulatory plan 2017/18 sets out our key priorities to 2020. These include exploring new activities and opportunities for practising members in areas where professional accountants can add value to society, of which achieving probate authorisation is a key deliverable.
- 1.36 ACCA members working in public practice have expressed interest in applying for probate authorisation. While we do not envisage that *all* ACCA members or firms in public practice will wish to provide probate services, we consider that there is a sufficient level of demand to be able to undertake this work.

### **Implementation timetable**

- 1.37 The application is made with a view to implementing ACCA's regulatory arrangements for probate activities in the first half of 2018, given the lead times for approval by the LSB and the need for appropriate consultation.
- 1.38 ACCA has drafted a plan of implementation which includes key milestones for the development and implementation of new regulations, guidance, regulatory systems and processes, education and training, and communications relating to probate.

### **Stakeholder engagement**

- 1.39 ACCA consulted its members on the provision of legal services in late 2016. The findings from this legal services survey indicated a clear appetite among practitioners for ACCA applying to the LSB to regulate legal services, and for members in practice being able to participate in the legal services market in England and Wales. The survey showed a clear demand for probate, with 81% of

respondents indicating that ACCA should apply to be able to regulate probate activities.

- 1.40 ACCA also invited comments on its draft application to gain approval of its regulatory arrangements for probate activities. We sought the views of various parties who might have an interest in, or be impacted by, ACCA being permitted to authorise individuals and firms in respect of probate activities. In particular, we invited comments from our members in practice in the UK, other ARs, the Legal Services Consumer Panel, the Competition and Markets Authority and the Lord Chief Justice. The ACCA members that responded to the public consultation were strongly supportive of our application and any issues raised were not significant and have not impacted on the final application.

### **Statement in relation to impact on other approved regulators**

- 1.41 Other ARs have been invited to comment on ACCA's draft application to the LSB. ACCA does not consider that the proposed changes will impact adversely on any ARs. We are committed to cooperating and collaborating with the LSB, LeO and other bodies across the legal services sector to address any risk of regulatory conflict arising with other ARs and other regulatory regimes.

### **Conclusion**

- 1.42 ACCA is an experienced regulator of the provision of professional services. In the UK, ACCA is a Recognised Supervisory Body (**RSB**) for the purposes of regulating individuals and firms that undertake audit work, a Recognised Professional Body (**RPB**) for the purposes of regulating individuals who hold insolvency appointments, and a Designated Professional Body (**DPB**) under the Financial Services and Markets Act 2000, enabling firms to carry out a range of exempt regulated activities. We therefore have embedded effective processes which will enable us to exercise effective control over the authorisation and conduct of individuals and firms in respect of probate activities.
- 1.43 We are satisfied that this application, the proposed Regulations and our proposed regulatory procedures for probate activities comply with the main requirements of the Act for ARs, and in particular Part 3 of Schedule 4 to the Act. This application does not conflict with the requirements of other legislation under which ACCA acts as statutory regulator, notably the UK Companies Act 2006, the Insolvency Act 1986 and the Financial Services and Markets Act 2000.
- 1.44 Approval of ACCA's regulatory arrangements for probate activities under Part 3 of Schedule 4 to the Act will support the regulatory objectives. It will provide greater opportunity for practising accountants to participate in the legal services market, and so protect and promote the interests of consumers and the public interest by:
- promoting competition in the provision of services,
  - increasing consumer choice and allowing greater continuity of service,
  - encouraging a strong, diverse and effective legal profession, and

- promoting adherence to the professional principles, and ensuring that those providing probate services have the appropriate competence and are held to high technical and ethical standards.

1.45 Legal services authorisation is important to ACCA because it supports our strategic objectives, including our public value offering. Probate is a service that many ACCA members will be competent to provide to a high standard. Our members have indicated to us that they are keen to be able to offer probate services to their clients, and ACCA and its members are well placed to add to the supply to the market of high quality services in this area.

## 2. CHARTER AND STATUTORY POWERS

### Royal Charter and bye-laws

- 2.1 The Royal Charter, which was granted to ACCA on 25 November 1974 by Queen Elizabeth II, is the constitution of ACCA. The affairs of ACCA are managed and regulated in accordance with the Charter and bye-laws, which are included in the *ACCA Rulebook*. Both the Charter and the bye-laws may be amended or added to in general meeting by resolution passed by not less than two thirds of the members entitled to vote and voting. Such amendments or additions to the Charter and bye-laws have no force or effect until they have been approved by the Privy Council. ACCA's Council may, from time to time, make such regulations as it thinks fit, provided such regulations are not in any way inconsistent with any of the provisions of the Charter and bye-laws.
- 2.2 On applying for admission to membership, members sign an undertaking that, if admitted, and as long as they are members, they will observe the Charter, bye-laws and regulations for the time being in force.
- 2.3 ACCA has considered whether any additional powers are required for the discharge of its functions as an AR for probate activities. We have determined that our existing powers under the Royal Charter of 1974, specifically clauses 3 and 4, enable ACCA to discharge its functions as an AR for probate activities. The *ACCA Rulebook 2017* is available on the ACCA website at <http://www.accaglobal.com/rulebook>
- 2.4 In addition, bye-law 4 states that the Council 'shall from time to time make all such regulations as it shall consider necessary or desirable in connection with the Association's acting as a recognised supervisory body, and as a qualifying body offering a recognised professional qualification, within the meaning of the Companies Act 1989, or otherwise relating to the carrying on of public practice or other activities in the United Kingdom or elsewhere. Such regulations may (without limitation) prescribe or provide for:
- ...
- (c) the conditions for the grant, suspension, withdrawal, application of conditions to and renewal of practising certificates, which may provide for different types of certificate to be issued to different classes of person, the manner in which an application for a practising certificate shall be made, the procedure for appealing against a decision on such an application, the period of time for which a practising certificate shall remain valid and the fees payable for the issue or renewal of a practising certificate;
- (d) the rules applicable to the holder of a practising certificate, including without limitation to the conduct of public practice and related activities;
- (e) the acceptance of undertakings or agreements from persons other than members of the Association as a condition for the issuance of a practising certificate to them or to another person; and
- (f) the monitoring of compliance by persons subject to the regulations with the requirements of the regulations.'
- 2.5 Furthermore, as part of a project to modernise the bye-laws, ACCA is proposing to introduce a new bye-law on 'Reserved Activities' which will provide greater clarity

that ACCA has the powers to regulate legal services within the meaning of the Act. This amendment will state that ACCA may obtain, retain or relinquish recognition for any activity reserved by law or regulation in the United Kingdom or elsewhere, and may make all such regulations as it shall consider necessary or desirable in connection with ACCA's recognition for such activities.

- 2.6 The modernised bye-laws will be more fitting of a global regulator. While we consider it inappropriate for the bye-laws to refer specifically to ACCA's recognition as an AR under the Act, the modernised bye-laws will make clear that ACCA holds recognitions and authorisations – in the UK and elsewhere – that are not listed in the bye-laws, and any specific examples given in the bye-laws are included 'without limitation'.
- 2.7 The proposed amendment to the bye-laws is set out below. A copy of the amended bye-laws for the *ACCA Rulebook 2018* will be provided to the LSB following the annual general meeting on 30 November 2017.

***Reserved activities***

*5.(a) The Council may determine whether it is necessary or desirable for the Association to obtain, retain or relinquish recognition for activities reserved by law or regulation in the United Kingdom or elsewhere. Such recognitions include (without limitation) recognition as a recognised supervisory body, recognised qualifying body, recognised professional body and designated professional body in the United Kingdom or equivalent elsewhere.*

*(b) Subject to bye-law 5(a), the Council shall from time to time make all such regulations as it shall consider necessary or desirable in connection with the Association's recognition for such activities reserved by law or regulation. Such regulations may (without limitation) prescribe or provide for similar matters to those set out in paragraphs (a) to (f) of bye-law 4 and such matters relating to the Association's recognition under prevailing legislation or regulation.*

### **3. STRUCTURE AND GOVERNANCE**

- 3.1 ACCA strives towards achieving the highest professional, ethical and governance standards through a robust regulatory framework, and continually works to advance the public interest with regard to its regulatory activities.

#### **ACCA's current regulatory responsibilities**

- 3.2 Our reputation rests on that of our members. This is especially true of practising members who provide professional services to the public including accounting, auditing, insolvency services and investment business. To protect the public interest and enhance the reputation of our members, we take our regulatory responsibilities very seriously.
- 3.3 ACCA works with governments and regulators around the world, contributing to policies being developed and avoiding the duplication of effort in jurisdictions where monitoring and regulation are well established. In the UK, ACCA is a RSB in respect of audit work, subject to oversight by the Financial Reporting Council (**FRC**) as the competent authority for audit. Similarly, in Ireland, ACCA is a Prescribed Accountancy Body overseen by the Irish Auditing and Accounting Supervisory Authority (**IAASA**). ACCA is also a RPB, subject to oversight by the Insolvency Service (**IS**), for the purposes of issuing licences to individuals permitting them to hold regulated insolvency appointments, and a DPB, under the Financial Services and Markets Act 2000, subject to oversight by the Financial Conduct Authority (**FCA**).
- 3.4 Further information on our regulatory activities is contained in ACCA's Report on Regulation 2017. The Report is available on the ACCA website at <http://www.accaglobal.com/uk/en/member/standards/regulatory-board/regulation.html>

#### **How ACCA's regulatory activities add value**

- 3.5 Accountants and their professional bodies have a central role in promoting the public interest and delivering public value globally. ACCA strives to deliver public value by promoting responsible and ethical business and supporting enhanced global economic performance. ACCA supports its members in delivering public value not only by helping them to satisfy the needs of individual clients and employers, but also by considering the wider impact of their professional activities on society as a whole. The public at large, through access to high quality accountants, are the ultimate beneficiaries of everything ACCA does to promote ethics and professionalism.
- 3.6 Regulation is an essential feature of ACCA's brand promise of global quality. ACCA's reputation, in turn, enhances the value of membership. Public value is, therefore, embedded in ACCA's regulatory system.
- 3.7 ACCA's regulatory systems and processes are regularly reviewed by ACCA staff and by its lead regulators (eg during inspection visits) in order to respond effectively to developments in the regulatory environment. ACCA's qualifications, ethical standards, licensing procedures, monitoring, investigation and disciplinary processes are key to reassuring the public and regulators that high standards and best practice are encouraged and, where appropriate, enforced. Therefore, ACCA

endeavours to ensure its procedures are effective, transparent and proportionate. ACCA strives to ensure that its regulatory arrangements are able to identify emerging risks and, where necessary, respond to those risks, and that its actions are evidence-based and in the public interest.

### **Regulatory functions of ACCA**

3.8 ACCA's regulatory functions comprise:

- *Professional qualifications and professional education* – developing ACCA's education and learning framework (including CPD) and ensuring the integrity of ACCA's qualifications and examinations
- *Licensing* – issuing practising certificates and licences to members involved in certain types of work, including auditing and insolvency work, provided they meet ACCA's standards for authorisation, including relevant qualifications, experience and eligibility requirements, including 'fit and proper' status
- *Monitoring* – monitoring compliance with technical and ethical standards, rules and regulations (including providing monitoring services to other regulators), and taking action, where appropriate, to protect the public
- *Investigation and discipline* – receiving and assessing complaints, identifying those that are suitable for conciliation, investigating alleged misconduct by **relevant persons**, and taking appropriate cases to independent Committees
- *Regulatory governance* – maintaining and developing the *ACCA Rulebook* and professional and ethical standards, and developing regulatory policy.

### **Regulatory standards and oversight**

#### ***ACCA's Council***

3.9 ACCA's Council is responsible for determining ACCA's overall objectives, strategy and budget. It is supported by ACCA's Executive Team and public oversight boards.

#### ***Executive Team***

3.10 ACCA's Executive Team is the most senior decision-making team in ACCA's management structure. It has overall responsibility for the effective delivery of ACCA's strategy and plans on behalf of the Council. The Executive Team comprises the Chief Executive and four Executive Directors, including the Executive Director – Governance.

#### ***Governance Leadership Team***

3.11 Led by the Executive Director – Governance, the Governance Leadership Team comprises the senior leadership of the Governance executive directorate, which has responsibility for the governance of ACCA and of its members and students. The Governance Leadership Team meets monthly.



