

ICAEW Narrative Assessment

Overall summary of ICAEW's performance

This year ICAEW has provided evidence which gives the LSB sufficient assurance against the standards for regulatory approach, authorisation, supervision and enforcement. ICAEW has provided evidence to give the LSB partial assurance on the well led standard, where the LSB expects to see further improvements in respect of the transparency of the decision making of the ICAEW Regulatory Board.

We consider that the ICAEW has provided us with good overall assurance about its performance this year. We are encouraged by some positive steps in a number of areas, as set out in this assessment. Moreover, ICAEW has identified significant work over the coming year which will be important for it to continue to develop and improve its performance. It has demonstrated a number of examples of good practice which we set out below, including an innovative approach to educational films.

Ahead of our next assessment of regulatory bodies' performance, we expect the ICAEW to have implemented changes to its probate register and to have improved the transparency of its decision making.

Background

In our 2021 annual assessment, we assessed the ICAEW as meeting 26 out of 27 outcomes. The ICAEW was rated as 'Unmet – Action required' for outcome A5. Moreover, we asked the ICAEW for more information about how it met outcome A1.

For this year's assessment we sent the ICAEW a targeted information request for outcomes A1, A5 and WL3. We also asked for information about specific issues that had arisen during the year, how it had taken account of the findings from our targeted review of the Faculty Office, its work on implementing our policy statement on consumer empowerment, and its key work under the current standards in the last 12 months.

In assessing the ICAEW's performance against the current framework's standards we have reviewed the information provided by the ICAEW in its response to our targeted information request, as well as information from its website and from our interactions with it over the past year.

Assessment of ICAEW's performance

Below we set out our assessment of the ICAEW's performance against the five standards in our current framework, our overall assessment of its performance and highlight areas of good practice which other regulators may wish to emulate.

Overall assessment on Well-led – **Partial Assurance**

We consider that the ICAEW has provided us with **partial assurance** that it meets the Well-led standard.

Overall, we consider that the ICAEW does not publish sufficient information to provide a good level of transparency about its decision-making, risk assessments and costs.

LSB welcomes that the ICAEW is committed to continue the transparency initiatives started in 2021. However, LSB notes that the majority of papers submitted to the ICAEW Regulatory Board have been withheld in 2022 for various reasons including being deemed by the ICAEW as commercially sensitive or about topics which would shortly be published for consultation such as the new arrangements for the ICAEW's disciplinary framework. As a result, it is not possible to understand what factors ICAEW is taking into account in making decisions and what the rationale is for its decisions. ICAEW should consider ways to improve transparency by drafting papers in such a way to only redact limited confidential information within a paper or an annex rather than withhold entire papers. Additionally, Board papers can be published after the publication of e.g. a consultation document. As such, LSB expects the ICAEW to find ways to increase the publication rate of Board papers and thereby achieving greater transparency about issues being considered, decisions being taken and reasons for doing so.

The ICAEW has demonstrated that its Board is aware of the organisation's resourcing status and has taken action to address resourcing needs. The Board is also taking steps to ensure its own effectiveness including annual appraisals of Board members and, where necessary, performance management and effectiveness review. Moreover, in 2022 the Board carried out an effectiveness review of its regulatory committees.

We are content that the ICAEW carries out its regulatory functions in line with the IGR and provides assurance to its Approved Regulator as required by Section 28 of the Legal Services Act 2007.

The ICAEW has demonstrated examples of its learning from its own work and that of others. Examples of the ICAEW learning and making changes based on its own experience include:

- The ICAEW is in the process of developing an innovative approach to monitoring continuing professional development (CPD), using artificial intelligence which has the potential to significantly improve how many CPD records it can review.
- The ICAEW has a programme in place to share learning from supervisory and enforcement activities which are published as regular reports for its regulated community.

An example of the ICAEW learning from others' work is that the Board has instituted as a standing agenda item a horizon scanning report which covers initiatives by the other regulatory bodies and oversight bodies both within and outside legal services. This approach shows that ICAEW actively seeks to learn from other regulators and sectors.

We will continue to monitor the ICAEW's performance as a Well-led regulator and the progress of its work in this area, particularly in respect of the transparency of the

decision making of the ICAEW Regulatory Board, where we will expect to see further improvements.

