



ICAS RESPONSE

LEGAL SERVICES BOARD CONSULTATION DOCUMENT:

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

20 July 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 Qualifying Body (RQB) for statutory audit.

Consultation

ICAS welcomes the opportunity to comment on the 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. We believe that this is possible without further regulation of the accountancy profession. We would be pleased to meet with the Legal Services Board with or without our colleagues from the other main professional accountancy bodies to discuss the matters raised in this (or our respective) consultation response(s).

Key Points

- We do not agree with the proposition in this paper that estate administration is a legal service or that such services should only be regulated by the Board. Many of our members will also assist in the administration of estates and we view this as part of accountancy services. Hence, it is regulated by the professional accountancy bodies. The proposals set out in the consultation paper will 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 of the Legal Services Board. We fully accept that this may not have been the Board’s design but it will be an intended consequence.
- We believe it is necessary to view the provision of services by members of ICAS and the other professional accountancy bodies separately from those provided by under-regulated/unregulated providers. 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 are not aware of critical feedback or complaints about our members who provide estate administration services: there may be consumer issues for other service providers but this is not the case with accountants.

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).

The professionalism of our members is derived from our high regulatory standards which are self-regulated and this is recognised in law, in the Companies Act 2006, with the Recognised Supervisory Bodies being designated as the regulators of auditors. We would be happy to expand on our regulatory arrangements, details of which can be found on the ICAS website (icas.org.uk).

Quality of services

The consultation paper suggests that there are poor services and advice 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.

Consultation Response

Question 1: Are you aware of any further evidence that we should review?

We note the research that has been undertaken in order to inform the proposals outlined in the consultation paper, most of which is based on the services provided by lawyers and those unqualified persons who provide unreserved legal services. We are not aware of any research having been undertaken to assess the services provided from other regulated professions, such as chartered accountants, and whether there are concerns regarding their work (although we do not consider this to be the case). We consider that it would be prudent to do so if the Board wishes to insist upon the reservation of estate administration.

Question 2: Could general consumer protections and / or other alternatives to mandatory legal services regulation play a more significant role in protecting consumers against the identified detriments? If so, how?

We accept that will writing, probate and estate administration can give rise to perceived consumer detriment but this is partly due to the nature of the event around which the services are provided. Death, the enactment of the deceased's wishes and the meeting of beneficiaries expectations can lead to conflict, often at an emotionally vulnerable time, and therefore effective professional support and services should be available.

Chartered accountants generally have an established on-going relationship with their clients because they provide annual accounts and tax compliance services, and may provide more frequent business services (such as book keeping, payroll and VAT compliance etc). Consequently, there tends to be a sound knowledge of a client particularly of those who are owner-managers of their businesses. An

accountant is well placed to support their clients, particularly at a time of stress, and where the affairs may be financially complex but the testamentary requirements are clear and straight forward.

We believe careful consideration should be given to the role of the accountancy profession in providing estate administration services and the Legal Services Board should not introduce additional regulation unless there is a clearly demonstrated need for this. We are not aware of any deficiency in our regulatory processes and the Board should not rely solely on its views of the legal profession and unregulated providers to effect such significant regulatory change. Any extension of regulation in the accountancy profession would of course have to be considered and introduced with the agreement of the Financial Reporting Council and the Department for Business Innovation and Skills.

Question 3: Do you agree with the list of core regulatory features we believe are needed to protect consumers of will-writing, probate and estate administration services? Do you think that any of the features are not required on a mandatory basis or that additional features are necessary?

We note the list of regulatory features that the Legal Services Board has identified and we consider that these protections are already in place for regulated accountants (other than that accountants do not come within the jurisdiction of the Legal Ombudsman). As a result, further mandatory regulatory schemes do not need to be extended to accountants.

Question 4: Do you believe that a fit and proper person test should be required for individuals within an authorised provider that is named as executor or attorney on behalf of an organisation administering an estate?

We question the need for this and whether there has been a demonstrated benefit from the costs that would be incurred. It is also questionable whether it should be necessary to have, in effect, further regulatory requirements for specific individuals within a regulated entity.

Question 5: What combination of financial protection tools do you believe would proportionately protect consumers in these markets and why? Do you think that mechanisms for holding client money away from individual firms could be developed and if so how?

As a regulated profession, overseen by the Financial Reporting Council, we consider that appropriate safeguards for consumers are in place with our professional indemnity insurance requirements for members in practice.

Also, as a generality, our members do not tend to hold significant amounts of client monies for long periods of time. Estate administration services provided by our members will usually be in the form of advice and support rather than the ingathering and distribution of an estate. In any event, ICAS and the other professional accountancy bodies have prescribed (and robust) regulatory requirements concerning the deposit, retention and withdrawal of client monies. Reference is made to our Client Money Regulations which are made by Council in accordance with the Royal Charter and Rules. Whilst the Board may wish to ensure that new entrants are subject to a client money regime, we would suggest that it is inappropriate to seek to impose such obligations on members who are already subject to equivalent regulatory requirements.