## **ACCA Regulatory Board**

- 3.12 ACCA took the initiative in 2008 to establish independent oversight of its regulatory functions. The Regulatory Board was launched in September 2008, bringing together all of ACCA's governance arrangements for regulation and discipline into a single entity. Placing oversight of regulation and discipline at 'arm's length' from the governance of ACCA's representative function helps to reassure stakeholders that ACCA's arrangements are operated impartially, with integrity and in the public interest.
- 3.13 The bringing together of all the public interest functions under a single Board has been a considerable success. Its responsibilities include oversight of ACCA's regulatory and disciplinary Committees and of ACCA examinations and other matters relating to the integrity of the qualifications process. It also includes the development of policy in relation to ACCA's regulatory and disciplinary activities.
- 3.14 The overarching remit of the Board is to provide independent oversight of ACCA's regulatory and disciplinary activities, and to report to the Council on the fairness and impartiality of those activities. Following a review of these oversight arrangements in 2014, ACCA's Council agreed that the Board should take an enhanced public interest role, and sit at the heart of a new unified oversight structure.
- 3.15 The Board provides oversight through its three sub-Boards:
- **Appointments Board** – responsible for the appointment, appraisal and removal of regulatory and disciplinary Committee members (including chairmen), disciplinary assessors, regulatory assessors and legal advisers, who are required for a robust and independent disciplinary and regulatory process
  - **Qualifications Board** – responsible for general oversight of ACCA's education and learning framework and examination arrangements. This includes ratification of the examination results and other matters relating to the integrity of the qualifications process
  - **Standards Board** – responsible for ensuring the *ACCA Rulebook* is compliant with ACCA's statutory obligations, Privy Council and lead regulator requirements, and policy decisions by ACCA's Council, by providing the detailed scrutiny and due diligence to the proposed changes to ACCA's rules, regulations and the Code.
- 3.16 The sub-Boards pursue their work as empowered entities, reporting regularly to the Board through their chairmen. Each sub-Board has a clear programme of work, directed at strengthening the public interest elements of ACCA's activities.
- 3.17 ACCA supplies copies of the agenda for each Board meeting and supporting papers to lead regulators on request where they cover, in whole or in part, matters of relevance to them. Minutes of the Board meetings are published on the ACCA website at <http://www.accaglobal.com/uk/en/member/standards/regulatory-board/minutes.html>
- 3.18 Further information on the oversight function of the Board is contained in ACCA's Report on Regulation 2017. Details of the Board's structure, together with the names and brief descriptions of the qualifications and careers of the principal office holders, are available on the ACCA website at <http://www.accaglobal.com/uk/en/member/standards/regulatory-board.html>

### **ACCA Rulebook**

- 3.19 The *ACCA Rulebook* contains ACCA's Royal Charter, bye-laws, regulations and the Code. All members and students of ACCA are bound by its regulations and the Code, and failure to adhere to these renders them liable to disciplinary action.
- 3.20 The *ACCA Rulebook* is updated annually, and re-issued each January. Changes to the *ACCA Rulebook* arise out of policy decisions of the Council, changes to legislation, lead regulator requirements, and the need to clarify existing regulations. The *ACCA Rulebook 2017* is available on the ACCA website at <http://www.accaglobal.com/rulebook>

### **Code of Ethics and Conduct**

- 3.21 Members of ACCA are required to comply with the Code, which is set out in section 3 of the *ACCA Rulebook*. ACCA has adopted the Code of Ethics for Professional Accountants issued by the International Ethics Standards Board for Accountants (**IESBA**). Where necessary, ACCA has augmented the IESBA Code with additional requirements and guidance that are appropriate to ACCA and its members, and this material is clearly distinguishable within the Code.
- 3.22 Compliance with the Code is considered during monitoring visits to firms, and repeated or serious breaches of the requirements will give rise to disciplinary action. Further information about the Code is available on the ACCA website at <http://www.accaglobal.com/uk/en/member/standards/ethics/acca-code-of-ethics-and-conduct.html>
- 3.23 The Code includes the following elements:

#### ***The Fundamental principles***

A professional accountant is required to comply with the following fundamental principles:

- *Integrity* – to be straightforward and honest in all professional and business relationships
- *Objectivity* – not to allow bias, conflicts of interest or undue influence of others to override professional or business judgements
- *Professional competence and due care* – to maintain professional knowledge and skill at the level required to ensure that a client or employer receives competent professional service based on current developments in practice, legislation and techniques and act diligently and in accordance with applicable technical and professional standards
- *Confidentiality* – to respect the confidentiality of information acquired as a result of professional and business relationships and, therefore, not disclose any such information to third parties without proper and specific authority, unless there is a legal or professional right or duty to disclose, nor use the information for the personal advantage of the professional accountant or third parties
- *Professional behaviour* – to comply with relevant laws and regulations and avoid any conduct that discredits the profession.

### ***The conceptual framework***

The application of the fundamental principles is considered within a conceptual framework, which acknowledges that these principles may be threatened by a broad range of circumstances. This approach categorises a number of threats to the fundamental principles, and thereby assists members to identify, evaluate and respond to them. If identified threats are other than clearly insignificant, safeguards must be applied in order to eliminate the threats or reduce them to an acceptable level, so that compliance with the fundamental principles will not be compromised.

It is impossible to define every situation that might create a threat to compliance with the fundamental principles, or to specify the appropriate mitigating action that should be taken. A conceptual framework requires members to identify, evaluate and address threats whenever they are recognised and, consequently, it is not sufficient for members to merely comply with the examples of circumstances set out in the Code. Rather, members must ensure that, in a particular set of circumstances, the fundamental principles have been safeguarded.

### ***Other regulatory standards***

3.24 Members are not only required to adhere to ACCA's rules and standards, they are also required to comply with standards issued by national and international standard-setting bodies. ACCA provides information and guidance to ensure that its members are aware of these other regulatory standards, including:

- the Insolvency Handbook, which contains current Statements of Insolvency Practices and is updated annually
- the Practice Information Handbook, which is a comprehensive guide to ACCA's certificate and licensing arrangements
- useful factsheets covering the application of rules and standards
- signposting to auditing and accounting standards on the websites of national and international standard-setters.

### **Governance arrangements for probate**

3.25 The Act, together with rules made by the LSB under section 30 of the Act, places a duty on an AR to have appropriate internal governance arrangements in place, and to ensure that its regulatory functions are not prejudiced by any of its representative functions.

3.26 As an AR for probate activities, ACCA will be responsible for the discharge of regulatory and representative functions in relation to probate activities in respect of persons whose primary reason to be regulated by ACCA is the person's qualification to practise accountancy. There is an important distinction between the definition of an AR and an AAR, which was made by the LSB soon after ACCA was added to the list of ARs in Schedule 4 to the Act. This distinction was drawn in order to reflect fundamental differences between accountancy bodies and other ARs, which mean that different measures are required in each case in order to keep the bodies' regulatory arrangements at arm's length to their representative functions. The distinction is necessary in order to follow the spirit of the Act and the Clementi Report that preceded it.

- 3.27 ACCA's regulatory functions in relation to legal activities (specifically probate) will *not* be in respect of persons whose primary reason to be regulated by ACCA is those persons' qualifications to practise a reserved legal activity. ACCA's members are accountants, and any reserved legal activities undertaken by them will, in practice, be incidental to their accountancy business. ACCA practitioners are identified by clients and members of the public as accountants, and not lawyers, despite the understanding of the law that is necessary for a range of activities commonly undertaken by accountants. Therefore, the independence of ACCA's regulatory arrangements will continue to rely on the fact that an independent **lay** member of a regulatory or disciplinary Committee or of ACCA's Regulatory Board will be someone who is not an accountant, regardless of whether that person has ever practised law.
- 3.28 Therefore, ACCA is an AR, and not an AAR. As an AR, ACCA is bound to comply with rules 6 and 7 of the IGRs, but it is not appropriate for ACCA to comply with the Schedule to the IGRs (applicable to AARs only).
- 3.29 ACCA has in place established, robust governance arrangements that allow its regulatory arrangements to operate at arm's length to its representative functions, including independent public interest oversight of its regulatory functions by the Regulatory Board and the sub-Boards. As with other areas of regulation, the Board will have independent oversight of the regulation of reserved legal activities. Appropriate independence is achieved by the Board's lay majority requirement set out within bye-law 12 and regulation 3 of the Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014 (**RBCRs**). The RBCRs are contained within the *ACCA Rulebook*. The Board will report to ACCA's Council on the fairness and impartiality of ACCA's probate arrangements, as with other areas of regulation.
- 3.30 The Board observes and respects the principle of regulatory independence, as set out in paragraph 1 of the IGRs, and has, at all times, been seen to act in a way that is compatible with the principle of regulatory independence.
- 3.31 The Board comprises eight members, including a lay chairman. Some members of the Board will have expertise in legal services, and two Board members are required to be members of ACCA's Council. The remaining six Board members are lay members. The Board has a quorum of three, with lay members present being in the majority. The Board does not include any ACCA staff.
- 3.32 Individuals are appointed to the Board by the Nominating Committee of ACCA's Council. The Board oversees the work of ACCA's regulatory and disciplinary Committees but members of the Board are not eligible to sit on those Committees, thereby ensuring independent and unfettered decision-making by those Committees.
- 3.33 The Board will have oversight of ACCA's regulatory arrangements for probate but will not be responsible for operational matters. The Admissions and Licensing Committee will deal with all authorisation issues relating to probate, although the Committee may delegate some of its powers. For example the assessment of straight-forward applications for probate authorisation will be delegated to appropriately trained members of ACCA staff in its well-established Authorisations team. Similarly, where ACCA's quality assurance arrangements give rise to concern regarding the conduct of legal activities, restrictions on probate authorisation may be

delegated to regulatory assessors, while more serious concerns will be considered by the Admissions and Licensing Committee.

## 4. REGULATORY ARRANGEMENTS FOR PROBATE ACTIVITIES

- 4.1 ACCA has developed regulatory arrangements that will apply to authorised individuals and firms wishing to undertake non-contentious probate activities in England and Wales.

### **Legal Activities Regulations 2018**

- 4.2 The Regulations will be contained within the *ACCA Rulebook* and will form part of the UK annex to the GPRs. The Regulations will only apply to the grant of probate or letters of administration in England and Wales, and extend to non-contentious probate business only. A draft of the Regulations is included with this application.
- 4.3 ACCA acknowledges its responsibility to ensure that probate activities are only delivered by regulated persons of appropriate skill and competence. The qualifications required to obtain probate authorisation from ACCA are contained in the Regulations, which also set out the eligibility requirements for probate authorisation, including the need to have the required PII cover and obtain relevant CPD.
- 4.4 Many of the safeguards necessary to ensure that members providing probate services to the public are competent to do so and observe the required ethical standards are contained within existing provisions applicable to all practising members (most notably the GPRs and the Code). However, we also recognise the need to provide resources for our members and to implement regulatory procedures to ensure that members attain and maintain the additional competences required when wishing to provide probate services to the public.
- 4.5 As a fundamental ethical principle within the Code, ACCA requires that members should attain and maintain professional knowledge and skill in order to ensure that the client receives a competent professional service. By virtue of this principle, each member has a clear responsibility to ensure that he or she has the theoretical knowledge necessary to perform the work concerned, and also to satisfy himself that he will be able to do so competently in practice. This will apply to the provision of probate services as to any other area of professional activity that a member might undertake.

### **Eligibility for probate authorisation – Individuals**

- 4.6 In order to be eligible for probate authorisation, an individual must:
- be a member of ACCA or another IFAC member body, and
  - be entitled to practise accountancy, and
  - demonstrate an appropriate level of competence to carry out probate work,
- or, hold, or be eligible to hold, authorisation for probate with another AR.

### ***ACCA membership***

- 4.7 A member of ACCA must have passed (or gained exemption from) the relevant examinations of the ACCA Qualification and also satisfied ACCA's practical

experience requirement (**PER**). This requirement is usually that an applicant for ACCA membership must have:

- gained a minimum of three years' relevant practical experience, and
- satisfied the minimum number of performance objectives, each being reviewed and signed off by a practical experience supervisor.

4.8 ACCA has developed a competence-based training programme which identifies key areas, covering a range of technical, professional, ethical, management and personal skills required by the modern accountant. ACCA members are not expected, en route to membership, to have acquired any level of competence in reserved legal activities, although there are clearly elements of a Chartered Certified Accountant's training that are important aspects of a probate engagement, for example accounting for assets and liabilities, financial reporting, and tax compliance work.

