



2022 LSB annual regulatory performance assessment

INFORMATION REQUEST FOR ICAEW

Specific questions relating to outcomes

Outcome	LSB observation	ICAEW comments
Outcome A1: Only those who meet the regulator's standards are authorised to provide education and training	<p>Thank you for ICAEW's update on this outcome in March 2022. We understand from this update and from relationship management conversations that ICAEW is in the process of putting the steps listed in its update into place.</p> <p>Please tell us about any progress in implementing ICAEW's plans for assuring itself against outcome A1?</p>	<p>In the first quarter of 2022, a review of the approved probate course provided by Mercia found it fit for purpose. We have also reflected on how to more broadly assess Mercia's role as a training provider and determined that an annual review is appropriate and the next review will, therefore, take place in the first quarter of 2023 to include the:</p> <ul style="list-style-type: none">• Syllabus• Conversion rate from training to examination• Pass rate/ retake rate• Attendee feedback• Dropout rate• Average time between course and exam• Delivery & assessment method <p>The IRB Legal Services sub-group will consider the findings of the review and report back to the IRB with a recommendation.</p> <p>The introduction of the reserved legal service of Oaths will be incorporated into the probate training course. There is no plan</p>

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		<p>to introduce separate processes or training for Oaths. Following the introduction of Oaths, the training modules will be reviewed online, and feedback will be sought from those who attended the first course.</p> <p>Online learning and assessment were introduced during COVID and are now well established. Mercia offers the course over four half days, at least once per quarter. Website links have been updated.</p>
<p>Outcome A5: The regulator’s list of those they regulate is accessible, accurate and provides information on the disciplinary records of those regulated</p>	<p>As set out in the letter from Chris Nichols on 19/05, the LSB is now viewing the requirement of this outcome in light of the statement of policy on consumer empowerment.</p> <p>Please tell us what specific steps ICAEW has taken to bring itself into compliance with Outcome A5 since the publication of the consumer empowerment statement? Please also provide a timeline for any steps ICAEW plans to take in the future to bring itself into compliance?</p>	<p>Changes were made to the way in which consumers could view disciplinary data regarding the firms listed on the Probate Register following the receipt of the draft Regulatory Performance Assessment in December 2021. This included the Probate Register containing links to the new ICAEW Disciplinary Database and a link to that database being provided as a link next to the link accessing the probate registers. This has provided consumers with much easier access to viewing any disciplinary information regarding firms they may be considering.</p> <p>ICAEW is also now working with a third-party supplier to develop a search tool to sit over the top of its probate registers. This will provide 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 search results will be presented in a summary format and users can click on a result and be directed to a detailed page with further detail on their selection. The</p>

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		<p>searchable register will include a summary of the firm’s regulatory record, if applicable, along with a hyperlink to the firm’s entry on ICAEW’s Disciplinary Database.</p> <p>The search tool is designed to be a user-friendly and high-quality interface which shares a similar look and feel to ICAEW’s Find a Chartered Accountant and Disciplinary Database products. The developer has created a prototype of the user-facing pages and the import logic is currently under development, with a view to bring this live to the public after rigorous testing has been completed. We believe that this new tool will be available for testing in Q1 2023.</p> <p>In the meantime, consumers will continue to be able to access disciplinary information regarding firms on the probate registers either by clicking on the links within the registers or by hitting the next link on the web page providing information about probate firms which provides access to the disciplinary database for all members / firms.</p>
<p>Outcome WL3: The regulator is transparent about its own: decision-making; regulatory approach; the risks it and its regulated community faces and how these are being mitigated; performance; regulated community and related markets; financial costs.</p>	<p>We understand from relationship management meetings that the ICAEW Regulatory Board wants to broaden the material published in the future. Please can ICAEW provide an update on its plans for maintaining or expanding its approach to transparency?</p>	<p>In June 2021, the IRB determined in support of greater transparency that it would, whenever possible, publish minutes of its meetings and papers. All papers are now assessed against an agreed exemption criteria for publication.</p> <p>The IRB reviewed its transparency commitment at its October 2022 meeting. It considered a paper detailing the publication of papers since June 2021 (the associated paper will be published with the October 2022 IRB papers). It was acknowledged that the preceding year had been challenging and that a small</p>