Overall assessment on Regulatory Approach – Sufficient Assurance

We consider that overall, the ICAEW has provided us with **Sufficient assurance** that it meets the Regulatory Approach standard.

The ICAEW has demonstrated that it has taken action to ensure that its regulatory arrangements and guidance are:

- Reviewed - as exemplified by the ICAEW's current work to review and update its regulations for CPD
- Evidence based – for example, the ICAEW's review of the voluntary transparency guidance which showed insufficient compliance, and which led the ICAEW to introduce mandatory rules in February 2022
- User friendly, and outcomes focused - an example of this is the new ICAEW disciplinary framework which is expected to come into force in 2023.
- Informed by learnings from its own work - (as demonstrated in its consultations on changes to the new disciplinary framework and the probate fee.

It has also demonstrated that it understands its regulatory arrangements' impact on the regulated community, the market and the regulatory objectives through the impact assessments in its statutory applications to the LSB.

The ICAEW has demonstrated some progress in terms of seeking the views of consumers to inform its work, including targeting consumer groups for engagement with consultation. It has also identified work that it will pursue during 2023 to assess evidence from its technical helpline as a source of information about the support needs of consumers. To place consumer empowerment at the heart of its policy agenda, it has introduced a requirement for all papers to the Board on new probate initiatives to set out the impact on consumer empowerment.

As part of our monitoring of the ICAEW's performance against this standard over the coming year, we will look forward to seeing:

- The ICAEW taking steps to gather more information about the needs of probate consumers including specific examples of feedback from consumers or consumer organisations
- Continued consultation on policy proposals for legal services regulations
- Specific information about how in practice the ICAEW is taking the policy statement on consumer empowerment into account, in the design and evaluation of legal services regulatory arrangements

Overall assessment on Authorisation – Sufficient Assurance

The ICAEW has provided us with **sufficient assurance** about its performance against the authorisation standard.

~~ICAEW does not authorise individuals for probate. ICAEW authorises and licenses firms and these firms must then have appropriately qualified individuals working for them delivering probate services. ICAEW has robust and clear evidence for its authorisation process for firms available on its website~~

ICAEW authorises and licenses firms and these firms must then have appropriately qualified individuals working for them delivering probate services. These individuals are designated by ICAEW as Authorised Individuals for probate. ICAEW has robust and clear evidence for its authorisation process for firms available on its website

ICAEW has demonstrated its approach to setting standards by publishing the appropriate standards for individuals seeking to provide regulated probate services. Longer term, subject to putting in place regulatory arrangements, the ICAEW will start to authorise the reserved legal activity of oaths. LSB is assured that the ICAEW has a plan for how to incorporate training for this legal service into its authorisation arrangements. Furthermore, LSB notes that the ICAEW expects to introduce a new framework for CPD which sets requirements for authorised persons based on risk.

The ICAEW has demonstrated that it has a credible process for assuring itself that only those who meet the regulator's standards are authorised to provide education and training. The ICAEW only has one training provider for probate services – Mercia. The ICAEW has provided evidence that it reviewed the course provided by Mercia in the first quarter of 2022 and found it fit for purpose. Moreover, the ICAEW has committed to undertaking an annual review and the next review will take place in the first quarter of 2023 and be considered by the ICAEW Regulatory Board.

Over the last year we have been seeking assurances from ICAEW about making its register of its regulated community more user friendly and accessible. The ICAEW has assured LSB that it is now working with a third-party supplier to develop a single, accessible interface whereby users can search for ICAEW-accredited probate firms, as well as firms that have ceased their ICAEW probate registration. The new search tool will allow users to search by name, record number or location. The searchable register will include a summary of the firm's regulatory record, if applicable, along with a hyperlink to the firm's entry on the ICAEW's Disciplinary Database. Moreover, until the new register is in place, the ICAEW has provided evidence that it has made arrangements to achieve some of the missing functionality, which has allowed us to take sufficient assurance at this stage.

From next year we will seek assurance on the ICAEW's performance on authorisation particularly in relation to the improvements of the probate register that it has committed to. As well as monitoring its general performance, we will be keen to see the ICAEW's progress on the following:

- Implementation of the new regulatory arrangements for CPD
- Outcomes of the oversight of its training provider
- Putting in place regulatory arrangements for the reserved legal service of oaths as well as relevant training standards and processes.