4.9 Students seeking ACCA membership are also required to complete ACCA's Ethics and Professional Skills module (which replaces the existing Professional Ethics Module during the course of 2017). The module uses exercises and case studies to help the student understand the principles and to practise what they learn. The module is expected to take approximately 20 hours to complete.

4.10 Full details of the examinations and practical training requirements for membership are contained with the Chartered Certified Accountants' Membership Regulations 2014 (**MRs**) and Appendices 1 and 2 to those regulations. The MRs are contained within the *ACCA Rulebook*.

#### ***Practising certificate***

4.11 An ACCA member who engages, or intends to engage, in public practice must obtain a PC.

4.12 Members wishing to obtain a PC must satisfy ACCA's practical training requirements, namely that an applicant must have:

- gained a minimum of three years' training in an ACCA Approved Employer under the supervision of a suitably experienced member (or adequately qualified person), of which at least two years must be post-membership training, and
- satisfied the minimum competence requirements, and
- documented the post-membership training in a Practising Certificate Training Record (**PCTR**).

4.13 In completing a PC application, a member must confirm that they are fit and proper, hold adequate PII cover, have suitable arrangements for continuity of practice (**COP**), and will continue to undertake appropriate CPD. They must also submit a completed PCTR and pay the appropriate fee as prescribed by ACCA.

4.14 Full details of the practical training requirements for a PC are contained with the GPRs and Appendix 1 to those Regulations. The GPRs may be found within the *ACCA Rulebook*, and a copy of the GPRs accompanies this application, together with further details of the practical training requirements.

### ***Competence to carry out probate work***

- 4.15 A professional accountant who engages in, or intends to undertake, probate activities must demonstrate an appropriate level of competence. No ACCA member would be permitted under the Code to provide probate services unless they had properly equipped themselves to do so.
- 4.16 In addition, members will be required to demonstrate they have acquired the necessary knowledge prior to making an application for probate authorisation. First-time PC applicants wishing to provide probate services will be required to confirm on the PC application form that they have attended and completed a relevant course and assessment in probate work. Existing practising members wishing to provide probate services will also be required to confirm on their application form that they have achieved the required level of competence by attending and completing a relevant course and assessment in probate work.
- 4.17 Applicants must have completed an accredited course and assessment covering specific subject areas relevant to reserved probate activities. ACCA is in discussions with an established training provider to develop and deliver a probate syllabus and assessment method for accountants that meet the required outcomes. Appropriate delivery methods are also being considered. We shall provide further details of the probate syllabus, delivery of the training and assessment at a later stage.
- 4.18 Members and non-members will be permitted to achieve the probate qualification from another training provider whose probate syllabus and assessment method are acceptable to the LSB.
- 4.19 The Regulations will make clear the need for a probate qualification, approved by ACCA, as a prerequisite for probate authorisation by ACCA.

### **Eligibility for probate authorisation – Firms**

- 4.20 A firm which intends to provide probate services must obtain authorisation from an AR for probate activities. For the purposes of the Regulations, a firm means a sole practitioner, partnership, limited liability partnership (**LLP**) or body corporate.
- 4.21 ACCA is not currently seeking authorisation to become a licensing authority for probate activities. Therefore, we shall only seek to authorise probate firms in which all the managers are individually authorised for one or more reserved legal activities, and at least one manager is authorised for probate activities.
- 4.22 ACCA will not seek to authorise a body ('the licensable body') in which:  
(a) another body is a manager or has an interest, and  
(b) non-authorised persons are entitled to exercise, or control the exercise of, at least 10% of the voting rights in that body.
- 4.23 The Regulations will make clear that all managers and any employees of a firm responsible for the firm's probate work must be individually authorised for probate activities.
- 4.24 Firms applying for probate authorisation will be required to complete an application form and provide details of the managers and employees of the firm who are authorised for probate activities, or are applying to be authorised. A fee may be payable in respect of the firm's authorisation, which will be based on the anticipated



cost of regulating the firm for probate activities that are not covered by the authorisation of individuals within the firm.

- 4.25 Following the submission of a firm's application for probate authorisation, a firm must be prepared to provide any further information required by ACCA in respect of the application.

### **Authorisation**

- 4.26 ACCA's authorisation procedures will assess the eligibility of individuals and firms to undertake probate activities, including the required education and training obtained by individuals.

### **Authorisation process**

- 4.27 ACCA's Authorisation team is responsible for assessing applications for certificates and licences, as well as renewals. The Authorisation team will ensure that application forms for probate authorisation have been fully completed, verify the information given on the forms, ensure individuals and firms meet the eligibility requirements for probate authorisation under the Regulations, and seek any further information from applicants that is considered necessary. In particular, authorisation officers will ensure that individuals satisfy the qualification requirements for probate.
- 4.28 As with other certificates and licences, the Admissions and Licensing Committee will be responsible for determining the outcomes of any applications for probate authorisation (by individuals or firms) that are deemed contentious. In practice, the routine scrutiny of application forms is delegated to experienced ACCA staff in the Authorisation team. Systems are in place to ensure that any contentious matters identified during the application or renewal process are brought to the attention of the Admissions and Licensing Committee.
- 4.29 If an application is approved, an individual's probate authorisation will attach to his or her PC, and the applicant will be advised, in writing, that they are authorised to carry on the reserved legal activity of probate. This authorisation will be issued under the delegated authority of the Admissions and Licensing Committee. An application will be refused if the applicant does not meet the eligibility requirements or if an application form remains incomplete.
- 4.30 If an application for a firm's authorisation is successful, the firm will be awarded a **legal activities certificate**, which will state those reserved legal activities that the firm is authorised to perform (ie probate). As with an individual's authorisation, this certificate will be awarded under the delegated authority of the Admissions and Licensing Committee. An application will be refused if the firm does not meet the eligibility requirements or if an application form remains incomplete.
- 4.31 Any issues or disputes will be referred to the Admissions and Licensing Committee. For example, if an applicant discloses information that impacts on their fitness and propriety, the application will be referred for the Committee's consideration. Re-applications, following the withdrawal of a certificate or authorisation by the Committee, will automatically be referred to the Admissions and Licensing Committee.

4.32 Individuals and firms that are granted probate authorisation must comply with the continuing obligations, which are set out in the GPRs and the Regulations.

### ***Application forms***

4.33 Individuals and firms applying for (and renewing) probate authorisation must complete application forms specifically in respect of reserved legal activities. ACCA will provide guidance on the application process on its website.

4.34 Draft copies of the following forms are shared with the Legal Services Board as part of this application:

- Application to become an authorised probate individual
- Application to become an authorised probate individual (non-member)
- Application for a firm's legal activities certificate

### ***Fees***

4.35 ACCA members pay a fee on admission to membership. In addition, all members pay an annual subscription, regardless of whether they hold PCs. The subscription for a calendar year is set annually, and any increase in excess of 5% requires the members' approval in general meeting (in accordance with the bye-laws). Separate fees are levied for PCs and for certificates and other authorisations for specific regulated activities (eg audit, insolvency and certain investment business activities).

4.36 Individuals authorised for probate activities and, in some cases, firms awarded legal activities certificates will be required to pay a fee, as determined by ACCA, in accordance with the LSB's Practising Fee Rules 2016. The fee will be first payable when the individual or firm applies to ACCA for authorisation, and will then be payable annually on renewal of the authorisation.

4.37 ACCA seeks to ensure that the costs of regulation (in particular authorisation and monitoring) are met by the regulated providers of those regulated activities. Our intention is to set fees for probate authorisation that are proportionate, competitive and fair for individuals and firms wishing to provide probate services.

4.38 It is not possible to indicate levels of fees for probate authorisation within this application, as they must be agreed with the LSB at a later stage, in accordance with the Practising Fee Rules 2016. As part of that process, the costs of authorisation must be estimated, which will depend on factors such as the agreed monitoring cycle for those firms carrying on probate work.

### ***Database of individuals and firms authorised for legal activities***

4.39 ACCA will rely to a great extent on existing systems to capture relevant information about individuals and firms. Those systems are being adapted to identify individuals and firms authorised for probate activities, so that they may be appropriately regulated, including for CPD and quality assurance purposes. A register of individuals and firms authorised by ACCA for probate activities will be made available on ACCA's website.

### ***Renewals and annual returns***

4.40 Once issued, PCs, non-member probate authorisations and firms' legal activities certificates must be renewed on a calendar year basis, ie certificates will be valid

until 31 December each year, and will be renewable by returning a form or submitting a renewal online. At that time, all individuals and firms will be required to confirm their compliance with various criteria set out in the renewal forms. For example, the renewal process for firms will include confirmation of the eligibility and competence of all individuals in the firm authorised to undertake probate activities. Individuals and firms that cease to meet all of the eligibility requirements, or that fail to submit properly completed renewal forms by the necessary deadline, will have their probate authorisation removed.

- 4.41 Some data collected from the annual renewal process will be used to understand the risk profile of a firm, and so impact the manner in which that firm is monitored.

### ***Fit and proper persons***

- 4.42 ACCA will only issue PCs and other authorisations to applicants who are fit and proper persons. The detailed provisions for fit and proper persons are set out in the GPRs which are contained within the *ACCA Rulebook*.

- 4.43 In determining whether a person is fit and proper, the Admissions and Licensing Committee will be asked to consider certain matters that relates to a person, including whether the person is or has been:

- convicted of a criminal offence
- at any time bankrupt, signed a trust deed for creditors or entered into a deed of arrangement, scheme or composition in respect of his or her financial affairs
- the subject of a bankruptcy restriction order or bankruptcy restriction undertaking under the Insolvency Act 1986
- removed from the office of liquidator, trustee, administrative receiver, administrator or supervisor
- the subject of a disqualification order or disqualification undertaking made under the Company Directors Disqualification Act 1986
- found to have failed to ensure that the experience and competence of his or her employees and practice associates are adequate, having regard to the nature of the work involved
- a patient under the Mental Health Act 1983
- the subject of a disciplinary order made by ACCA or another professional body
- the subject of an investigation, whether criminal, disciplinary or otherwise, in respect of his or her conduct.

- 4.44 The Admissions and Licensing Committee may also take into account any matter relating to a person who is or will be employed by the applicant, or who is or will be in business with the applicant in connection with public practice.

- 4.45 Individuals and firms seeking authorisation for probate activities will be required to confirm that they are fit and proper. Similarly, their compliance with the fit and proper requirements will be confirmed as part of the annual renewal process.

### **Compliance requirements**

#### ***Client monies***

- 4.46 Section 270 *Custody of client assets* of the Code clearly states the overriding requirement that those entrusted with assets belonging to others should:

- keep such assets separately from personal or firms' assets,
- use such assets only for the purpose for which they are intended,
- at all times, be ready to account for those assets, and any income or gains generated, to any persons entitled to such accounting, and
- comply with all relevant laws and regulations relevant to the holding of and accounting for such assets.

4.47 Firms are also required to comply with more specific provisions, including those in respect of client bank accounts operated by the firm, and records required to be maintained. The main points are set out below:

***Clients' accounts***

4.48 Clients' monies should be paid, without delay, into a bank account separate from other accounts of the firm. Such an account may be either a general client account or a separate account in the name of the specific client. Such accounts must be designated as 'client accounts'.

4.49 Where it is anticipated that the monies of an individual client in excess of £10,000 (or its equivalent) will be held by the firm for more than 30 days, the money should be paid into a separate, designated bank account.

4.50 The Code currently states that members must not retain insolvency monies in a general client account, but they must be held in a separate designated client account for each estate. Any interest earned is, therefore, accounted for to the insolvent estate. The Code will include a similar provision in respect of estate monies following a grant of probate.

4.51 Where a firm receives a payment that includes both client monies and other monies, it should be paid into a client account. Once the monies have been received into the client account, the firm should withdraw from that account such part of the sum received as can properly be transferred to an office account. No other monies, other than clients' monies, may be paid into a client bank account.

4.52 According to the Code, the firm may withdraw monies from a client bank account in order to make payments on behalf of a client, or (subject to strict conditions) to meet fees and other amounts due to the firm. Other amounts may be drawn from a client account on a client's authority.

4.53 Bank charges for maintaining a client accounts must be paid out of the firm's own office account.

***Maintaining records***

4.54 Firms are, at all times, required to maintain accurate records and controls (eg by way of reconciliations) to show clearly the monies they have received, held and paid on account of their clients, clearly distinguishing the monies of each client from the monies of others and from the firm's monies.

