

Meeting: Legal Services Board

Date: 19 July 2022

Item: Paper (22) 42

Title: ACCA: Cancellation of Designation

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Status: Official

Introduction

1. This paper sets out the application from the Association of Chartered Certified Accountants (ACCA) to withdraw from legal services regulation and presents the proposed recommendation to the Lord Chancellor.

Recommendation(s)

2. The Board is invited to:
 - **recommend** to the Lord Chancellor under s45(3) of the Legal Services Act 2007 that an order be made to cancel the ACCA's designation as an approved regulator for the reserved legal activity of probate activities
 - **agree** in principle the draft letter of recommendation (Annex A), subject to the Chair's final sign off and
 - **delegate** authority to the CEO to make any minor drafting changes to the detailed analysis of the application which will accompany the letter of (Annex B).

Background

3. The ACCA was designated as an approved regulator for the reserved legal activity of probate activities on 30 December 2009. However, it was not until 23 October 2017 that the ACCA applied to the LSB to introduce regulatory arrangements for probate activities. Those regulatory arrangements were approved by the LSB on 17 January 2018.
4. The ACCA began regulating firms and individuals on 1 March 2018. Its regulated community was growing over time but reached a peak of less than 100 individuals and less than 80 firms.

5. In 2019, the ACCA conducted a review of its approach to probate regulation in England and Wales. The conclusion of that review was a decision by the ACCA on 19 September 2019 to exit legal services regulation.
6. The ACCA's decision to exit legal services regulation meant that it needed to devise and execute a plan that mitigated any risks associated with its exit.
7. The ACCA's plan was to:
 - a. arrange for an optional alternative route for those it had authorised to continue to practice.
 - b. ensure that all individuals and firms it had authorised had either:
 - i. received authorisation from another approved regulator; or
 - ii. ceased to practise
 - c. apply to the LSB to effect its withdrawal from legal services regulation by withdrawing its legal activities regulations
 - d. apply to the LSB to formally cancel its designation as an approved regulator.
8. ACCA reached an agreement with CILEx Regulation Limited (CRL) that CRL would set up a route for it to authorise and regulate persons previously authorised by the ACCA to carry on probate activities. The route was to be optional and did not preclude persons so authorised by the ACCA from applying to another approved regulator for authorisation.
9. The LSB approved an application by CRL to set up its proposed route on 19 October 2021¹. The transfer by ACCA of its authorised persons commenced shortly thereafter.

Cancellation process

10. The process for the ACCA to exit legal services regulation is set out in section 45(3) of the Legal Services Act 2009 (the Act) which **requires** the LSB to make a recommendation to the Lord Chancellor that an order be made to cancel a body's designation as an approved regulator if:
 - a. The body applies to the Board for such a recommendation to be made;
 - b. The application is made in such form and manner as may be prescribed by the rules made by the Board, and is accompanied by the prescribed fee, and;

¹ <https://legalservicesboard.org.uk/wp-content/uploads/2021/10/Decision-Notice-CILEx-Regulation-ACCA-19-October-2021.pdf>

- c. The body publishes a notice giving details of the application in accordance with such requirements as may be specified in rules made by the Board.
11. The rules relevant to section 45(3)(b) are the LSB's Rules for applications to cancel designation as an approved regulator² (the Rules). The Rules contain clear information requirements that must be met in order for the LSB to conclude that the Rules have been complied with and it is suitable for designation to be cancelled.

Cancellation application

12. On 21 October 2021 the ACCA submitted an application to the LSB under section 45(3) of the Act for cancellation of its designation as an approved regulator.
13. As part of that application the ACCA proposed alterations to its regulatory arrangements to allow it to withdraw from the regulation of authorised persons, prior to any cancellation recommendation the LSB may make.
14. During the LSB's consideration of the application we identified that the ACCA had not been able to provide the LSB with the assurance that persons it had authorised had either ceased practice or transferred to another approved regulator. It had therefore not been able to demonstrate that it had effectively implemented its plan for managing risk to the regulatory objectives. That part of the application was therefore refused by the LSB on 17 January 2022 on the basis that granting it would be prejudicial to the regulatory objectives and contrary to the public interest.
15. The consequence of the refusal was that the LSB paused its assessment of the cancellation application pending the approval of a revised application from the ACCA to alter its regulatory amendments. This pause was necessary as we required assurance from ACCA that it had mitigated the risk of persons it had authorised continuing to practise without the appropriate authorisation.
16. Following the refusal of the application we communicated our concerns to the ACCA about both the risk posed by the current position, and the delays that had been encountered since ACCA first signalled its intention to exit legal services regulation in 2019.
17. A revised application was received on 27 April 2022. This provided the LSB with assurance that the risk of unauthorised practise had been mitigated and enabled us to conclude that there was no longer any reason to refuse the application. The LSB approved³ the application on 19 May 2022. This approval meant that the ACCA reverted, at this point, to being a dormant regulator. As a result, it no longer has any rules or regulations that would enable it to authorise individuals or firms to undertake any reserved legal activities.

²

[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)

³ <https://legalservicesboard.org.uk/wp-content/uploads/2022/05/ACCA-Application-to-Revoke-Regulatory-Arrangements-Decision-Notice.pdf>

Assessment of the cancellation application

18. Annex B to this paper sets out our detailed analysis of the application against the requirements set out in the Act and the Rules.
19. The analysis confirms that the ACCA has complied with the requirements of both the Act and the Rules. Consequently, the LSB must make a recommendation to the Lord Chancellor that an order be made to cancel the ACCA's designation as an approved regulator for probate activities.

Recommendation

20. That the Board make a recommendation to the Lord Chancellor that an order be made to cancel the ACCA's designation as an approved regulator.
21. The proposed text of the recommendation can be found at Annex A. We are proposing that final sign-off of the wording of the proposed recommendation be delegated to the Chair.

Next Steps

22. Subject to the Board's agreement, we will liaise with Ministry of Justice officials on the practicalities, including any further information that might be required. It should be noted that it may take some time for the Lord Chancellor to make a decision on our recommendation, however, given that ACCA is now dormant, the wait does not carry significant risks.

Risks and mitigations	
Financial:	N/A
Legal:	The legal team have been engaged throughout this process to assist in mitigating risk.
Communications and engagement:	We will publish the recommendation and analysis (subject to board approval), seeking support from the communications and engagement team as required.
Equality and diversity:	The application from ACCA included analysis on the impact of its withdrawal from the market. The LSB considered this information, noting that CRL has committed to analysing the impact on the individuals and firms that have transferred into its regulation.
Resource:	The work was carried out within the existing resourcing of the statutory decisions team with input from the legal team as required.

Annexes

Annex A – Draft letter of recommendation to the Lord Chancellor
 Annex B – Detailed Analysis

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
Annexes A & B	Exemption s22 Information intended for future publication	31 July 2022