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Ms Patricia Adair  
Regulatory Policy Manager  
Professional Standards  
INSTITUTE OF CHARTERED ACCOUNTANTS  
OF ENGLAND AND WALES  
DX 877 LONDON-CITY

27 April 2016

Dear Ms Adair

ICAEW's proposed application to regulate further reserved legal activities

I refer to your consultation document in relation to ICAEW's draft application to the Legal Services Board to become an Approved Regulator and Licensing Authority for additional reserved legal activities. I am grateful to you for consulting me, as currently the sole approved regulator for notarial activities, on the proposals and for the additional information provided following our meeting and the attempts made to clarify and refine your proposals in Mr Soare's letter of 24<sup>th</sup> March.

I would stress that our main concern is the public interest and how we consider your proposal will impact on that in the light of the regulatory objectives set out at section 1 of the Legal Services Act 2007.

I am very concerned about the concept of provision of notarial services being carried out in accountancy-led firms for three reasons:

- I The inevitable impact on the exercise of independent judgement on the part of the person providing notarial services (which is the principal reason for Rule 11 of the Notaries Practice Rules 2014 and which would need to be amended if notaries were providing services in accountancy-led firms).
- II Concern over whether the notarial acts of persons employed in accountancy firms would be given the same recognition and status in foreign jurisdictions as at present; and
- III Whether as a result of the proposals the respect and prestige enjoyed by English and Welsh notaries abroad would be diminished.

Although I understand that the application has to include an application to become an Approved Regulator for legal services albeit that it is acting as the licensing authority which is the main aim, we are concerned about the first element of the application for Approved Regulator status for notarial acts, it being our understanding that this is now to cover all



notarial acts and not just acts relating to taxation. This opens the possibility that ICAEW might then see fit to approve the carrying out of notarial activities by persons who are not notaries authorised and admitted by the Master of the Faculties and qualified in accordance with the Notaries (Qualification) Rules 2013. To grant such a power to ICAEW is inappropriate in the absence of any provision of evidence as to what qualifications they would require of such persons.

We appreciate that you say that you would not use that power in practice because all the persons who you intend to regulate to offer notarial activities would be notaries admitted as individuals by the Master of the Faculties and holding a current practising certificate issued through the Faculty Office. However, unless some way can be found to ensure, by binding undertaking and precise legal wording, that in effect no one will be so permitted, we do not believe that this would be in the interests of the public.

No evidence has been supplied to us of any request either from accountancy-led firms to provide notarial services or from the public that they should wish to obtain notarial services from accountancy firms. Accordingly, we do not believe the application would either protect and promote the public interest, protect and promote the interests of consumers, improve access to justice, increase public understanding of the citizen's legal rights and duties, encourage an independent, strong, diverse and effective legal profession or promote competition in the provision of services (given the overriding requirement of independence).

We are also mindful of the Ministry of Justice's consultation on the legislative separation of the regulatory and representative functions within the legal professions and we do not believe that the ICAEW as "a world leading professional membership organisation that promotes, develops and supports...chartered accountants" should be seeking to extend its *regulatory* remit at the current time.

On the specific point made in Vernon Soare's letter of 24th March (at point 4) we do not accept that the Notaries Practice Rules 2014 would currently permit notaries to be employed in accountancy-led firms although I accept that if your application were approved it would be possible for the Rules to be amended in so far as they conflict with the proposals.

Finally, as the Approved Regulator of notaries public in England and Wales which office has never had or exercised any representative function, I am concerned to note that the ICAEW did not see fit to include the two representative membership bodies of the notarial profession in England and Wales (the Society of Scrivener Notaries and the Notaries Society) in the list of stakeholders to be consulted on its draft application.

Yours sincerely



**CHARLES GEORGE, QC**  
Master of the Faculties

cc: Neil Buckley, CEO, Legal Services Board  
Jonathan Coutts, Hon Secretary, Society of Scrivener Notaries  
Christopher Vaughan, Secretary, Notaries Society