4.55 Members and firms are required to maintain such records for a period of not less than six years from the date of the last transaction recorded.

***Anti-money laundering***

4.56 Members must also demonstrate their compliance with legislation relating to money laundering and terrorist financing, and the local statutory provisions.

- 4.57 ACCA, in collaboration with other accountancy bodies, has produced guidance to help members and member firms to interpret the UK legislation. *Anti-Money Laundering Guidance for the Accountancy Sector*, published by the Consultative Committee of Accountancy Bodies (**CCAB**), has been approved by HM Treasury,<sup>1</sup> and provides authoritative guidance and practical advice to firms in adopting best practice when implementing and complying with anti-money laundering (**AML**) requirements. This guidance is available on the CCAB website at <http://www.ccab.org.uk/reports.php>, as well as on the ACCA website.
- 4.58 Compliance with AML legislation will be reviewed as part of ACCA's routine quality assurance procedures for firms authorised for probate activities.

### ***Continuity of practice***

- 4.59 ACCA requires (in the GPRs and in the Code) all practitioners and regulated firms to make arrangements so that the professional needs of their clients will be dealt with if the practitioner dies or becomes incapacitated through illness. It is mandatory that a written COP agreement is in place (with one or more parties), and these may be inspected by ACCA.
- 4.60 A continuity provider must be based in the same country as the PC holder and, for each authorisation of the PC holder, there must be a continuity provider with the equivalent qualification and authorisation.<sup>2</sup>
- 4.61 A sole practitioner must enter into an agreement with a practising accountant, or firm of practising accountants; someone in a partnership, may make an arrangement either within the partnership agreement or by entering into an agreement with another firm; and an incorporated firm may make provision for continuity either within its articles of association or by entering into an agreement with another firm.
- 4.62 ACCA provides guidance concerning continuity arrangements on its website at <http://www.accaglobal.com/uk/en/member/standards/rules-and-standards/other-standards.html>
- 4.63 ACCA's GPRs require ACCA to be notified in the event that a COP agreement has been activated. The name of the continuity nominee should be disclosed on the professional stationery of the practice as soon as possible after the commencement of the management period.

### ***Internal complaints-handling***

- 4.64 In accordance with existing lead regulator recommendations, firms in the UK are already required to implement adequate procedures to handle client complaints in respect of fee, service and contractual disputes

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<sup>1</sup> Following the issue of the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, CCAB has updated its guidance, which is currently awaiting approval on behalf of HM Treasury.

<sup>2</sup> ACCA has, in the past, assisted firms in identifying possible continuity providers in respect of specific services.

- 4.65 Firms authorised by ACCA for probate activities will be required to operate fair, efficient and effective internal complaints-handling processes that comply with section 112 of the Act and the Scheme Rules of LeO.
- 4.66 The Regulations will require firms to advise their clients, in writing, of their right to make a first-tier complaint to the firm, and the process for doing so. Firms will also be required to advise clients of their right to make a second-tier complaint to LeO under the Scheme Rules (and the process for doing so), if the first-tier complaint has not been resolved to the client's satisfaction within eight weeks. If a second-tier complaint is referred to LeO, firms will be required to cooperate fully with any investigation, and to comply with any decision.
- 4.67 The Regulations will incorporate the requirements in respect of complaints-handling. In addition, the Code sets out the specific objectives of internal complaints-handling procedures.
- 4.68 In addition, it is a fundamental ethical principle that ACCA members and others bound by the *ACCA Rulebook* are, at all times, professional and courteous in their dealings with clients and others.
- 4.69 Internal complaints-handling procedures will be reviewed as part of ACCA's quality assurance procedures for firms authorised for probate activities.
- 4.70 To assist firms to comply with the regulatory arrangements for first-tier complaints-handling and signposting to LeO, ACCA will enhance guidance on internal complaints-handling procedures (including standard documentation) to provide specific guidance in respect of probate activities. Firms will be advised of the importance of reviewing complaints and considering whether procedures or systems need to be introduced or amended to avoid similar complaints arising in the future. The current guidance is available on ACCA's website at <http://www.accaglobal.com/gb/en/member/standards/rules-and-standards/other-standards.html>

### ***Legal Ombudsman***

- 4.71 The remit of LeO covers complaints about poor service. If a complaint referred to LeO involves possible misconduct, the complaint will be redirected to ACCA for investigation through our investigation and disciplinary processes. These procedures are covered later in this application.
- 4.72 ACCA will work collaboratively with LeO on complaints and share information where possible. We shall establish a Memorandum of Understanding and an Operational Protocol which set out how ACCA and LeO will work together and share information on complaints. These agreements will be in place when we start to authorise firms and individuals for probate activities.

### ***Diversity***

- 4.73 ACCA is a values-driven organisation. As the global body for professional accountants, diversity is one of our unique core values and it is built into a framework which sets out the behaviours and attitudes expected of ACCA employees. ACCA has been at the forefront of encouraging inclusivity, opportunity and diversity - supporting access to the professions, and promoting our professional insights research on the benefits of diversity in the workplace and finance functions.

We respect and value difference, embracing diversity in our people and in our output.

- 4.74 Firms authorised for probate activities will be expected to monitor the diversity of their employees, in accordance with LSB guidance. Firms may be required to supply diversity data to ACCA. ACCA intends to develop guidance on the type of diversity data that should be collected by firms.
- 4.75 The collection of diversity data enables a better understanding of the profile of regulated firms. However, the regulatory objective to 'encourage a strong, independent, diverse and effective legal profession' is delivered not only from diversity within firms that provide probate services, but also in the diversity of the nature of firms and professions able to provide reserved legal activities.

### ***Continuing professional development***

- 4.76 ACCA's CPD requirements – within the MRs – stipulate that all members must obtain CPD. Regardless of their role, they must maintain competence in professional ethics and keep their business and finance knowledge up to date. In addition, individuals holding PCs or otherwise authorised by ACCA for a reserved activity must maintain competence in the specialised areas of their practice, and obtain an appropriate proportion of CPD units in those areas.
- 4.77 Therefore, members authorised for probate activities will be required to ensure that they maintain their competence in probate work, and will be expected to undertake probate-related CPD as appropriate. In addition, a firm holding a legal activities certificate must require all individuals who are authorised to undertake probate work on behalf of the firm to comply with ACCA's CPD requirements.
- 4.78 ACCA's CPD requirements are designed to ensure a transparent and measurable approach to CPD, together with flexibility in how CPD is achieved. ACCA's CPD requirement is supported by a range of products and services.
- 4.79 ACCA's CPD requirements may be approached in a number of ways:
- by following a unit scheme, whereby a number of verifiable and non-verifiable CPD units must be gained in each calendar year, or
  - through an employer who holds approved CPD employer status from ACCA, or
  - by following the CPD scheme of another body which is a member of IFAC.

If following the unit scheme route, individuals must usually complete at least 40 relevant units of CPD each year, where one unit is equal to one hour of development. There are no prescribed learning activities; members should choose those that are best suited to their needs. However, at least 21 of the 40 units must be verifiable.

- 4.80 Verifiable CPD is where the individual can explain how he or she applied the learning, and can provide evidence that the learning activity was undertaken.
- 4.81 Members, and others obliged to comply with the *ACCA Rulebook*, must keep evidence of their CPD activity for three years.

### ***CPD confirmation procedures***

- 4.82 All members are required to submit an annual declaration, either confirming that they have met the CPD requirements via one of the acceptable routes, or stating

that they have not been able to complete the CPD requirement. The CPD declaration includes confirmation that they have maintained or developed, as appropriate, their competence in professional ethics. Members holding PCs are also required to confirm they have complied with the CPD requirements when submitting their annual PC renewal application.

- 4.83 If members state they have not been able to meet the CPD requirement, they are given increased support and guidance to rectify any shortfall. They are then required to make a replacement declaration once they have made good the shortfall.
- 4.84 The Professional Development department annually checks a sample of CPD records for sufficiency and relevance. The sample is selected on a statistically representative basis, which is risk-based. ACCA's MRs allow ACCA to remove individuals from the register of members if they fail to submit an annual CPD declaration, or fail to submit evidence when requested to do so.
- 4.85 Compliance with ACCA's CPD requirements is reviewed as part of ACCA's quality assurance procedures, and this will be the case in respect of firms holding legal activities certificates. In addition, licensing compliance officers will check the CPD records of members during an ACCA Approved Employer monitoring visit. Serious deficiencies will be reported to the Professional Development department for follow up. Minor deficiencies will be included in a report to the firm.

***CPD resources***

- 4.86 ACCA's CPD requirements recognise that there are many different ways to maintain or develop skills and knowledge. The 'CPD for Members' section of ACCA's website contains a wide range of resources to help members maintain and develop their skills, for example:

- networking events and seminars
- courses, e-learning modules and webinars
- CPD articles, technical resources and consultation documents, and
- *Accounting and Business* articles (some with tests attached to verify understanding).

- 4.87 Full details of ACCA's CPD requirements and resources can be found on the 'CPD for Members' section of ACCA's website at <http://www.accaglobal.com/en/member/cpd.html>

***CPD support for probate***

- 4.88 ACCA recognises its responsibility to offer and signpost courses and online resources for the benefit of members who are required to maintain competence in probate activities. Such resources will include sufficient content that meets the standard of verifiable CPD.
- 4.89 ACCA UK runs regional member networks and sector-specific member networks tailored to individual business areas, including the Practitioners' Network. These member networks act as a forum for the exchange of ideas, and facilitate networking with other practitioners. They also cater for the professional education and information needs specific to the practice sector. ACCA UK currently provides courses and updates aimed at accountants who need updating on inheritance tax, particularly those moving into the area of private wealth management and estate planning. The sessions refresh delegates on the principles and main rules of inheritance tax, but also introduce them to some planning issues. Full details of



ACCA's support for members in public practice, including the Practitioners' Network, can be found on the 'ACCA Members' section of ACCA's website at <http://www.accaglobal.com/uk/en/member.html>

- 4.90 Additionally, ACCA UK's Technical Advisory team provides free technical advice to UK members, including advice on probate-related matters. The team also contributes an extensive range of articles, factsheets and guides to the 'Technical Activities and Advice' section of ACCA's website to help members stay informed. Full details of ACCA UK's technical support for members in the practice sector can be found on the 'UK Technical Advice and Support' section of ACCA's website at <http://www.accaglobal.com/uk/en/technical-activities/uk-tech.html>
- 4.91 ACCA's promotion of CPD for probate will include:
- ensuring the CPD resources section of ACCA's website, which brings all learning together in one place under topic headings, contains relevant CPD resources for probate
  - providing a guidance sheet which clarifies the importance of relevant CPD for practising members undertaking probate work – to be included in the probate authorisation application and renewal packs
  - updating the guidance and support featured in the dedicated web sections for CPD and technical advice, including a suite of probate factsheets
  - developing sector specific networking events and seminars for probate activities through ACCA UK's Practitioners' Network
  - promoting ACCA UK's Practitioners LinkedIn member group which enables members to network and share knowledge
  - working with other professional bodies to exchange ideas, increase resources and develop networking opportunities for members and employers linked to CPD in probate
  - working with specialist suppliers to extend the range of resources available to members undertaking probate work, for example, e-learning suppliers and training providers.

### ***Professional indemnity insurance***

- 4.92 Compensation and indemnification are addressed through ACCA's PII requirements, which include FGI.
- 4.93 PII policies provide cover for practitioners against claims for professional negligence. All members in public practice are required to hold PII, in accordance with prescribed minimum levels, as a condition of their authorisation to practise. Where an ACCA practitioner is in partnership, or has fellow directors in an incorporated firm, or employs full-time or part-time staff, cover must also include FGI.
- 4.94 PII must provide cover in respect of all civil liability incurred in connection with the conduct of a firm's business by the partners, directors or employees, and FGI must include cover against any acts of fraud or dishonesty by any partner, director or employee in respect of money or goods held in trust by a firm.
- 4.95 The detailed provisions for PII and FGI are set out in the GPRs, which are contained within the *ACCA Rulebook*. The Code also enshrines the primacy of acting in the client's interest, and subjugates other pressures, be they commercial or otherwise, to that principle.

