

Analysis and Recommendation

The Legal Services Board recommends to the Lord Chancellor under section 45(3) of the Legal Services Act 2007 that an order is made cancelling the Association of Chartered Certified Accountants' designation as an approved regulator ("AR") in relation to the reserved legal activity of probate activities.

1. The Association of Chartered Certified Accountants' (ACCA) has applied to the Legal Services Board (LSB) under section 45(3) of the Legal Services Act 2007 ("the Act"), for to LSB to recommend to the Lord Chancellor that an order be made cancelling its designation as an approved regulator ("AR") in relation to its only reserved legal activity, probate activities.
2. In 2009 ACCA was designated as an AR for the reserved legal activity of probate activities under the Act¹. ACCA has no separate regulatory body; all decisions relating to its legal activities are delegated to the independently chaired Regulatory Board.
3. The LSB must make a recommendation to the Lord Chancellor that an order is made cancelling an approved regulator's designation in relation to one or more reserved legal activities if it is satisfied that the criteria in section 45(3) are met.
4. This document sets out the basis for the LSB's recommendation.

Background

5. On 22 October 2021, ACCA submitted its application² made under section 45(3) of the Act, for the LSB to make a recommendation to the Lord Chancellor that an order be made cancelling ACCA's designation as an AR in relation to its only reserved legal activity, probate activities. ACCA also made payment of the prescribed application fee³ at this time.
6. ACCA was designated as an approved regulator for probate activities under the Act on 30 December 2009. It did not commence authorising persons to provide probate activities until 2018 when it put in place the necessary regulatory arrangement to do so, as these were approved by the LSB on 17 January 2018⁴. Those regulatory arrangements limited the scope of ACCA's regulation to non-contentious probate activities, that is probate activities other than

¹ [Legal Services Act 2007 \(Approved Regulators\) Order 2009](#)

² <https://legalservicesboard.org.uk/wp-content/uploads/2021/12/ACCA-Application-for-Cancellation-of-designation-Amended-1-December-2021-1.pdf>

³ £6,000 to cancel all the reserved legal activities regulated by ACCA

⁴ https://legalservicesboard.org.uk/what_we_do/regulation/pdf/2018/20180118_Final_Decision_Notice_ACCA.PDF

those done in, or for the purposes of, proceedings begun before a court or before an arbitrator appointed under the Arbitration Act 1950.

7. In 2019 ACCA adopted the recommendations of a review by ACCA of its probate regulatory activities. The review recommended withdrawal from legal services regulation for the following reasons:

a. **Regulated population**

For ACCA, few practitioners hold probate authorisation and ACCA consider that there is a low likelihood that ACCA's probate practitioner population will grow significantly in the future and has stated that there remains uncertainty by members about whether sufficient new business will be acquired to make training and authorisation (and compliance) worthwhile.

b. **Changes to the Internal Governance rules ("IGR")**

The IGR 2019 made by the LSB would require arrangements to be put into place to enable ACCA to comply, which ACCA assess would be disproportionate given the size of its regulated population.

c. **Cost of Regulation**

There are costs associated with ACCA's designation as an AR, including the levies payable to the LSB and Legal Ombudsman, costs associated with the regulatory framework and staff resources for the regulation of probate. If ACCA remained an AR, these costs also would include those associated with the changes to ACCA's regulatory governance arrangements to fully comply with the IGR and becoming a licensing authority for ABS to enable ACCA to open the legal services market to its practitioners.

8. It should be noted, for context, that the IGR 2019 were intended to enhance the independence of regulatory functions within the current legislative framework. All other legal services regulators were able to comply with the IGR and the IGR have been successful in enhancing regulatory independence in the sector.

9. To provide the opportunity for those currently regulated by ACCA for probate activities to continue, ACCA's review of probate recommended that:

a. ACCA provide a pathway for eligible members to achieve probate (and other reserved legal activities) authorisation from CILEX Regulation ("CRL") and

b. ACCA relinquish its AR status for probate in England and Wales to facilitate its exit from legal services regulation.

10. ACCA considered and explored whether a partnership with another AR could provide a pathway for eligible members to gain probate (and other reserved legal activities) authorisation whilst reducing the future risks to which ACCA is exposed to. ACCA considered that CRL would be a suitable partner as its values and ambitions align to those of ACCA and it has specialist experience of regulating conveyancing and probate practitioners who are not Chartered Legal Executives and has also regulated Associate Prosecutors for the Crown Prosecution Service. On 23 July 2021, CRL submitted an

application to provide a route for it to authorise and regulate persons previously authorised by ACCA to carry on probate activities as well as CRL's other reserved legal activities⁵, which was approved by the LSB in its decision notice on 19 October 2021⁶, ("CRL decision notice").

LSB Rules for applications to cancel designation as an approved regulator

11. Section 45(3)(b) of the Act requires the application to be made in such form and manner as may be prescribed by rules made by the Board. The relevant rules are the LSB's Rules for applications to cancel designation as an approved regulator⁷ ("the Rules").

Information Requirements

12. The Rules set out the information requirements for applications including details:

- i. as to why the applicant is making the application
- ii. of any alternative courses of action, besides cancellation of designation, that have been considered or explored by the applicant
- iii. of the affected authorised persons and whether any communication has been had with such persons in relation to the application
- iv. of what arrangements the applicant proposes in relation to the transfer of regulation of the effected authorised persons to another relevant approved regulator and whether the approved regulator has consented to such transfer.

Why the applicant is making the application

13. Paragraph 7 above sets out why ACCA made the application. The Board is satisfied that ACCA has appropriately explained why the application has been made.