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		<p>number of issues, for example discussions of governance and ongoing legal matters had featured heavily. However, notwithstanding the requirement to redact or withhold papers it was content that it was operating in as transparent a manner as possible. It was noted that when it was not possible to publish a paper this was included in a summary document that included the relevant exemption and a brief summary of the issue. The committee encouraged those drafting papers to do so in a way that confidential information could be redacted, to maximise publishable information.</p> <p>The IRB has continued to invite oversight bodies and others and was joined at its October 2022 meeting by Dawn Dickson from the Financial Reporting Council. There remains a standing invitation for the LSB CEO to attend an IRB meeting, or nominate a member of the senior team to attend.</p> <p>As a part of the transparency agenda the IRB has considered how ICAEW engages with stakeholders and affirmed its commitment to the appropriate and proportionate use of consultation. At the June 2022 meeting, the IRB considered a document detailing its approach to consultations (published in the June 2022 IRB papers) and concluded that there would be a presumption of consultation on any substantive regulatory change. A shortened version of the paper was commissioned to be published on the ICAEW IRB page. This has resulted in the largest number of public consultations so far by ICAEW in relation to its regulatory / disciplinary work and this will continue into 2023 with several consultations already being planned for issues currently being reviewed by the IRB.</p>

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		<p>At the October 2022 meeting the IRB considered a presentation on the Regulatory and Conduct 2022/23 annual report (the presentation will be published with the October 2022 IRB papers). This included statistics from ICAEW's website for views and access to the 2021/22 report. The report is a key mechanism by which ICAEW provides key information on its regulatory and conduct strategy, internal oversight arrangements, the requirements of its external oversight regulators, internal governance, and the operation of the Professional Standards Department. Available on the ICAEW website, the report is publicly accessible providing a resource to anyone who wishes to gain greater insight into how ICAEW operates.</p> <p>Historically, the IRB secretariat function has been provided by a Professional Standards Department Regulatory Policy Manager. The PSD Chief Officer and IRB Chair reviewed the support required by the IRB, its sub-groups and associated committees and determined that there should be dedicated resource for the role. Accordingly, ICAEW has funded the recruitment of a dedicated Board Secretary for the IRB and Regulatory & Conduct Appointments Committee (RACAC). Supporting the transparency agenda will form a key part of the secretariat, including providing advice and support to those drafting papers to ensure that they can be published whenever possible. A new Board Secretary will be in post from December 2022.</p>

Questions relating to other issues raised in the year

Issue	LSB observation	ICAEW comments
<p>ICAEW Probate compensation fund</p>	<p>We understand from relationship management meetings that the representative side of ICAEW is now providing surety for the probate compensation fund. We recognise that it is for the ICAEW to decide how it funds the compensation fund.</p> <p>Please provide more information about the governance provisions of this arrangement? In particular, please set out how ICAEW assures itself that the compensation funding arrangements comply with the Internal Governance Rules?</p>	<p>There is no change to the governance arrangements relating to the Probate Compensation Scheme as a result of the replacement of the prior insurance cover by a surety from the ICAEW Board, so we do not consider that the change raises any problems in complying with the IGRs.</p> <p>Claims made on the Fund will be determined in the same way as before on their merits by the Probate Committee, with no influence or interference by the ICAEW Board on whether claims are accepted or how much might be paid by way of compensation. The change in arrangements is simply that ICAEW's reserves will go on risk for the extent the insurance cover extended the cover of the scheme beyond the current amount in the Fund.</p> <p>The formal structure under which the representative part of ICAEW will provide surety for the probate compensation fund was minuted by the main ICAEW Board, with consideration of how this arrangement meets the requirements of the IGRs.</p> <p>The IRB's confidence in the arrangements remains high not only due to the strength of the immediate and growing cash reserve but also because of the strength of ICAEW reserves and its surety.</p> <p>In the highly unlikely event of having to draw down on the surety, the discretionary decision making is not fettered in any way by the new financial arrangement.</p>

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	<p>We also understand that this arrangement is to be temporary until ICAEW may again obtain insurance from the private market. Please provide an update on any steps that it is taking to put in place a longer-term arrangement?</p>	<p>We continue to actively and regularly engage with our broker and pursue insurance options to remove ICAEW's temporary role as surety. This will continue. The approach includes; a plan to continue to build the cash reserve, the potential for that reserve to fund the first claim each year, we have and will continue to provide anonymised statistical analysis to insurers on the activities of our registered firms to provide greater understanding of the low levels of risk – all to assist the partnership relationship and attractiveness of providing insurance.</p>
<p>Consideration of LSB targeted review of the Faculty Office's performance against the Well-led Standard</p>	<p>Please explain how you have taken account of the findings of the LSB's targeted review of the Faculty Office's performance against the Well-led standard, particularly in respect of governance and consumer engagement?</p>	<p>Areas reviewed by Professional Standards in the context of the LSB assessment of the Faculty Office indicated the following;</p> <ul style="list-style-type: none"> • Transparency of governance and decision making; - The initiative that has been taking place around publication of board minutes and papers, update to the website, and the annual report mean that we believe this transparency is being achieved within the constraints on us as a multi-disciplinary regulator. • Clear delegations of authority and regular review; Clear delegations of authority exist within our regulatory governance and this is the subject of regular review. Members of all ICAEW's regulatory committees and the Investigation Committee review annually the way in which PSD staff have executed their delegated powers and provide reports of their findings to the full committees and to the IRB. The IRB reviews all the delegated powers review