- 4.96 The level of indemnity required by practitioners ordinarily depends on the firm's total income, while recognising the significance of the firm's largest fee. The 'largest fee' does not necessarily relate to the largest single invoice to a client, but to the highest cumulative amount of fees raised to a particular client during the year.
- 4.97 Firms authorised for probate will be required to hold PII and FGI and ensure that their policies provide cover against any risks that may arise where the firm undertakes probate activities. The minimum limits of cover for PII and FGI must be calculated in accordance with the GPRs, but firms will also be subject to a minimum level of cover in respect of probate activities, which will be set out in the Regulations.
- 4.98 Initially, the minimum level of cover in respect of probate activities and associated work will be £100,000. However, firms authorised for probate activities will also be required to consider the risk profile of their work and their clients, and ensure the level of cover for PII and FGI provides the appropriate level of cover for their clients. As a result, the level of PII and FGI carried by firms will sometimes be in excess of the minimum set out in the GPRs and the Regulations.
- 4.99 A further safeguard is the requirement that PII cover must be at least 25 times the firm's largest fee. Therefore, as fees for probate work would be expected to bear a relationship to the size of the deceased's estate, the level of PII cover will sometimes be impacted by a particular probate appointment.
- 4.100 Compliance with the PII and FGI requirements will be a requirement of probate authorisation, and a review of a firm's PII cover will take place as part of the annual renewal process. As with other Rulebook requirements, a repeated or serious breach of the PII rules will give rise to disciplinary action.
- 4.101 ACCA does not propose to operate a compensation scheme, as the requirement to hold PII and FGI satisfies the Act's requirements for compensation and indemnification arrangements in respect of probate activities.

### **Quality assurance**

- 4.102 ACCA's monitoring procedures will help to ensure that individuals and firms authorised to undertake probate activities comply with ACCA's regulations and professional standards.

### ***Monitoring process***

- 4.103 The Monitoring department is responsible for monitoring ACCA registered firms and taking steps to achieve compliance. This is achieved through a risk-based approach comprising inspection visits and desktop monitoring. If an ACCA registered firm is licensed to carry out audit or insolvency work, it is subject to monitoring by ACCA as an RSB or RPB respectively. As part of ACCA's quality assurance processes, a compliance review will always check compliance with the GPRs and the Code.
- 4.104 ACCA monitors registered firms in a cost effective manner in order to ensure compliance with legislation, associated regulations, rules and standards, and to identify instances where the interests of the public may be at risk.
- 4.105 The main purposes of monitoring are to:

- assess whether registered firms are, and remain, fit and proper
  - ascertain whether registered firms understand and comply with the relevant requirements
  - enforce compliance with rules, regulations and standards, and ensure high levels of professional competence are maintained.
- 4.106 ACCA's quality assurance procedures are designed to be proportionate to the risk posed by registered firms. The frequency of monitoring will vary depending on the type of work a firm undertakes and the regulatory risk – according to a range of factors. Firms whose quality control procedures have been found to be unsatisfactory in the past will be monitored more frequently.
- 4.107 ACCA will adapt its existing monitoring procedures in order to inspect probate work. We shall rely on existing systems to capture relevant information on probate monitoring, and will set up new processes and system enhancements, where necessary, to identify individuals and firms authorised for probate.
- 4.108 ACCA will continually review the number of ACCA firms carrying on probate activities in order to ensure we have the monitoring resources and expertise to conduct inspections of probate work.
- 4.109 We shall ensure ACCA staff who may be involved in monitoring probate work are competent to do so. Initially, this may involve specialist guidance and training (from external sources where necessary) in order to up-skill existing senior compliance officers. In addition, probate expertise may be a requirement in the recruitment of new senior compliance officers.
- 4.110 Once ACCA has started to authorise individuals and firms for probate activities, it will be some months before opportunities arise for ACCA to monitor the work of firms with legal activities certificates. Therefore, there will be a window in which ACCA will be able to train and recruit senior compliance officers according to its monitoring obligations.
- 4.111 There will also be a need for ongoing training of staff in respect of reserved legal activities, as there is in other specialist areas of regulation (such as audit). Training and consultancy services are sometimes sought from relevant organisations, including some of ACCA's existing training providers. This will also be appropriate in respect of training to update staff in respect of reserved legal activities.

#### ***Inspection visit cycle***

- 4.112 ACCA members in public practice (and other individuals and firms obliged to comply with the *ACCA Rulebook*) are aware that they are subject to quality assurance monitoring by ACCA. All firms with legal activities certificates will be monitored on a cyclical basis, including those that have been awarded the certificate but have not performed any probate work since they were last monitored. Where possible, we will seek to combine probate monitoring with other monitoring activities (eg audit and AML supervision).
- 4.113 As with current monitoring processes, ACCA will use risk factors to determine when a firm with a legal activities certificate will be visited within a visit cycle. Risk factors taken into account will include the outcome of the previous visit and the number and types of probate cases undertaken. For example, firms may be visited sooner where they have high risk clients or carry out a particularly large amount of probate work.

- 4.114 We shall monitor firms with legal activities certificates within two years of them obtaining probate authorisation. If, at that time, the firm has not completed any probate appointments, it will be required to notify ACCA when it first accepts a probate appointment, which will then give rise to an accelerated monitoring visit. Subsequent monitoring will be carried out according to the appropriate cycle – based on the assessment of risk. Where ACCA finds that a firm needs to make some improvements to its probate work it will be scheduled to receive an accelerated follow up visit.
- 4.115 Firms that hold probate authorisation but have not undertaken any probate work since they were last monitored will be monitored on a desktop basis.
- 4.116 ACCA is to review its various monitoring cycles in light of its increasing complex range of monitoring obligations. The normal monitoring cycle for probate activities cannot be stated in this application. We acknowledge that it must be agreed with the LSB, in light of ACCA's risk-based approach to monitoring and the need to demonstrate proportionality.

### ***Inspection visit process***

- 4.117 When a firm with a legal activities certificate is monitored by way of a visit, the monitoring process will consist of:
- an initial interview with the managers of the firm within the framework of the Practice Monitoring Programme
  - inspection of practice documents and records to confirm eligibility and compliance with the GPRs, the Regulations and the Code (normally only where the visit is carried out within the routine cycle), including reviewing CPD records, PII and FGI cover, continuity arrangements, client accounts, and internal complaints-handling procedures
  - inspection of client files for a sample of completed probate cases
  - a final meeting to agree ACCA's findings, make recommendations for improvement, and confirm future action required.
- 4.118 A senior compliance officer will identify the probate cases to be inspected, based on his or her experience in monitoring, and an assessment of risk. The files selected for review will be in addition to any statutory audit files, for example, where statutory audit and probate monitoring visits are combined.
- 4.119 Although CPD compliance is monitored by the Professional Development team, the monitoring programme also requires checks to be carried out on CPD undertaken to ensure it adequately covers the scope of work a member (or other authorised individual) undertakes. Therefore the Monitoring department is in a good position to monitor members who are authorised for probate activities, to ensure they are maintaining a sufficient level of focused learning.
- 4.120 Firms selected for desktop monitoring will be asked to complete a Compliance Review Questionnaire and submit specific documents and records for inspection.
- 4.121 Following a visit, the senior compliance officer sends a report to the firm which details any deficiencies found during the visit and, in some cases, will request an action plan from the firm. The report will also indicate the timing of the next visit, particularly where it is likely that it will be accelerated. The exception to this process is where the firm is being referred to a regulatory assessor or the Admissions and

Licensing Committee (as discussed below). In these cases the report will be made to the regulatory assessor or the Admissions and Licensing Committee rather than the firm, but the firm will still receive a draft copy of that report and will be given an opportunity to make representations before the report is finalised and provided (together with the firm's submissions) to the regulatory assessor or the Admissions and Licensing Committee.

### ***Regulatory action***

- 4.122 Regulatory action is taken to prevent a member from continuing with conduct that poses a risk to the public interest. It is not disciplinary action, and is concerned with how members are likely to conduct themselves in future rather than punishing past misconduct. Regulatory action includes refusing to issue or renew a certificate or authorisation, removing a certificate or authorisation, or imposing conditions on a certificate.
- 4.123 Regulatory action can be taken by either a regulatory assessor or the Admissions and Licensing Committee, although only the Admissions and Licensing Committee can order the withdrawal or suspension of probate authorisation or a firm's legal activities certificate. The normal criteria for referring firms for regulatory action are that a monitoring visit reveals either breaches of the conditions for eligibility for authorisation, or breaches of the Code or of relevant standards that are sufficiently serious to warrant immediate action by ACCA.

### ***Regulatory assessors***

- 4.124 Regulatory assessors will consider cases concerning the conduct of probate work. Regulatory assessors are appointed by the independent Appointments Board. There are currently two regulatory assessors both of whom are ACCA practising members.
- 4.125 The Admissions and Licensing Committee has delegated to regulatory assessors its powers in respect of the imposition of conditions on certificates and authorisations. In future, cases considered by the regulatory assessors will include those concerning the conduct of probate work.
- 4.126 The regulatory assessors must refer cases to the Admissions and Licensing Committee where they think the withdrawal or suspension of a certificate or authorisation should be considered. In addition, an individual or firm can ask for a matter to be heard by the Admissions and Licensing Committee if the relevant person disagrees with the regulatory assessor's decision. Similarly, ACCA will refer a case straight to the Admissions and Licensing Committee where ACCA believes that the imposition of conditions on a certificate or authorisation would be inadequate to protect the public.

### ***Admissions and Licensing and Appeal Committees***

- 4.127 The Admissions and Licensing Committee is responsible for deciding all matters in respect of certificates and other authorisations and, therefore, will do so in respect of issues relating to probate authorisation.
- 4.128 If ACCA's recommendation, based on the firm's monitoring history as a whole, is that the removal of the firm's probate authorisation may be appropriate, the matter will be referred directly to the Admissions and Licensing Committee. ACCA believes it is in the public interest for regulatory action to be considered as quickly as possible in such cases.

- 4.129 Members, authorised individuals and firms may be entitled to appeal against a decision of the Admissions and Licensing Committee but must first apply for permission to appeal, showing proper grounds. The merits of the appeal are usually assessed by an Appeal Committee chairman, but may also be considered by the Appeal Committee as a whole. A decision is made as to whether the appeal can proceed to a full oral hearing based on the defined grounds. The Appeal Committee has the power to affirm, vary or rescind any order of the Admissions and Licensing Committee.
- 4.130 The Admissions and Licensing Committee, Appeal Committee and regulatory assessors refer to the Guidance for Regulatory Orders (**GROs**) when they are considering what, if any, regulatory order (or orders) may be appropriate. The GROs are suitable to be applied to decisions in respect of probate activities. The current version of the GROs is available on ACCA's website at <http://www.accaglobal.com/uk/en/member/standards/committees/guidance.html>
- 4.131 The decisions of the Admissions and Licensing Committee and the Appeal Committee are independent of ACCA. Members of these Committees are drawn from a central panel of individuals, each of which is eligible to sit on any of ACCA's disciplinary and regulatory Committees, and which includes specialists in audit, investment business, insolvency and legal services, as well as general practitioners. However, most panel members are lay people. The Committees (and therefore the central panel) must not include members of ACCA staff or ACCA Council members.
- 4.132 Members of the central panel are appointed by an independent Appointments Board, which is wholly comprised of lay people, and reports to ACCA's Regulatory Board (see earlier). Approximately one third of those on the central panel are appointed as eligible to serve as chairmen on regulatory and disciplinary Committees.
- 4.133 The Admissions and Licensing and Appeals Committees have a quorum of three members, including the chairman. At least one member of the Committee must be an accountant and lay people (non-accountants) must be in the majority.
- 4.134 All hearings of the Admissions and Licensing Committee and Appeal Committee are attended by a legal adviser who is independent of ACCA and whose function is to act as an adviser to the Committee, including the chairman, on all procedural and legal matters. This further enhances the independence of the Committees.
- 4.135 In the interests of transparency, cases heard by the Admissions and Licensing and Appeal Committees are open to the public, including the press, although ACCA's regulations include provision for a Committee to determine that it should sit in closed session, for all or part of a case, if it is justified by the interests of any party, any third party, or by the public interest. Decisions made by the Admissions and Licensing and Appeal Committees are published (except in exceptional circumstances), together with reasons, naming the relevant person.
- 4.136 ACCA has regulations and procedures that ensure that a member receives a fair hearing, which is in line with Article 6(1) of the Human Rights Act 1998.

