ICAEW REGULATORY BOARD 6 OCTOBER 2022

# *Regulatory Developments*

## STATUS

1. The report is open but the appendices are considered confidential and certain sensitive paragraphs are also redacted in yellow.

## EXECUTIVE SUMMARY

2. The paper (which is a standing item) summarises key regulatory developments of possible relevance to the activities of Professional Standards and the development of policy. This includes consultations and consultation feedbacks that have recently been published. This report provides a summary of these in the appendix and has provided some further commentary on those documents that are considered of immediate interest.
3. This document discusses the following in more detail;
   a) The Economic Crime and Corporate Transparency bill
   b) The response by the SRA to the request for open board meetings
   c) The FCA publication of the consumer duty
   d) FRC research into entry and exit of audit firms into the PIE audit market
4. The government's summary of responses to the White paper on restoring trust in audit and corporate governance, and the proposed steps forward, was issued on 31 May. A summary of the key points has been prepared for the IRB by the Chief Officer. A more detailed analysis has been placed in the reading room [redacted].
5. Professional Standards continues to maintain close relationships with the 7 other legal services regulators, and the three other UK audit regulators facilitating the leverage of best practice and joint opportunities.

## RECOMMENDATIONS

6. The board are asked to note the content and the appendices and to ask questions of staff where further information is required.
7. The board are asked to approve the classification of the paper as open and identify where redaction may be appropriate, as has been highlighted in yellow. Also agree to the non-disclosure of the appendices.

## ECONOMIC CRIME AND CORPORATE TRANSPARENCY BILL

8. The government introduced the proposed Economic Crime and Corporate Transparency Bill on 23 September 2022. The bill includes a number of measures around the registration of companies and directors, data sharing and intelligence gathering. However more significantly for legal services it introduces a 9th statutory objective (section 155) and removes the cap on the SRA's fining powers (section 154).

9. In the commentary on the bill the government has observed that the crisis in Ukraine has "shone a light on the exposure of professional services sectors to economic crime", with the legal services sector assessed by the last Treasury national risk assessment of money laundering and terrorist financing as at high risk of abuse for money laundering purposes.

10. The 9th statutory objective added to section 1 of the Legal Services Act states the following;

    "(i) promoting the prevention and detection of economic crime."

    The Ministry of Justice did verbally consult with legal services regulators including ICAEW on the introduction of this objective which in its earlier draft also made reference to enforcement. Our response on this was threefold;

    a) The addition of 9th objective to a list of 8 that were already difficult to balance in weighting adds more complexity to the defining principles
    b) The objective is potentially counter-intuitive to access to justice
    c) The objective was very broad and needed some context setting and guiding principles

11. The MoJ did concede that the concerns we raised mirrored those of the other regulators. In terms of guidance they were looking to the LSB to set this out, though no mention of the LSB is made in the bill. Following the publication of the bill the Bar Standards Board has already voiced these concerns.

12. As far as Professional Standards is concerned our discussions with the Treasury and the LSB indicate that probate has a very limited touch point to economic crime as the service is personal rather than corporate and dead people cannot be sanctioned. We have however given guidance to practitioners on the economic competence of executors and beneficiaries.

13. The removal of the sanctions cap for the SRA comes on the back of their recent step to raise the ceiling to £25,000 from £2,000. The Law Society have expressed unhappiness with this having only previously suggested the cap be £7,500. Their concern is that significantly serious cases normally dealt with by the Solicitors Disciplinary Tribunal would fall to the SRA. (The cap does not apply to ABS's where limits of £250m for firms and £50m for individuals apply.)

14. In terms of next steps Regulatory Policy will monitor the progress of the bill and the steps the LSB propose to take to interpret the new objective. It is felt at this stage the AML supervision we exercise over most of our probate firms will largely address the principles, [redacted].

[redacted]

[redacted]

[redacted]

[redacted]

## FCA CONSUMER DUTY

18. On 7 December 2021, as was noted in the appendix to the Regulatory Developments paper in February 2022, the FCA issued a consultation on the introduction of a duty to the consumer as part of their rules for all bodies regulated by them. The ICAEW Financial Services Faculty submitted a representation in response where they expressed concern on some of the red tape that might be involved and the risk of losing firms in the sector. However on 27 July 2022 following this consultation the FCA published new rules which are broadly the same as in the consultation and take effect from 31 July 2023.
19. The duty comprises a consumer principle to deliver fair outcomes for retail customers, with rules supporting 4 outcome areas defined as products and services, price and value, consumer understanding and consumer support. Those affected by the duty include all regulated firms and regulated bodies. In our case it affects us as regulator, and also the 1826 firms we license for DPB and Consumer Credit.
20. The duties are not dissimilar to those required of PS as a legal services regulator where a series of initiatives on consumer interest have already provided PS collateral that cross-cuts all regulatory and voluntary areas. Around half of probate firms (185) are also licensed for DPB.
21. No formal contact on this has been received from the FCA about our role as a DPB regulator and no specific guidance has been given in the published documents. However the expectations around what firms should do and monitor may need to become part of our own monitoring regime going forward. [redacted].

## FRC RESEARCH INTO FIRM ENGAGEMENT/DISENGAGEMENT WITH THE PIE AND NON-PIE AUDIT MARKETS

22. As part of our submissions to the FRC and government in connection with the white paper and other reforms, we have drawn attention to capacity issues in the market and the risk posed by a decreasing volume of firms prepared to work in audit as well as in the area of PIE audits. The launch of this investigation announced on 7 September 2022 is therefore to be welcomed.

23. The objectives of the review are stated to be;

    a) **PIE audit market** – to better understand the appetite of firms to enter, or expand their presence in, the PIE audit market. This includes examining any barriers that firms face in achieving this, and what action(s) may lower these barriers
    b) **Non-PIE audit market** – to better understand the economics of audit firms in the non-PIE audit market, as well as what has driven the decline in the number of such firms in recent years. The implications of the declining number of firms for choice, competition and audit quality will also be considered

24. The project is being jointly carried out by Touchstone Renard and Frontier Economics working closely with the FRC. Touchstone Renard is carrying out fieldwork with a large number of firms during Autumn/Winter 2022, with some potential in-depth follow-ups in early 2023. No timescales have been given on when the results of the research will be published.

25. At 31 December 2010 ICAEW had 3958 firms on its audit register, of which 1804 were sole practitioners. At 31 August 2022 this number had reduced to 2386 of which 842 were sole practitioners. This is a reduction of 40% at firm level and 53% at sole practitioner.

## APPENDICES

| | Appendix Name | For consideration or for reference | No of pages |
|---|---|---|---|
| **Appendix A** | **Review of consultations and feedback September** | **Reference** | **2** |
| **Appendix B** | **Review of consultations and feedback June & Prior** | **Reference** | **2** |

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| **Executive Director** | Duncan Wiggetts<br>Chief Officer Professional Standards |
| **Author** | Peter James Head of Regulatory Policy |
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