Overall assessment on Supervision – Sufficient Assurance

We consider that the ICAEW has provided us with sufficient assurance that it meets the Supervision standard.

In respect of its supervision of the regulated community, the ICAEW has demonstrated that it is undertaking both cyclical and proactive supervisory activities. ~~ICAEW operates an outcomes-focused, evidence and risk-based Practice Assurance Scheme. The ICAEW has demonstrated that if practice assurance visits raise concerns, these are referred to a Practice Assurance Committee which may require remedial action from the firm or refer the firm to the professional conduct department for further investigation.~~

ICAEW operates an outcomes-focused, evidence and risk-based monitoring approach. The ICAEW has demonstrated that if visits raise concerns, these are referred to a Probate Committee which may require remedial action from the firm or refer the firm to the professional conduct department for further investigation.

The ICAEW has demonstrated that feedback is built into every step of the supervisory process with individual firms receiving feedback after a monitoring visit and the ICAEW sharing learning from supervision activities with its regulated community through newsletters. The ICAEW also publishes an annual practice assurance monitoring report. Additionally, The ICAEW produces educational films for its community on areas such as anti-money laundering.

As to its monitoring of the performance of its training provider, we note that this is an area where ICAEW has recently reset its approach. As such we expect the ICAEW to start publishing evidence to document its supervision of its training provider during 2023.

From next year we will seek assurance on the ICAEW's performance on supervision particularly in relation to the oversight of its training provider.

Overall assessment on Enforcement – Sufficient Assurance

We consider that the ICAEW has provided us with **sufficient assurance** that it meets the Enforcement standard.

LSB notes that ICAEW has a user friendly and transparent process for handling complaints about authorised persons. In particular,

- The ICAEW's webpage has a helpful guided tour of the complaints process which checks that the first-tier complaints route has been exhausted and which guides the consumer onto the Legal Ombudsman who may then refer the complaint back to ICAEW if it is about misconduct rather than service.
- The ICAEW has published a document setting out its process for complaints and investigations.
- The ICAEW has an extensive FAQ for complainants which provide detailed information about the process.
- The ICAEW publication 'Complaints – what's the process for investigation?' explains its approach to keeping everyone informed during enforcement proceedings and provides a comprehensive, transparent flowchart of the enforcement process.

LSB is aware that ICAEW's new disciplinary framework, which will come into force in 2023, allows the ICAEW Conduct Department to apply for an interim order where it has received a complaint and it considers that there is 'risk of significant harm to the public'.

The ICAEW has demonstrated that it has a robust process for ensuring transparency of the outcomes of its enforcement processes which include:

- Publishing disciplinary decisions in the ICAEW's disciplinary database
- sharing information on learning from the disciplinary process for regulated community through regular disciplinary updates
- publishing detailed documents setting out its disciplinary orders and regulatory decisions

ICAEW's new disciplinary framework sets time limits on the various stages of the enforcement process to ensure timely progress of enforcement cases. Moreover, the ICAEW has initiated a comprehensive review of the Guidance on Sanctions used in its enforcement process including a comparative study on sanctions applied by other similar regulators and a consultation with the chairs of all of the regulatory and disciplinary committees to understand issues regarding the use of the current guidance.

From next year we will seek assurance on the ICAEW's performance on enforcement particularly in relation to the implementation of the new disciplinary framework and progress on the review of its sanction's guidance.

Good practice

We consider that the ICAEW has demonstrated the following good practices which other regulators may wish to emulate:

- The ICAEW produces award winning educational films for its community on areas such as anti-money laundering
- The ICAEW is in the process of developing an innovative approach to CPD monitoring, using artificial intelligence which has the potential to significantly improve how many CPD records a regulatory body can review.
- The ICAEW has a programme in place to share learning from supervisory and enforcement activities which are published as regular reports for its regulated community.
- ICAEW's webpage has a helpful guided tour of the complaints process which checks that the first-tier complaints route has been exhausted and which guides the consumer onto the Legal Ombudsman who may then refer the complaint back to ICAEW if it is about misconduct.