### ***Referrals to the disciplinary process***

- 4.137 It is rare for the Admissions and Licensing Committee to refer a matter to the disciplinary process as this Committee is concerned with future probate authorisation issues and not past breaches. However, matters that arise during the course of the monitoring process that may require consideration of taking disciplinary action will be referred directly by the Monitoring department to the Assessment department (see below).

### **Investigation and discipline**

- 4.138 ACCA's investigation and disciplinary procedures ensure that, where appropriate, disciplinary action is taken against members, authorised individuals and firms. The existing regulations and procedures are relevant in respect of those authorised to undertake probate activities.
- 4.139 ACCA will adapt its existing arrangements when assessing and investigating complaints relating to probate work, and ensure that staff involved in the process are competent to undertake the assessment and investigation of complaints against individuals and firms in respect of probate work. This may include specialist guidance for staff, and staff training specific to probate activities and the Regulations. The source of such training has been identified as available from both internal and external sources.
- 4.140 Following the LSB's approval of this application, and ACCA starting to authorise individuals and firms for probate activities, we would not expect a high volume of complaints relating to probate work. It is unlikely that any probate-related complaints would be received prior to ACCA staff being appropriately trained in respect of probate activities and the regulatory requirements. We are confident that there will be a window in which ACCA will be able to train senior investigations officers according to their needs. ACCA also has experience in outsourcing the investigation of complaints where necessary.
- 4.141 There will also be a need for ongoing training of senior investigations officers in respect of reserved legal activities, as there is in other specialist areas of regulation (such as audit). Training and consultancy services are sometimes sought from relevant organisations, including some of ACCA's existing training providers. This will also be appropriate in respect of training to update staff in respect of reserved legal activities.

### ***Investigation and disciplinary process***

- 4.142 ACCA investigates complaints against relevant persons and, where appropriate, takes disciplinary action. It is empowered to do so under its bye-laws. The bye-laws and regulations bind members, firms, registered students and affiliates. In addition, certain non-members (including partners in mixed practices) expressly agree to be bound by and subject to ACCA's bye-laws, regulations and the Code. Non-members authorised for probate activities will fall within this category.
- 4.143 Full details of the complaints and disciplinary procedures are contained within the Chartered Certified Accountants' Complaints and Disciplinary Regulations 2014 (CDRs). The CDRs are contained within the *ACCA Rulebook*.

- 4.144 The Assessment, Investigations and Adjudication departments are responsible for processing complaints concerning those areas of members' professional work that are subject to statutory regulation as well as the wider, unregulated areas of accountants' professional work. ACCA's disciplinary regulations and procedures comply with the requirements of the laws of natural justice and with the Human Rights Act 1998.
- 4.145 ACCA acts in the public interest and in accordance with the principles of better regulation. It strives to take proportionate and effective disciplinary action, where appropriate, while carrying out procedures that are consistent and transparent.
- 4.146 ACCA will rely on existing systems to capture relevant information on complaints relating to probate activities. ACCA will continually review levels of probate authorisation and the number and types of complaints received, and we shall ensure that we have the appropriate resources and expertise to assess and investigate complaints relating to probate work.

### ***Assessment***

- 4.147 The investigation and disciplinary process may be initiated by an external complaint made to ACCA, for example from a client, another practitioner or a regulator, or by a complaint from within ACCA, for example following a monitoring visit to a firm. In all instances, the Assessment department handles the initial complaint.
- 4.148 The Guide to ACCA's Complaints and Disciplinary Procedures 2017 and Information on the types of complaint that ACCA will investigate are available on ACCA's website at <http://www.accaglobal.com/gb/en/footer/toolbar/contact-us/make-a-complaint-about-an-acca-member.html>
- 4.149 Complaints that do not indicate misconduct are assessed by the Assessment department for their suitability for either conciliation or investigation by ACCA, or referred to LeO under the Memorandum of Understanding currently under consideration. Valid complaints that fall to be considered by ACCA, and which are not suitable for conciliation, are referred to the Investigations department. Those complaints that do not require investigation or referral to LeO, and which cannot be conciliated, will be rejected at the initial stage of the process.

### ***Conciliation***

- 4.150 ACCA is recognised as an Alternative Dispute Resolution body by the UK Chartered Trading Standards Institute. Our Conciliation Service is a small team of lawyers and mediators who assist the parties to a dispute to resolve their disagreements. They attempt to resolve complaints that arise because of poor service, as opposed to misconduct, through conciliation if appropriate. Complaints (or aspects of complaints) not closed following a conciliation process will be referred on to the Investigations department. However, complaints about poor service relating to probate work will be handled by LeO and not by ACCA's Conciliation Service.
- 4.151 Further information about ACCA's Conciliation Service is available on ACCA's website at <http://www.accaglobal.com/gb/en/footer/toolbar/contact-us/make-a-complaint-about-an-acca-member/faqs-about-the-conciliation-service.html>



### ***Investigation***

- 4.152 Complaints that indicate misconduct are investigated by investigations officers within the Investigations department. Following the investigation of a complaint, if the investigations officer believes the matter is not sufficiently serious to warrant disciplinary action, it may be either closed or rested on the relevant person's file, with an Investigation Manager's approval. The complainant can request that such a decision be reviewed by a disciplinary assessor, who has the power (among other things) to direct that a report of disciplinary allegations be prepared (see below).
- 4.153 A decision to rest on file one or more of the allegations (for a period of five years) may be appropriate where ACCA believes the member is liable to disciplinary action but it would not be in the public interest to refer the matter to a disciplinary assessor. The member (as well as the complainant) has the opportunity to request that the investigations officer's decision be reviewed by a disciplinary assessor.
- 4.154 The investigations officer may also dispose of a complaint by way of consent order. The consent order regime allows ACCA to dispose of a complaint where the relevant person accepts responsibility for all failings and/or breaches being investigated. It has the benefit of being a formal disciplinary order, without the need for a full investigation and disciplinary process. All consent order decisions are published, naming the relevant person. There is no right of appeal against a consent order.

### ***Disciplinary action***

- 4.155 If an investigations officer believes disciplinary action is indicated, a report of disciplinary allegations is drafted and referred to a disciplinary assessor to decide whether there is a case to answer.

### ***Disciplinary assessors***

- 4.156 ACCA's disciplinary assessors are appointed by the Appointments Board, and are required to be independent decision-makers. The panel of assessors comprises individuals with a wide range of expertise, including insolvency, accountancy and law. There are currently nine disciplinary assessors on the panel.
- 4.157 The disciplinary assessor is required to decide whether the evidence is sufficient that the relevant person should be called on to answer the allegations. Before reaching a decision, the disciplinary assessor may direct the investigations officer to carry out further investigation, including calling for further information. In complex cases an expert report may be obtained by ACCA and included in the report to the disciplinary assessor. The member has the right to make written representations to the disciplinary assessor.
- 4.158 If the disciplinary assessor finds no case to answer the matter usually ends there, and no record of it is retained on the member's file. However, the complainant has the right to request a review of the decision by a further disciplinary assessor.
- 4.159 Where a disciplinary assessor determines that there is a case to answer, he or she has two alternative courses of action:

- to refer the matter to the Disciplinary Committee for a hearing, or
- to rest the matter on file.

4.160 ACCA will refer a case straight to the Disciplinary Committee where ACCA believes that action must be taken (and seen to be taken) urgently. In the case of serious allegations, ACCA has the option to refer a matter to an Interim Orders Committee, requesting that an immediate interim order be imposed on the relevant person in order to protect the public.

4.161 A disciplinary assessor may also refer a matter to the Monitoring department or to an Admissions and Licensing Committee in respect of issues that may impact the relevant person's future authorisation.

### ***Disciplinary and Appeal Committees***

4.162 The Disciplinary Committee is responsible for hearing cases referred to it, and deciding whether allegations are found proved. This will be the case in respect of individuals and firms involved in probate work, as with other areas of a professional accountant's responsibility.

4.163 If a Disciplinary Committee finds allegations proved, it can make a variety of orders including exclusion from membership, a fine (currently capped at £50,000), the payment of compensation by the relevant person to the complainant (not exceeding £1,000) and a waiver or reduction of fees.

4.164 The relevant person may apply for permission to appeal against the decision of the Disciplinary Committee, but must apply for permission to appeal showing proper grounds. The Appeal Committee has the power to affirm, vary or rescind any order of the Disciplinary Committee, and to impose its own decision. Where the appeal is against the Disciplinary Committee's findings as well as its orders, the Appeal Committee may order that the case be re-heard by a freshly constituted Disciplinary Committee.

4.165 The Disciplinary Committee and Appeal Committee are expected to refer to the Guidance for Disciplinary Sanctions (**GDS**) when they are considering the appropriate sanction to impose upon the relevant person. The GDS is available on ACCA's website at <http://www.accaglobal.com/uk/en/member/standards/committees/guidelines-disciplinary.html>

4.166 As with the Admissions and Licensing Committee and the Appeal Committee, the decisions of the Disciplinary Committee are independent of ACCA. Members of all these Committees are drawn from the central panel of individuals. As explained earlier, the central panel includes specialists in audit, investment business, insolvency and legal services, as well as general practitioners, but most panel members are lay people, and the panel does not include members of ACCA staff or ACCA Council members.

4.167 The Disciplinary Committee has a quorum of three members, including the chairman. At least one must be an accountant and non-accountants must be in the majority.

4.168 All hearings of the Disciplinary Committee are attended by a legal adviser who is independent of ACCA and whose function is to act as an adviser to the

Committee, including the chairman, on all procedural and legal matters. This further enhances the independence of the Committees.

- 4.169 As in the case of the Admissions and Licensing Committee and the Appeal Committee, cases heard by the Disciplinary Committees are open to the public, including the press, although ACCA's regulations include provision for a Committee to determine that it should sit in closed session, for all or part of a case, if it is justified by the interests of any party, any third party, or by the public interest. Decisions made by the Disciplinary Committee are published (except in exceptional circumstances), together with reasons, naming the relevant person.
- 4.170 ACCA has regulations and procedures that ensure that a member receives a fair hearing, which is in line with Article 6(1) of the Human Rights Act 1998.

## **5. COMPETENCE AND RESOURCES**

### **Strategy to 2020**

- 5.1 ACCA's vision is to be number one in developing professional accountants the world needs. Our strategy is determined by ACCA's Council in a five-year Corporate Plan. ACCA's Strategy to 2020 sets out our mission, core values, strategic priorities, outcomes and capabilities.

### **Regulatory Plan**

- 5.2 ACCA's Regulatory plan 2017/18 sets out our regulatory objectives to 2020, our plans for the coming year and for the longer term, our staff and financial resources, our identified risks and the management of those risks.

### **Staff resources**

- 5.3 ACCA's regulatory work falls within the responsibility of the Governance executive directorate, and this will include all regulatory matters relating to probate activities. The executive directorate's overarching objective is to create, develop, support and regulate Chartered Certified Accountants of a high technical and ethical standard. It works closely with the Professional Qualifications, Professional Education and Customer Service teams to ensure that qualifications developed and delivered by ACCA are compliant with international standards and attained after rigorous examination.
- 5.4 The Executive Director - Governance has line responsibility for all regulatory matters. He reports directly to the Chief Executive on these matters. ACCA notifies lead regulators of any resignation or removal from key posts of the holders of these positions and provides details of their successors as soon as known.
- 5.5 ACCA has assessed the impact of regulating probate activities on its staff resources and workloads, and is satisfied that it will continue to meet its regulatory obligations. To ensure that staff resources remain appropriate, we shall continue to recruit staff with the relevant expertise, and also remain alert to occasions when it may be more appropriate to outsource to suitably qualified professionals (eg in the case of specialist investigations). ACCA will ensure that its documented regulatory procedures are appropriate for the regulation of probate activities, and ensure staff receive appropriate training and remain competent to undertake this work. The relevant resources, expertise and procedures will be in place when ACCA starts to authorise individuals and firms for probate.
- 5.6 Accompanying this application are organisation charts that cover the processes of:
- professional development
  - authorisation
  - practice monitoring
  - assessment and allocation of complaints
  - investigation of complaints
  - adjudication
  - lead regulator relationships.

- 5.7 The regulatory and disciplinary processes for probate activities will be undertaken by ACCA staff, assessors and Committees working together to achieve ACCA's objectives. Further information on the provision of staff resources for probate activities is provided below.
- 5.8 ACCA staff, including all those involved in regulatory activities, are paid a salary. ACCA has clear staff policies concerning gifts and hospitality, anti-bribery and conflicts of interest, as well as a staff code of ethics and a speak-up policy. All staff are required to familiarise themselves with, and to comply with, these policies and the code of ethics.
- 5.9 ACCA staff who are professionally qualified undertake CPD in accordance with the requirements of their professional bodies. In addition, internal training of staff involved in regulation is arranged, according to specific needs and developments.

