



ICAS RESPONSE

LEGAL SERVICES BOARD CONSULTATION DOCUMENT:

Enhancing consumer protection, reducing regulatory restrictions: Will writing, probate and Estate Administration”

November 2012

## **Background**

ICAS received its Royal Charter in 1854 and is the oldest professional body of accountants in the world. We were the first body to adopt the designation “Chartered Accountant” and the designatory letters “CA” are the exclusive privilege of Members of ICAS in the UK.

ICAS is a professional body for over 19,000 members who work in the UK and in more than 100 countries around the world. Our CA qualification is internationally recognised and respected. We are a Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit. We are a Recognised Professional Body for insolvency and Designated Professional Body (for statutory ancillary financial services under the Financial Services and Markets Act).

## **Consultation**

ICAS welcomes the opportunity to comment on these supplementary consultation proposals. As the ICAS Charter requires, we act in the public interest, and our proactive projects, responses to consultation documents etc. are therefore intended to place the general public interest first, notwithstanding our charter requirements to represent and protect our members’ interests.

We consider the public interest in this instance to be the availability of legal, and other professional, services of a high quality that provide value for money. High quality in this instance reflects expertise, independence, competence, and client confidentiality. We recognise that the Legal Services Board (“the Board”) wishes to improve the effectiveness of the existing legal services regime. However, we believe that this is possible without further regulation of the accountancy profession. We expressed this view in our earlier consultation paper and do not believe that our concerns about the potential for regulatory conflict with the accountancy profession have been adequately addressed.

## **Key Points**

- We accept the recommendation that the provision of will-writing activities should be reserved.
- We would disagree agree with the proposition that estate administration is a legal service or that such services should only be regulated by the Legal Services Board. Many of our members will also assist in the administration of estates and we view this as part of accountancy services. The proposals set out in the consultation paper would still lead to services which have long been considered as “accountancy services” by our profession being termed a “legal service” and falling within the regulatory net of the Legal Services Board. We do not believe that estate administration should be a reserved legal service that can only be provided under the jurisdiction (i.e. oversight) of the Legal Services Board. We fully accept that this may not have been the Board’s original intention but in the face of our earlier consultation response it appears to now be the Board’s course of action.
- Again, we observe that the consultation document does not highlight any evidence to suggest that there is a problem where our members provide estate administration services.
- We would invite the Legal Services Board to more clearly articulate how it expects estate administration and probate services to operate as independently (and complementary) licensed activities.
- Duplicate regulation does not serve the public interest. We would encourage the Board to conclude that such services are capable of being provided by members of the legal and accountancy professions and should continue to be regulated on an individual basis. If the Legal Services Board continues to call for estate administration to be reserved then separate provision could be made for members of expressly stated bodies on the grounds that they are already subject to enhanced regulation and professional oversight.

- We note that increased competition may lead to competitive pricing but that could be to the detriment of service quality.
- The consultation paper does not detail how the proposals will meet the UK Government's stated "one in one out" policy to reduce regulation.

Before responding to the detailed consultation questions, we would wish to make some general comments on the proposals.

#### Regulation of the accountancy profession

The accountancy profession is already subject to an enhanced level of regulation; members and firms are supervised rigorously using a combination of self-regulation (which includes authorisation, continuing professional development and risk based monitoring arrangements) and oversight by the Financial Reporting Council (FRC). We are not aware of these issues having been raised with the FRC or the Department for Business Innovation and Skills (BIS) despite the potential implications for the accountancy profession. We would be interested to learn how the current proposals will meet the new "one in one out" regulatory policy commitment.

#### Quality of services

The consultation paper suggests that poor services and advice are provided in relation to estate administration. However, there is little evidence to suggest that this is a problem area where the services are provided by chartered accountants. We are not aware of any public interest need to extend regulation to the provision of estate administration services by members of highly respected professional bodies.

### **Consultation Response**

**Question 1: Do you agree with the scope of the proposed reserved will writing activities and estate administration activities. Do the scenarios provided in Annex 1 of the Provisional Report clarify when activities will and will not be caught within the scope of the proposed new reservations? What are the likely impacts of the scope of the proposed activities as described?**

Our comments below are concerned solely with the proposal to reserve estate administration activities as we agree that will-writing activities ought to be reserved in England and Wales.

The consultation paper sets out that the Legal Services Board intend to regulate only the core legal activities of estate administration and any legal activities provided alongside these core activities. However, from our reading of the proposed scope, traditional accountancy services would be termed a "legal service" if provided in association with estate administration. That same service would not constitute a legal service if provided to an accountancy client where no estate administration work was involved in the future.

We find it difficult to lend any support whatsoever to the proposal that an otherwise unreserved activity should be caught within the scope of the new reservation if it is provided in conjunction with the actual administration of an estate. An activity should remain constant; it should be either a reserved or unreserved activity and should not be capable of being scoped into "reservation" by virtue of the provision of a separate reserved activity at some future date. If the key outcome is to protect the estate money from misappropriation (and having the key authority to access the estate funds) then the existing reservation of probate ought, we understand, to provide adequate protection.

Notwithstanding the above, we accept that there is scope for unregulated providers to presently provide estate administration services and if it is the Legal Services Board's desire to bring such providers within its scope then we would suggest that separate provision could be made for members of expressly stated bodies on the grounds that they are already subject to enhanced regulation and professional oversight.

**Question 2: What are your views on the options for implementation that we have described. What do you think would be the likely impacts of each?**

Whilst Option 3 would provide ICAS members with transitional protection, we believe that the principle of reserving estate administration has significant regulatory implications and should be debated openly. We consider that the option for implementation should therefore follow the process set out in the Act.

**Question 3: Do you agree with the initial assessment of the consequential amendments that would likely be needed? Are there any other consequential amendments you consider you be necessary?**

We have no comment to make on the consequential amendments as other bodies are better placed to do so.

**Question 4: To prospective approved regulators: what legislative changes do you think will be required in order to implement regulatory arrangements for these activities?**

We consider that the Legal Services Board should probably discuss any prospective legislative changes with the Department for Business Innovation and Skills and/or The Financial Reporting Council.