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		<p>reports and has recently discussed making changes to the areas covered by the committees and ensuring more consistency between the reports. The IRB also has its own quality assurance programme for assessing the performance of all regulatory and disciplinary committees which includes observation of meetings and interviewing committee chairs. The focus of the programme is reconsidered at the end of every two-year cycle. The IRB also reviews the final inspection reports prepared by each of ICAEW's external oversight regulators and monitors progress made by PSD management in carrying out any remedial work or improvement noted in those reports.</p> <ul style="list-style-type: none"> • Written documentation supporting committee appointments. This has been developed over the last three years and there are now formal documents shared with committee and tribunal members setting out terms of appointment, rules on conflict of interest, expense and charging policy and other matters associated with the role, including contracts. • Scrutiny of financial matters and resource. A regular dashboard has been supplied to the IRB on a quarterly basis reporting key financial indicators. The IRB reviews and signs off the regulatory fees each year which including approval of the Professional Standards' Budget. The PSD Chief Officer reports on current level of resource and any retention/recruitment issues as part of the written update reports for every IRB meeting as part of this oversight the level of resources is regularly reviewed. • Undue influence in appointments. The establishment of a separate nomination committee (RACAC) for Professional

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		<p>Standards appointments with lay parity ensures that appointment decisions are made in an objective and unbiased manner.</p> <ul style="list-style-type: none"> • Sufficient understanding of the issues facing both [probate] consumers and [those providing probate services]. The monitoring and evaluation by QAD on their visits to firms provides a valuable indication of issues for practitioners in the supply of probate services. Such feedback has, for example, resulted in us regularly engaging with the financial services community to overcome the practice of certain financial institutions only allowing interaction with lawyers for probate services. As the stakeholders for probate work are somewhat different from a normal consumer/adviser situation, gathering feedback from the consumer is more challenging. However, we have identified in discussions with our Technical Helpline that there are educational support needs for beneficiaries and executors and are looking to explore this further in 2023 (see consumer empowerment comments below).
<p>Consideration of LSB statement of policy on consumer empowerment</p>	<p>Please describe your internal processes for ensuring that you take account of the LSB's policy statement on consumer empowerment.</p> <p>Please provide an update on relevant work undertaken since you provided a gap analysis submission to the LSB in August</p>	<p>Following the publication of the new LSB statement, all new initiatives that ICAEW launches affecting legal services will take into account the principles of the policy statement on consumer empowerment, in the design and evaluation of such initiatives. All papers to the IRB regarding new initiatives will set out the impact on consumer empowerment.</p>

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	<p>2022, including an indication of when you expect to meet all of the outcomes in the statement?</p> <p>Please describe how ICAEW will determine what quality information about probate practitioners could be suitable for relevant consumers?</p>	<p>It is considered that the practical and financial support provided to Legal Choices remains the most appropriate mechanism to promote and support the consumer empowerment agenda. Legal Choices provides a publicly accessible resource for information on legal professionals and all reserved legal services including probate. The involvement and support of other regulators means that Legal Choices can have a bigger profile than a single regulator initiative. It is probable that consumers who seek information about one legal service from Legal Choices will return if they require further information about other services. It is noted that the existence of a wider legal market and other providers enhances consumers choice and competition.</p> <p>ICAEW is involved in joint regulator work focusing on public legal education, the collection of consumer feedback and how to better support consumers. However, it was determined that the initiatives being promoted by other regulators, while taking forward the consumer empowerment plan, did not fit with ICAEW's scope of authorisation and that more bespoke initiatives for the reserved legal service of probate were required. Feedback from the ICAEW membership helpline indicated that more could be done to support probate-authorized firms and individuals, their clients, and other consumers through the provision of additional support material. Specifically, there is anecdotal evidence that consumers who are not clients of an authorised probate firm who are directly or indirectly affected by estate administration and probate work are often unclear as to their rights or how to make their voice heard. ICAEW is looking into the feasibility of providing material</p>

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		<p>to assist beneficiaries and trustees in understanding how probate and estate administration works, how it might impact them and the scope of ICAEW-authorized firms and individuals. Publicly available material is being reviewed to see whether there are existing resources that could be leveraged or if it will be necessary to create bespoke material. This work will be progressed in 2023 and any new support material provided by the end of the second quarter of the year.</p> <p>As previously indicated in discussions with the LSB the nature of probate raises questions as to the appropriateness of promoting digital comparison or feedback tools. Still, ICAEW will continue to consider whether other approaches can be taken to offer consumers of probate and estate administration a means to feedback if they wish to do so.</p> <p>Our new regulations around price and service transparency took effect on 1 February 2022 and our Quality Assurance Department reviews our firms' compliance with these regulations during monitoring visits.</p> <p>Our work on ensuring that information about ICAEW accredited probate firms is available in at least one single online location is included in the response to Outcome A5 above.</p>