### ***Professional development***

- 5.10 There are six professional development officers, reporting to a Professional Development Manager. The team is responsible for CPD procedures, supporting members in meeting their CPD obligations and ensuring compliance with the relevant regulations. The Professional Development Manager reports to the Head of Quality and Recognition.
- 5.11 There is one Professional Development Products Manager who reports to a Senior Manager Professional Development Products. The team is responsible for developing CPD learning support. The Senior Manager Professional Development Products reports to the Director of Professional Education.

### ***Authorisation***

- 5.12 The Authorisation team is undergoing expansion and the number of authorisation staff has increased by five since May 2017. There are now sixteen authorisation officers, reporting to either the Authorisation Operations Manager or a Licensing Compliance Officer. The team is responsible for processing PC applications and renewals, and this will include probate authorisations for individuals and firms. The Authorisation Operations Manager and the Licensing Compliance Officer report to the Head of Licensing.

### ***Quality assurance***

- 5.13 There are six senior compliance officers, reporting to the Compliance Manager, who carry out the monitoring of firms, which will, in future, include the monitoring of probate activities. All senior compliance officers are qualified accountants with experience in practice, including statutory audit work and other regulated activities. There are also four practice reviewers, who report to the Monitoring Operations Manager, who is a qualified accountant. The practice reviewers carry out desktop reviews and are not qualified accountants. The Compliance Manager and Operations Manager report to the Head of Monitoring.

### ***Investigations and discipline***

- 5.14 The Assessment department includes three senior investigations officers, who handle those complaints (and aspects of complaints) that may be disposed of by way of conciliation. These senior investigations officers report to the Assessment Manager, who is a qualified solicitor. The Operations Manager is responsible for

assessing and allocating complaints and, in future, these will include complaints relating to probate activities. The Assessment Manager and Operations Manager report to the Head of Assessment.

- 5.15 The Investigations department includes seven senior investigations officers who are either qualified solicitors or accountants, six investigations officers and one case officer. In addition, ACCA outsources to suitably qualified professionals who conduct specialist investigations. There are three Investigations Managers to whom they report, who are all legally qualified. The Investigations Managers report to the Head of Investigations, who is both a qualified accountant and a qualified solicitor.
- 5.16 Three teams exist within the Adjudication department: Case Progression, Case Presentation and Hearings. There are six hearings officers who administer hearings, including pre-hearing work, facilitating hearings and post-hearing publicity. The hearings officers report to the Hearings Manager.
- 5.17 Before a matter may be heard by the Disciplinary Committee, a member of the Case Progression team carries out the necessary post investigation work, including witness liaison, to ensure the case is ready for hearing. Three case progression officers – all qualified solicitors – and one paralegal report to the Case Progression Manager.
- 5.18 Five case presenters – all qualified solicitors or barristers – represent ACCA at hearings. These are all employees of ACCA, although ACCA also has access to external barristers who are familiar with ACCA's regulations. All case presenters report to the Case Presentation Manager.
- 5.19 The Hearings Manager, Case Progression Manager and Case Presentation Manager all report to the Head of Adjudication.

### **Operational procedures**

- 5.20 All relevant operational procedures are contained in the procedures manual of the Governance executive directorate. The manual is made available to lead regulators during regular inspections of ACCA. ACCA has a long-standing, evidenced policy of consulting with regulators in advance on significant changes to procedures.

### **Lead regulator relationships**

- 5.21 ACCA's Standards department services ACCA's oversight arrangements for regulation, discipline and ethics. This includes responsibility for ACCA's relationships with its lead regulators, ensuring the ongoing compliance of ACCA's regulatory obligations, and responding to the requirements and ad hoc demands of regulatory oversight bodies.
- 5.22 ACCA requires high technical and ethical standards in the conduct of its students, members, member firms and others authorised by ACCA for specific activities (such as insolvency). ACCA is accustomed to cooperating with its lead regulators, other regulators and governments. We recognise that responding appropriately to the needs of lead regulators, and others, serves to advance the public interest, and also enhances public confidence and trust in ACCA practitioners.

- 5.23 The Standards Manager, who is a qualified accountant, will be responsible for managing ACCA's relationship with the LSB on matters relating to probate. She is supported by a regulation officer, and it is anticipated that this team will report to, and liaise with, the LSB on ACCA's ongoing compliance with its obligations as an AR for probate activities and the provision of information under section 55 of the Act. The Standards Manager reports to the Head of Standards.

### **Financial resources**

- 5.24 ACCA's qualifications, ethical standards, licensing procedures, monitoring, investigation and disciplinary processes are key to reassuring the public and regulators of the high standards expected of ACCA members. ACCA's financial commitment to the costs of regulation is a measure of the seriousness with which it approaches its responsibilities. Due to its financial strength, ACCA is able to implement necessary regulatory and disciplinary procedures, and to respond to changing demands, while paying due regard to the regulatory principle of proportionality.
- 5.25 Recognising that the robustness of its regulatory procedures enhances the reputation of accountants and elevates the ACCA brand, ACCA aims to balance its costs and revenues across the organisation, although the costs of regulation continue to exceed regulatory income (in the form of fees for authorisations, and fines and costs ordered). ACCA, as with other regulators, faces budgetary constraints and choices when allocating its resources. Further details of how our financial resources are deployed in the various areas of regulation (by activity) can be found in ACCA's Regulatory plan 2017/18.
- 5.26 ACCA is satisfied that it has sufficient financial resources to meet its core regulatory functions and is financially capable of fulfilling the requirements for regulating probate activities. We continue to invest in a range of initiatives that will deliver sustainable growth and have sufficient reserves to ensure that unexpected expenditure can be met. Further information concerning ACCA's financial resources is contained in our integrated report and consolidated financial statements for 2017 which are available on ACCA's website at <http://www.accaglobal.com/uk/en/about-us/annual-reports.html>
- 5.27 ACCA has robust financial planning and review procedures. The Council is responsible for monitoring the organisation's performance in relation to its strategic plan and annual budget. It delegates aspects of these functions to Committees, which operate under its overall guidance and report to it. The Audit Committee is responsible for ensuring that a system of internal control is maintained. Financial and non-financial performance is reviewed regularly against target.

### **Financial problems and fraud**

- 5.28 ACCA recognises that significant financial problems or material levels of fraud in the organisation would be matters that may cast doubt on its ability to discharge its regulatory duties. Significant financial problems or material levels of fraud are matters that would be detailed in ACCA's audited and published annual accounts. ACCA's Executive Director – Governance would notify lead regulators of such matters once its auditors have indicated that ACCA should include reference to such matters in the audited accounts (before the audited accounts are published).

## Risk management

- 5.29 Regulation is, ultimately, about managing risk – minimising risk to the public arising from ACCA members not acting professionally or ethically. However, this must be achieved in a way which neither misdirects resources nor creates disproportionate burdens on professionals in relation to the benefits to the public interest. It would be wrong to strive for a zero-risk environment. The critical question for any professional body is whether it is carrying out appropriate activities concerning the authorisation and regulation of its members, and responding appropriately to the risks that might flow from the framework in which they operate.
- 5.30 ACCA actively manages a range of risks to the achievement of its Strategy to 2020. The Audit Committee of ACCA’s Council provides ongoing oversight of the corporate level risks, each of which is owned by one or more members of the Executive Team. As part of its management of risks, the Executive Team regularly reviews all corporate level risks, using a clearly defined risk procedure, in light of market, legislative and operational developments. There is also an established risk management framework which allows for the elevation of directorate level risks to the corporate level risk register where appropriate. The Audit Committee’s oversight of the risks includes reviewing the effectiveness of ACCA’s risk management process and approach, including ‘deep dive’ reviews of specific corporate level risks on a rolling basis.
- 5.31 ACCA recognises that the integrity of its qualifications and the rigour of its regulatory processes are central to its reputation and the ACCA brand. ACCA’s risk appetite in respect of its regulatory framework is described as ‘open’, which means that it is willing to consider all potential options with a bias towards options likely to prioritise the certainties of successful delivery over potentially high reward strategies. ACCA’s corporate level risks have a strong focus on minimising threats to the standing and value of the ACCA brand. Further details of ACCA’s risk management procedures are provided with this application.

## Implementation timetable

- 5.32 ACCA has drafted a plan of implementation which includes key milestones for the development and implementation of new regulations, guidance, systems and processes, education and training, and communications relating to probate. Some of the key milestones are set out below:

Date	Activity / milestone
October 2017	Submission of a formal application to the LSB for the introduction of AR regulatory arrangements for probate activities
October 2017 to January 2018	Development of adapted regulatory systems and processes, guidance, forms, education and training, marketing and communications in respect of probate activities
Between November 2017 and January 2018	LSB determination of application
February 2018	Legal Activities Regulations 2018 published



March 2018	First applications for probate authorisation may be accepted by ACCA
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## 6. REGULATORY OBJECTIVES AND REGULATORY PRINCIPLES

### Regulatory objectives

- 6.1 ACCA will discharge its regulatory functions as an AR for probate in accordance with the regulatory objectives, which are set out in section 1 of the Act. We have considered how we actively contribute to the achievement of the regulatory objectives, and we do not believe that there are any adverse impacts upon any of the regulatory objectives as a result of ACCA introducing regulatory arrangements for probate activities.
- 6.2 ACCA's proposed regulatory arrangements for probate activities will support the regulatory objectives in the following ways:

#### ***Protecting and promoting the public interest***

ACCA will introduce effective, transparent and proportionate regulations and regulatory arrangements for probate which will ensure high standards of practice and ethical conduct. The regulatory arrangements will protect the public interest, and the public interest will be promoted through greater diversity of those authorised to provide probate services.

#### ***Supporting the constitutional principle of the rule of law***

ACCA will carry out its regulatory responsibilities as an AR and implement regulations and regulatory arrangements for probate activities which are fair, consistent and support the constitutional principle of the rule of law.

#### ***Improving access to justice***

The authorisation of ACCA members and firms for probate activities will increase competition in the provision of probate services, and improve the supply of competent, trusted persons available to provide probate services.

#### ***Protecting and promoting the interests of consumers***

ACCA members and firms are in a position to be able to offer a high standard of service in probate work to both existing clients and potential clients. The interests of consumers will be promoted not only through wider choice, but also through the continuity of service that clients will be able to receive from their accountants in respect of their (and their families') financial affairs.

#### ***Promoting competition in the provision of services***

The introduction of regulatory arrangements for probate will provide an opportunity for a more diverse range of firms to participate in the legal services market and provide probate services to clients. This will promote competition in the provision of legal services, and improve access to reserved legal activities. We anticipate that this will be particularly true in more rural areas.

#### ***Encouraging an independent, strong, diverse and effective legal profession***

The Regulations, together with existing provisions within the *ACCA Rulebook*, will set out the standards of practice and ethical conduct with which authorised individuals and firms will be required to comply. The advantages of increased diversity in the providers of legal services – allowing accountants to provide legal services that are complementary to existing public practice services – are clear, and the enforcement of high standards will encourage a strong and effective legal profession.

### ***Increasing public understanding of the citizen's legal rights and duties***

ACCA firms authorised for probate will be required to operate fair, efficient and effective internal complaints-handling processes which will increase clients' understanding of their legal rights to complain to the firm and LeO and the process for doing so. In addition, accountancy practices are particularly well-placed to advise clients of their duties where clients find themselves acting as executor of a deceased's estate.

### ***Promoting and maintaining adherence to the professional principles***

ACCA members are required to comply with the Code, which includes the five fundamental principles of integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. These principles are well-established, and are articulated in such a way as to encompass all the professional principles in section 1(3) of the Act.