Alternative course of action considered

14. The application notes that ACCA had considered as an alternative to cancelling its designation, delegating its regulatory function to CRL. However, it opted not to pursue this alternative as ACCA would have retained the power to authorise individuals and firms for probate and the risks that flow from maintaining its status as an AR.

Affected authorised persons and ACCA communication with them

15. The application sets out there are 99 individuals and 78 firms authorised by ACCA to undertake non-contentious probate activities who will be affected by ACCA's withdrawal from probate regulation and the cancellation of its designation as an AR. Since 22 October 2021, ACCA has ceased to accept new applications for probate authorisation.

⁵ Immigration services, conveyancing, rights of audience and conduct of litigation.

⁶ <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Decision-Notice-CILEx-Regulation-ACCA-19-October-2021.pdf>

⁷

[https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20\(2\)/FINAL Rules for applications to cancel designation as an approved regulator.pdf](https://legalservicesboard.org.uk/what_we_do/regulation/pdf/New%20folder%20(2)/FINAL_Rules_for_applications_to_cancel_designation_as_an_approved_regulator.pdf)

16. The application sets out the engagement and consultation ACCA has had with its authorised persons since spring 2020 concerning its decision to withdraw from the legal services regulation, and how it has considered those responses. On 27 October 2020, ACCA issued an extension notice to all ACCA probate practitioners confirming that existing probate authorisations would be extended into 2021 until the date of transfer to CRL was confirmed by ACCA (and subject to the LSB's approval).
17. Further, ACCA has communicated to the affected authorised persons that they were required to ensure they have ceased to practise or are appropriately authorised to undertake probate activities since their authorisation with ACCA ended on 31 December 2021.
18. In accordance with rule 12, ACCA has published a cancellation notice on its website on the same day on which this application was submitted to the LSB and since the application was made it has published this notice on CRL's website and in the accountancy trade press, including relevant ACCA journals and newsletters.

Transfer arrangements

19. The application notes that ACCA did not charge a practising certificate fee in 2021 and there are no practising fees held by ACCA that require arrangements for transfer to another relevant AR.
20. The application provided a timetable of the transfer arrangements as follows:
 - 22 October 2021 - ACCA ceases to accept new applications for probate authorisation.
 - 30 November 2021 Affected authorised persons apply to transfer to CRL, or confirm they intend to apply for authorisation with another AR or cease probate activities by 31 December 2021.
 - 31 December 2021 ACCA ceases to authorise individuals and firms for probate and ACCA to regulate non-contentious probate activities and withdraws the Legal Activities Regulations 2018 (LAR), which came into effect on 1 March 2018 (following LSB approval of ACCA as an approved regulator for non-contentious probate on 18 January **2018**).
21. It should be noted that the timetable was not met and ACCA was not able to withdraw its LAR on schedule. This is explained further below.
22. ACCA, CRL and CILEX have established a tripartite Memorandum of Understanding (MoU) which was signed on 21 October 2021 to provide a framework for cooperation, coordination and information sharing regarding all matters associated to ACCA probate entities that transfer to CRL and the accountancy professionals working within them. The tripartite MoU also deals with any inconsistency in regulatory practice related to the separation of work for firms, and the parties to the tripartite MoU. It is supported by a data sharing agreement.

Alterations to regulatory arrangements for probate

23. As part of its application for cancellation of its designation as an AR, ACCA also applied for approval of alterations to its regulatory arrangements, to give effect to its withdrawal from legal services regulation and address concerns raised by the LSB about the potential for regulatory gaps.
24. ACCA's intention was for these alterations to be in place from 1 January 2022, subject to LSB approval. As these proposed changes are to ACCA's regulatory arrangements, the LSB was required to consider them under Part 3 of Schedule 4 to the Legal Services Act 2007.
25. The LSB refused ACCA's application to alter its regulatory arrangements on 17 January 2022. The Decision Notice⁸ set out that LSB was satisfied that granting ACCA's application to alter its regulatory arrangements would be prejudicial to the regulatory objectives and contrary to the public interest. ACCA had not been able to provide assurance to the LSB that persons it had authorised to carry on the reserved legal activity of probate activities had either ceased to do so or had transferred to another approved regulator. Therefore, it had not completed what it had set out as the necessary steps in order to effectively cease regulating authorised persons.
26. Further consideration of ACCA's cancellation application was paused, pending a revised application from ACCA to alter its regulatory arrangements and decision on it by the LSB.
27. ACCA submitted a revised application⁹ to alter its regulatory arrangements on 27 April 2022. The application set out the steps ACCA had taken in order to remedy the reasons for refusal of its first application.
28. The revised application provided the LSB with assurance that ACCA had now completed what it had set out as necessary steps in order to cease regulating authorised persons. The ACCA confirmed that it had received confirmation from all of its regulated community that they have either ceased practising or transferred to another approved regulator. The LSB approved the application on 19 May 2022. The Decision Notice¹⁰ sets out the LSB assessment in detail.

Recommendation

29. The LSB has considered the criteria under section 45(3) of the Act and recommends to the Lord Chancellor that an order be made cancelling the Association of Chartered Certified Accountant designation as an approved regulator in relation to its only reserved legal activity, probate activities.

⁸ <https://legalservicesboard.org.uk/wp-content/uploads/2022/01/ACCA-Decision-Notice-2022.pdf>

⁹ <https://legalservicesboard.org.uk/wp-content/uploads/2022/04/ACCA-Application-for-Alterations-to-Regulatory-Arrangements.pdf>

¹⁰ <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/ACCA-Application-to-Revoke-Regulatory-Arrangements-Decision-Notice.pdf>