

ICAEW REGULATORY BOARD GOVERNANCE UPDATE

By Philip Nicol-Gent, Chair of the ICAEW Regulatory Board

In 2021, we saw the first change of the ICAEW Regulatory Board (IRB) chair with Michael Caplan QC retiring from the board at the end of October 2021. Jenny Watson CBE took up the role on 1 November 2021 but unfortunately stepped down for unforeseen personal reasons after just two months in post. I was subsequently appointed as chair from 1 January 2022 having been a member of the IRB since 2016 and vice-chair since 2017.

COVID-19 continued to play its part which meant in the 15 months to March 2022 all but two ICAEW Regulatory Board (IRB) meetings were held virtually.

And, in each of our meetings, we followed regularly and carefully the reports from the Professional Standards Department (PSD) Chief Officer about how PSD was continuing to adapt to operational challenges arising because of COVID-19, working remotely and increased staff absences through illness and resourcing challenges. We remain impressed by the resilience of the PSD senior management team and staff during two years of uncertainty and change.

'Business as usual' matters in 2021 included our regular review of resourcing, complaint and application numbers and progress with monitoring reviews. These matters also included our review of inspection reports authored by the Financial Reporting Council, the Insolvency Service, the Office for Professional Body Anti-Money Laundering Supervision and the annual performance assessment published by the Legal Services Board.

There were also five key activities for the IRB during this period.

1. Response to the BEIS consultation on 'Restoring Trust in Audit and Corporate Governance'

Given the potential impact of the proposals in the consultation on PSD's work, and our unique and important insight from our oversight of this work, we decided the government should receive a response from the IRB in addition to the ICAEW response produced by the Reputation & Influence Department following consultation with its firms and members.

We were particularly concerned to note that the consultation document made no reference to the fact that ICAEW had created the IRB in 2015, with similar internal governance arrangements being introduced at other Recognised Supervisory Bodies (RSBs), and that it had not considered the important impact of these changes to ensure regulatory work is conducted independently and impartially. We were disappointed to see unsubstantiated criticisms made about the robustness of the RSBs regulatory and disciplinary work, and frequent references to 'self-regulation'. In our response, we explained the degree of oversight of PSD's work and pointed out that all decisions on significant regulatory or disciplinary decisions are made by committees or tribunals with at least lay parity in membership, if not lay majority.

While we were able to support many of the government's proposals, we challenged the need for the Audit, Reporting and Governance Authority (ARGA) to be provided with an enhanced oversight role over chartered accountants as a proposition not only lacking a good evidential base but also one which ignores the fact that anyone can call themselves an accountant.

Unlike 'lawyer', which is a reserved title, anyone can use the term 'accountant' and continue to operate without qualifications, insurance or any adherence to an ethical code or disciplinary scheme. We do not believe that the public interest is being prioritised by the government continuing to ignore this issue and proposing an increase in the regulation of those already supervised which will just exacerbate the unlevel playing field.

In contrast, we were fully supportive of the government's proposals to make more robust the framework for making sure that directors of companies are held accountable for preparing or approving materially misleading financial statements and to strengthen the audit regulatory framework.

We hope that such a substantive response from a board with our insight, comprising a parity of lay and chartered accountant members, will be carefully considered by those making the final conclusions. The response is available to read in full at [icaew.com/regulatoryconsultations](https://www.icaew.com/regulatoryconsultations)

2. Reform of the ICAEW disciplinary framework

One of the IRB's primary areas of focus during this period was the continuing project to reform ICAEW's disciplinary framework which we started in 2019.

A dedicated IRB sub-group with a lay member majority was set up. This sub-group met with the project team frequently during this period to agree which of the existing Disciplinary Bye-laws should be retained, what changes should be made to them and, more recently, to review the development by PSD lawyers of the new Investigation & Disciplinary Regulations (IDRs) and consider process changes to improve efficiency and effectiveness. We have also reviewed advice provided by Counsel and the results of the public consultation which we carried out in February/March 2022. At every stage, the sub-group has made provisional policy decisions to guide the project by PSD management, with a summary of policy decisions being shared and ratified at subsequent IRB meetings.

We are happy with progress and that the changes will achieve the original objectives;

- Making the Disciplinary Scheme clearer and more accessible to all users.
- Separating duties and obligations from process provisions.

It was pleasing for us to see the positive endorsements for re-casting the framework which we received from nearly all the respondents to the consultation.

The consultation is now closed but the explanatory document outlining the changes is available to read at [icaew.com/regulatoryconsultations](https://www.icaew.com/regulatoryconsultations)

We hope to launch the new disciplinary framework between October 2022 and January 2023 depending on when we receive Privy Council approval.

3. Revisions to our quality assurance programme for regulatory and disciplinary committees

After a review of how the quality assurance programme had operated in recent years, we decided to expand the observation programme substantially in 2021 to make it more comprehensive. As a result of these changes, all committees will now be reviewed on a two-year cycle and the Investigation Committee will be reviewed annually.

Board members (in pairs; one lay, one chartered accountant) are now reviewing the committees both remotely and in person, and meeting committee members informally after meetings. The IRB secretary then collates feedback forms which are used as the basis of discussions with committee chairs. Suggestions may be made by IRB observers about how the committee might manage its workload more efficiently or effectively and the committee chairs are asked about the quality of the support they receive from PSD staff and whether the IRB should consider introducing any changes to improve processes.

There will be a review when the current two-year cycle closes at the end of 2022, and any enhancements and changes implemented ahead of the 2023 cycle.

4. Legal Services Strategy and Business Plan

During 2021, we consulted on a refreshed strategy for legal services (probate).

Our activities are guided by, and support, the Legal Services Board's strategic themes (fairer outcomes, stronger confidence and better services), to strengthen trust and protect the public by enabling, evaluating and enforcing the highest standards in the profession.

Our business plan for 2021/22 was also published. The plan describes what ICAEW does in relation to the regulation of reserved legal services, and how this aligns with our values, our work with the Legal Services Board and our statutory duties. This plan also describes how we intend to continue to improve this regulation, to educate and inform and encourage actions in the best interests of the consumer.

5. Response to the Insolvency Service's consultation on 'The Future of Insolvency Regulation'

We submitted our second separate consultation response in March 2022; this time in response to the government's 'Future of Insolvency Regulation' proposals. We agree with the government that changes should be made to the current insolvency regulatory framework to make it more effective and welcome the proposal to introduce the regulation of firms which we believe would be the single most important change for a better system.

However, in our response, we have also pointed out the weaknesses in the evidential case put forward for removing regulatory responsibility from ICAEW and the other Recognised Professional Bodies (RPBs) and replacing the RPBs with a government regulator. It was disappointing to note the lack of reference in the consultation document to the significant governance changes which had been made by ICAEW and the other RPBs in recent years. While we can understand the government's preference to have a single regulator in place, the consultation document did not properly reflect the fact that, in reality, ICAEW and the IPA carry out over 90% of all insolvency regulatory work in the UK and that both bodies have signed up to common approaches on many issues including the use of common sanctions guidance approved by the Insolvency Service.

We also highlighted the danger that continuing with the current proposals could create a regulatory vacuum at a time when corporate and personal insolvencies are rising post-pandemic which would be contrary to the public interest. The vacuum would be created if the finite number of specialist insolvency regulatory staff decide to take up better remunerated positions in private practice rather than wait for any new government regulator to be created. The response is available to read in full at icaew.com/regulatoryconsultations