## **Regulatory principles**

- 6.3 ACCA is committed to delivering public value and meeting its public interest obligations through the operation of effective regulatory and disciplinary arrangements, which instil public trust in the accountancy profession and help maintain its reputation.
- 6.4 We operate in strict conformity with the obligations set out in our Royal Charter and in legislation which confers specific duties on ACCA. We apply the principles set out in relevant general legislation enacted in our country of domicile, such as the Human Rights Act 1998.
- 6.5 We adhere to the regulatory principles set out within the Legislative and Regulatory Reform Act 2006, and so ensure that our regulatory and disciplinary activities are carried out in a way that is transparent, accountable, proportionate and consistent, and that those activities should be targeted only towards areas in which action is needed.
- 6.6 The *ACCA Rulebook* and the regulatory processes that flow from it are underpinned by these principles, and it is this foundation that helps our members to adopt the highest technical and ethical standards, in the public interest.
- 6.7 ACCA believes that its proposed regulatory arrangements for probate activities are consistent with the regulatory principles in the following ways:

### ***Proportionality***

ACCA is committed to continuous improvement in all of its regulatory and disciplinary arrangements, and to simplifying and making clearer these arrangements wherever possible. We will carry out periodic reviews of all processes and regulations, including those in respect of probate.

We are committed to innovation and to exploring different means of delivering effective, proportionate regulation, with the wider public interest in mind. For example, we operate a Conciliation Service in respect of certain complaints (and aspects of complaints) that do not merit full investigation. We strive to focus resources on the non-compliant, while limiting the administrative burden for those who do comply.

### ***Accountability***

ACCA supports and actively embraces the concept of independent oversight of the accountancy profession. This is evident from our relationships with lead regulators, which cover various activities regulated by statute. But we are also committed to oversight of the regulation of all our relevant persons. Therefore, we have created lay-majority Public Interest Oversight Boards to oversee all our regulatory and disciplinary arrangements.

The structure of the Regulatory Board (together with its sub-Boards) allows it to operate independently – reporting to ACCA’s Council but making decisions at arm’s length from it. This significantly strengthens the ACCA brand, but also plays an important part in maintaining appropriate governance separations between, on the one hand, regulatory and disciplinary arrangements and, on the other hand, ACCA’s representative functions as a professional body.

### ***Consistency***

ACCA is a global body and we operate consistent, centrally managed examinations, PER and CPD requirements, wherever our students and members are based in the world.

We require our members – wherever they are based – to comply with the Code which, in turn, is consistent with the IESBA Code of Ethics for Professional Accountants. We also advocate consistent global technical standards.

To the greatest extent possible (in view of the specific additional requirements of the Regulations) our regulatory arrangements in respect of probate activities will be the same as those used in other areas of regulation.

### ***Transparency***

ACCA strives to operate fair and balanced arrangements, especially in respect of professional regulation and discipline. For example, once cases have been investigated, independent assessors take the decisions as to whether or not it is in the public interest that they be referred to disciplinary hearings. Disciplinary (and most other) hearings are open to members of the public.

In practice, hearings are rarely conducted in private. To the extent that a hearing takes place in public, appropriate publicity will follow. The principle of transparency means that ACCA’s regulations have been drafted in such a way as to minimise a relevant person’s ability to influence the transparency of proceedings. For example, a decision by a regulatory assessor will usually be published, as will a consent order.

### ***Targeting***

ACCA recognises the heightened duty of care which attaches to professional bodies in respect of their members who are in public practice. We have a regime of authorisation, monitoring and enforcement for members and firms which directs resources appropriately, based on an assessment of risk. The authorisation and regulation of individuals and firms in respect of probate activities will be compatible with this existing framework.

ACCA advocates a risk-based approach to regulation. A proportionate approach does not attempt to eliminate risk. However a risk-based approach ensures that our regulatory activities and resources are targeted only towards areas in which action is needed. Our focus is on protecting the public and, where appropriate, our

regulatory procedures are designed to help firms to become fully compliant with the required standards, before robust regulatory intervention becomes necessary.

## 7. CONSULTATION

- 7.1 ACCA consulted its members regarding the provision of reserved legal activities in late 2016 to help us identify the areas where we should invest resources in authorising and regulating our members for legal activities. We emailed more than 18,000 ACCA members in practice in the UK (excluding Northern Ireland), providing them with information, and inviting them to answer a short set of questions about reserved legal activities. The information piece and online questionnaire also featured in the *In Practice* ezine issued on 2 December 2016 and were further promoted on the ACCA website. The survey remained open for two weeks.
- 7.2 We received 448 responses to the online questionnaire. The findings showed that there is a definite appetite among those who responded for ACCA applying to the LSB to regulate legal activities, and for members being able to participate in the legal services market in England and Wales. The survey showed a clear demand for probate activities, with 81% of respondents indicating that ACCA should apply to regulate in this area.
- 7.3 ACCA shared an initial draft application to gain approval of our regulatory arrangements for probate activities with the LSB on 7 April 2017 and we subsequently met with the LSB on 15 June 2017 to discuss our draft application.
- 7.4 ACCA also conducted a public consultation on the draft application to gain approval of our regulatory arrangements for probate activities in order to obtain the views of any party who has an interest in, or will be impacted by, the changes. The external consultation was launched on 29 August 2017, and was open until 9 October 2017. We invited comments specifically from our members in practice in the UK, other ARs, the Legal Services Consumer Panel, the Competition and Markets Authority and the Lord Chief Justice. A copy of the draft application was made available to the public on ACCA's website, and publicised through various channels including email communications and member journals.
- 7.5 We received 24 responses to the public consultation from ACCA members in practice. The Competition and Markets Authority declined to provide a formal response, but advised ACCA on 18 October 2017 that it had considered the draft application and provided some comment to the LSB. The Legal Services Consumer Panel and the Lord Chief Justice did not provide formal responses, and no comments were received from other ARs.
- 7.6 The members that responded to the consultation were strongly supportive of ACCA's application to gain approval of our regulatory arrangements for probate activities. Some raised specific queries relating to their eligibility for probate authorisation. However, these issues were not significant and have not impacted on the final application. The outcome of the public consultation will be publicised in a dedicated Legal Activities section on ACCA's website and communicated to members in the *In Practice* ezine and AB magazine.

## **8. RESOLUTION OF REGULATORY CONFLICT**

### **Other approved regulators**

- 8.1 Section 52 of the Act places a duty on ARs to make reasonable provision to prevent regulatory conflicts. This conflict may arise where one or more individuals authorised by other ARs work in a firm awarded an ACCA legal activities certificate, or where individuals authorised by ACCA for probate activities work in firms regulated by other ARs.
- 8.2 ACCA will liaise with other ARs to share information where it is lawful and in the public interest to do so. In other areas of regulation, this is referred to as sharing information 'on a regulator to regulator basis'. We shall cooperate with other ARs where regulatory or disciplinary procedures are ongoing in mixed practices in order to minimise duplication of cost and effort in respect of regulatory activities.
- 8.3 ACCA does not intend to become a signatory to the Multi-Disciplinary Practices Framework Memorandum of Understanding at this stage, as we do not intend to apply to license alternative business structures for probate at the same time as this application is in progress. Should ACCA apply to become a licensing authority in the future, we shall explain as part of that application how we intend to work with other ARs on issues around possible regulatory conflict in multi-disciplinary practices and alternative business structures.

### **Other regulatory regimes**

- 8.4 Section 54 of the Act places a duty on ARs to make reasonable provision to prevent external regulatory conflicts. This conflict may arise from the regulatory requirements of ACCA's lead regulators that are not ARs under the Act, such as the regulatory requirements of the FRC, IAASA, IS and FCA.
- 8.5 ACCA shall liaise with its lead regulators to resolve any external regulatory conflicts that may arise. We aim to prevent the unnecessary duplication of regulatory provisions throughout the *ACCA Rulebook*, as this presents a risk of inconsistency and lack of clarity. Similarly, we resist the inclusion of regulations that duplicate laws or lead regulator requirements that apply directly to our regulated individuals and firms. Relevant persons are required to comply with such laws and regulations through compliance with the fundamental ethical principles of the Code.
- 8.6 There will always remain a risk that the requirements of one lead regulator conflict with those of another lead regulator. However, due regard for the regulatory principles by all parties serve to minimise that risk. In all such cases, ACCA would adopt a collaborative approach in order to achieve a proportionate and consistent outcome that satisfies all parties.

## 9. CONTACT DETAILS

9.1 Further information in respect of this application may be obtained by contacting:

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9.2 ACCA was incorporated under the Companies Act 1929 and granted a Royal Charter on Incorporation on 25 November 1974. The ACCA Royal Charter number is RC000732.



## 10. GLOSSARY OF TERMS AND ABBREVIATIONS

In this application, unless the context otherwise requires:

AAR	means applicable approved regulator
ACCA	means the Association of Chartered Certified Accountants
the Act	means the Legal Services Act 2007
AML	means anti-money laundering
AR	means approved regulator
the Board	means ACCA's Regulatory Board
CCAB	means Consultative Committee of Accountancy Bodies
CDRs	means the Chartered Certified Accountants Complaints and Disciplinary Regulations 2014
the Code	means ACCA's Code of Ethics and Conduct
COP	means continuity of practice
CPD	means continuing professional development
DPB	means Designated Professional Body
FCA	means the Financial Conduct Authority
FGI	means fidelity guarantee insurance
FRC	means the Financial Reporting Council
GDS	means Guidance for Disciplinary Sanctions
GPRs	means the Chartered Certified Accountants' Global Practising Regulations 2013
GROs	means Guidance for Regulatory Orders
IAASA	means the Irish Auditing and Accounting Supervisory Authority
IESBA	means the International Ethics Standards Board for Accountants
IFAC	means the International Federation of Accountants
IGRs	means the LSB's Internal Governance Rules
IS	means the Insolvency Service
lay person	means an individual who is not an accountant

legal activities certificate	means a certificate issued by ACCA to firms, which identifies the reserved legal activities that the firm is authorised to provide
LeO	means the Legal Ombudsman
licensing authority	means an approved regulator which is designated as a licensing authority under Part 1 of Schedule 10 to the Act, and whose licensing rules have been approved for the purposes of the Act
LLP	means limited liability partnership
LSB	means the Legal Services Board
manager	has the meaning given by section 207 of the Act
MRs	means the Chartered Certified Accountants' Membership Regulations 2014
PC	means practising certificate
PCTR	means Practising Certificate Training Record
PER	means practical experience requirements
PII	means professional indemnity insurance
the Regulations	means the Legal Activities Regulations 2018
relevant person	means a member of ACCA, or other person (whether an individual or a firm) who has undertaken to abide by and be bound by, inter alia, the Association's bye-laws and the regulations made under them
RBCRs	means the Chartered Certified Accountants' Regulatory Board and Committee Regulations 2014
RPB	means Recognised Professional Body
RSB	means Recognised Supervisory Body

## 11. APPENDICES

The following enclosures form part of this application:

### Appendix

- 1 Annex 1 to the Chartered Certified Accountant's Global Practising Regulations 2003 (*draft with tracked changes*)
- 2 Legal Activities Regulations 2018 (*draft*)

### Other supporting documentation

#### ***Chapter 2 Charter and statutory powers***

- 3 *ACCA Rulebook 2017* (including ACCA's Code of Ethics and Conduct)

#### ***Chapter 3 Structure and governance***

- 4 Report on Regulation 2017
- 5 Organisational structure and profiles of ACCA's Executive Team
- 6 Organisational structure of ACCA's Governance Leadership Team
- 7 ACCA Regulatory Board structure
- 8 ACCA Regulatory Board terms of reference

#### ***Chapter 4 Regulatory arrangements for probate activities***

- 9 Practising Certificate Training Record
- 10 Practising Certificate Training Record Forms
- 11 Practising Certificate application form 2017
- 12 Practising Certificate renewal form 2017
- 13 Application to become an authorised probate individual (*draft*)
- 14 Application to become an authorised probate individual (non-member) (*draft*)
- 15 Application for a firm's legal activities certificate (*draft*)
- 16 Practice Monitoring Programme
- 17 Compliance Review Questionnaire
- 18 Guidance for Regulatory Orders

19	Guide to ACCA's Complaints and Disciplinary Procedures 2017
20	Information on the types of complaint that ACCA will investigate
21	Guidance for Disciplinary Sanctions

***Chapter 5 Competence and resources***

22	Strategy to 2020
23	ACCA Regulatory plan 2017/18
24	Organisation Chart – Professional development
25	Organisation Chart – Authorisation
26	Organisation Chart – Practice monitoring
27	Organisation Chart – Assessment and allocation of complaints
28	Organisation Chart – Investigation of complaints
29	Organisation Chart – Adjudication
30	Organisation Chart – Lead regulator relationships
31	ACCA Integrated Annual Report 2017
32	ACCA Consolidated Financial Statements 2017
33	Risk management procedures