We do not believe there is a need to consider proposals to hold client money outwith the individual firms.

Question 6: Do you agree that education and training requirements should be tailored to the work undertaken and risks presented by different providers and if so how do you think that could this work in practice?

We agree that it is vital that any practitioner is suitably competent. The area where the Legal Services Board research found technical deficiencies was with will writing. However, in relation to estate administration the research did not expose technical deficiencies.

On a more general note, members of the accountancy profession are subject to continuing professional development (CPD). International Education Standard (IES) 7, *Continuing Professional Development: A Program of Lifelong Learning and Continuing Development of Professional Competence*, prescribes that member bodies

- Foster a commitment to lifelong learning among professional accountants;
- Facilitate access to continuing professional development opportunities and resources for their members;
- Establish for their members benchmarks for developing and maintaining the professional competence necessary to protect the public interest; and
- Monitor and enforce the continuing development and maintenance of professional competence of professional accountants.

Our members already have learning and development requirements that are tailored to the work they undertake. As members of a regulated profession, Chartered Accountants already possessed strong educational and training requirements prior to qualification and, on-going, with annual continuing professional development (CPD). CPD for members of ICAS is 'output based' to ensure training is relevant and tailored and focuses on the required outputs for each member. Whilst the Board may wish to ensure that new entrants are subject to education and training requirements, we would suggest that it is inappropriate to seek to impose such obligations on members who are already subject to equivalent regulatory requirements.

Question 7: Do you agree with the activities that we propose should be reserved legal activities? Do you think that separate reviews of the regulation of legal activities relating to powers of attorney and/ or trusts?

Reservation of will writing

In general, we do not have strong views regarding the possibility of will-writing becoming a reserved activity. As far as we are aware, exceptionally few, if any, of our members in England & Wales draft wills, and the activity is already reserved in Scotland.

Probate

ICAS is already authorised as an approved regulator in relation to probate. We accept that this service should remain reserved.

Reservation of estate administration

We note that there is no comprehensive definition of 'estate administration' available, either in the Legal Services Board consultation paper or in general practice. It is therefore difficult to know what precise services this proposal would encompass. We note the Legal Services Board considers estate administration would include:

- Advice about tax and wealth management
- Obtaining background information for preparation of the will
- Preparing the relevant HMRC papers

- Preparing estate accounts
- Advice relation to the administration of the estate

All of the above are services that accountancy practitioners can, and do, successfully provide to their clients.

Within the accountancy profession the above activities are defined as being within 'accountancy practice'. We do not consider that it is appropriate for these services to be classified as 'legal services'. This work can be undertaken by lawyers but it is also provided frequently by professional accountants who are perhaps better placed to assist in administering an estate where there are business interests, accounts, and business taxation issues involved. It is also the case that an accountant provides an on-going, regular client service usually on an annual basis, and can therefore provide professional support using their existing knowledge of the client.

Question 8: Do you agree with our proposed approach for regulation in relation to “do-it-yourself” tools and tools used by providers to deliver their services? If not, what approach do you think should be taken and why?

We have no comments on this question.

Question 9: Do you envisage any specific issues relating to regulatory overlap and/or regulatory conflict if will-writing and estate administration were made reserved activities? What suggestions do you have to overcome these issues?

Many of the estate administration activities identified by the Legal Services Board will fall within the existing scope of 'accountancy practice'. Such activities can be undertaken by lawyers but it is also provided by accountants. In fact, in many instances an accountant is better placed to assist in administering an estate where there are business interests, accounts, and business taxes involved. As a result, the Legal Services Board's current proposals would lead to regulatory overlap, which we believe is unnecessary.

We believe it is necessary to view the provision of services by members of ICAS and the other professional accountancy bodies separately from those provided by under-regulated/unregulated providers. 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.

Question 10: Do you agree that the s190 provision should be extended to explicitly cover authorised persons in relation to will-writing activities as well as probate activities following any extension to the list of reserved legal activities to the wider administration of the estate? What do you think that the benefits and risks would be?

Probate services are clearly defined for the purposes of s190 (see s190(6)). It seems to follow that equivalent statutory privilege should be conveyed upon any new reserved activities but we consider that a number of tax services provided by non solicitors/barristers would fall with estate administration services. This would mark a significant development of the scope of legal professional privilege. In Scotland, the equivalent to legal professional privilege would be confidentiality of documents on the basis of the lawyer/client relationship.

Question 11: Do you have any comments on our draft impact assessment, published alongside this document, and in particular the likely impact on affected providers?

Each regulatory regime has associated costs and we think it would be imprudent to assume that a profession that is already regulated can adopt a new licencing regime with only negligible costs.

The impact assessment does not in our view fully analyse the costs and difficulties that arise when a regulatory regime leads to double regulation, and particularly so at the boundaries. As noted above, we would expect further research and consultation to be instructed if the Board wishes to insist upon the reservation of estate administration services.