ICAEW's self-assessment of key work that undertaken in the past 12 months against the current standards

Standard	ICAEW comments
Well-led	<ul style="list-style-type: none"> • The IRB has implemented publication of board papers, agendas and minutes • The IRB has carried out an effectiveness review on the regulatory committees under a new approach • A new chair for the Probate Committee has been appointed under the new appointment procedure effected under the IGR changes • The IRB has issued an Annual Report which gives transparency to a number of its activities and those of the department • The IRB 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 • An external research consultancy has been engaged to conduct a survey of all ICAEW member-firms to assess their appetite for offering a wider remit of reserved legal services. The results of this survey will help inform the IRB's future legal services strategy.
Regulatory approach	<ul style="list-style-type: none"> • The IRB has completed the two-year project to introduce a new disciplinary framework which will see the introduction of a reduced set of Disciplinary Byelaws and new, clearer user-friendly Investigation & Disciplinary Regulations in March 2023. The feedback received from the public consultation was very positive to the changes to the structure and to the greater clarity of the processes. • The IRB has resolved to consult more often and more widely with stakeholders and the public on any substantive change to regulatory and disciplinary strategy and operations. Several consultations are already planned for 2023 including possible changes to the PII Regulations. The IRB resolved at its October 2022 meeting to start a new project to introduce greater consistency to the front-line regulations which govern the work of all regulatory committees which have emerged from different legislation. • The Quality Assurance Department continues to perform monitoring visits to evaluate compliance with the probate regulations. This enables us to identify and communicate common themes of shortfall and re-education through Probate News and Regulatory and Conduct News

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	<ul style="list-style-type: none"> Encouraged by the significant impact of the ICAEW/HMRC anti-money laundering training film, <i>All Too Familiar</i>, the IRB is continuing to focus on ways in which ICAEW can enhance its work to educate members and firms in key areas to decrease instances of misconduct and poor performance and, in doing so, protecting the public.
Authorisation	<ul style="list-style-type: none"> The IRB has worked with the Education & Training Board to pioneer a new approach to CPD which will result in radical changes to the existing CPD policy for ICAEW members and non-members who are authorised by ICAEW to provide regulated services, from November 2023. This review has encompassed two consultations of both our practising and non-practising members and a review of recent changes in CPD evaluation at other similar bodies in the UK and internationally. The new proposals include innovative proposals such as the creation of different CPD Categories with different requirements where areas of work are rated for the potential risk impact on the public with the riskiest requiring greater CPD commitments. Work is also ongoing to develop a CPD AI monitoring tool to allow not only a greater number of members to be reviewed for compliance but also to generate a rich seam of data which can be mined to understand the way in which members undertake their CPD which will, in turn, provide greater focus on how to satisfy preferred methods of learning. Development of further website pages advising on registration process was completed in 2022, including markers to comply with the Professional Qualifications Act 2022. Introduction of additional resources in the Regulatory Support team that processes applications and withdrawals. This includes an extra Supervisor and an additional Senior Advisor.
Supervision	<ul style="list-style-type: none"> Ongoing evaluation and feedback of issues identified by QAD on monitoring visits (noted above) Guidance to practitioners issued through Probate News and newly launched Regulatory & Conduct News Employment of intelligence officers covering economic crime, money laundering and audit, providing additional insight on risk and where supervisory attention should be directed and

Standard	ICAEW comments
	<p>ensuring the cross-fertilisation of data collected by different teams within PSD to put together a better profile of firms / members being supervised</p> <ul style="list-style-type: none"> • Annual review carried out by the Probate Committee covering PSD staff's exercising of the powers delegated to them by the Probate Committee
Enforcement	<ul style="list-style-type: none"> • The introduction of the new Disciplinary Framework will now take place in 2023 after a two-year project to simplify processes and make them more efficient, more effective and more user-friendly • Committee training has been expanded during 2022 to supplement the annual committee training days with targeted in-committee specialist training and formal induction training for new committee members. • The IRB has requested PSD senior management to carry out a comprehensive review of the Guidance on Sanctions 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. The IRB has already started to debate policy issues which form the general approach to sanctions and will consider further papers during 2023. • Assessment of amendment to committee member remuneration including payment of members from 1 January 2023. • Mental health training for enforcement staff dealing with difficult complaints and cases • Annual review carried out by the Investigation Committee covering decisions made by PSD staff to close complaints without referral to the Investigation Committee