



Legal Services Regulations

PROPOSED CHANGES AS PER JANUARY 2025
CONSULTATION

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1 GENERAL

The Legal Services Act 2007 permits two methods by which a firm may be accredited to undertake reserved legal activities. ~~undertake probate work:~~

- as an authorised firm in which case all of the principals (and shareholders in the case of a company) have to be individually authorised to undertake probate legal services work;
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- as a licensed firm if all the principals (and shareholders in the case of a company) are not individually authorised to undertake probate legal services work. Additional requirements then apply.

~~Authorisation is by an approved regulator; licensing is by a licensing authority and ICAEW is both. Once a firm is authorised or licensed under these regulations it is an 'accredited probate legal services firm' and it has to comply with these regulations. Some regulations may only apply to a licensed firm, such as the requirement to appoint a Head of Finance and Administration and a Head of Legal Practice.~~

~~In addition to the regulatory requirements for probate work, a number of important regulatory provisions are applied to estate administration when carried out by a firm conducting probate work. 'Authorised work' for the purposes of these regulations includes estate administration.~~

The work that can be authorised by accreditation under these regulations is limited to probate work, estate administration, and the administration of oaths. These activities are collectively defined in these regulations as 'authorised legal services work'.

The definition of probate work, and therefore the work that can be authorised by accreditation under these regulations, consists only of preparing papers to apply for a grant of probate or letters of administration. If a firm is asked to prepare papers to oppose a grant of probate, then the client should be requested to seek advice from a suitably authorised person.

Estate administration is an unreserved activity. However, for the purposes of these regulations, w~~When a firm engages in estate administration, and that this work work, it also falls under the definition of "authorised probate legal services work". This means that, these regulatory provisions and specific conduct obligations apply in relation to this work.~~

There are different arrangements in Northern Ireland and Scotland (in the latter case probate is known as 'confirmation'). Thus, a firm cannot undertake probate (or confirmation) work in Northern Ireland and Scotland unless specifically permitted to do so under the law of those countries.

As a licensing authority ICAEW has statutory powers to intervene in the business of firms which it has licensed. These powers and the types of default by a licensed firm (such as breaches of licence conditions or insolvency events) which trigger them are set out in schedule 14 of the Act. ICAEW uses similar powers and applies similar principles as an approved regulator in the case of authorised firms. It is a requirement of the Act that in discharging its regulatory functions, ICAEW, as an approved regulator, must act in a way which is compatible with the regulatory objectives set out in section 1 of the Act, and in the way which it considers most appropriate for the purpose of meeting those objectives.

It is a requirement of the Act that in discharging its regulatory functions, ICAEW, as an approved regulator, must act in a way which is compatible with the regulatory objectives set out in section 1 of the Act, and in the way which it considers most appropriate for the purpose of meeting those objectives.

All individuals who are in charge of, or control the undertaking of, [probate legal services work](#) in an accredited [legal services probate](#) firm must be individually authorised to do so under the Act. That authorisation may have been granted by ICAEW or another approved regulator.

ICAEW must be given full details of any non-authorised person who holds or is expected to hold a material interest (see Regulation 6.2) in a licensed firm or a firm which applies to be licensed, or of any change in the holding of such an interest. Such a holding is subject to approval by ICAEW which may be granted unconditionally or subject to conditions.

[The Act also requires authorised persons to comply with the Legal Ombudsman's Scheme Rules and to notify clients of their rights to make complaints relating to relevant legal services in accordance with these Scheme Rules.](#)

In these regulations, guidance is given to help firms apply the regulations. This is printed in light type and the regulations are in **bold** type with defined terms in ***bold italics***.

1.1 These *regulations* were made originally by the ICAEW Professional [Standards](#) Board pursuant to Clause 16 of the Supplemental Royal Charter of 1948 and Principal By-law 49. They came into force on 14 August 2014 and were amended by the ICAEW Regulatory Board on 23 February 2017 , 1 June 2023 and, most recently, on [XXX\(TBC\)](#)

1.2 These *regulations* only apply to [the grant of probate or letters of administration authorised legal services](#) work in England and Wales.

1.3 These *regulations* apply to *firms* seeking *accreditation* and to *accredited probate legal services* *firms* authorised or licensed under these regulations. The regulations also apply to *principals* and *employees* of the *firm*. In certain instances, the *regulations* continue to apply even if *accreditation* has ceased.

1.4 Any notice or document may be served on ICAEW by sending it to:

Professional Conduct Department
ICAEW
Metropolitan House
321 Avebury Boulevard
Milton Keynes
MK9 2FZ

1.5 Any notice, decision, order or other document which needs to be served on a *firm*, *member*, *legal services affiliate* or other person under these *regulations* will be delivered by hand, or sent by email, fax or post:

- a if it is delivered by hand to the addressee, service will take effect immediately;
- b if sent by email, it will be sent to the most recent email address given by the addressee and service will take effect immediately;
- c if sent by fax, it will be sent to the most recent fax number given by the addressee and service will take effect immediately; or
- d if sent by post, it will be sent to the latest address given by the addressee and service will take effect two *business days* after posting.

DEFINITIONS AND INTERPRETATION

1.6 The words listed below shall have the meanings given:

Accountancy body • ICAEW;

- Institute of Chartered Accountants of Scotland;
- Chartered Accountants Ireland;
- Institute of Chartered Accountants in Australia;
- New Zealand Institute of Chartered Accountants;
- South African Institute of Chartered Accountants;
- Institute of Chartered Accountants of Zimbabwe; or
- Canadian Institute of Chartered Accountants.

Accreditation (includes accredited, accredit)
The process by which *ICAEW* authorises or licenses persons to undertake authorised [probate-legal services](#) work.

Accredited [probate-legal services](#) firm
A *firm accredited* under these *regulations* to conduct authorised [probate-legal services](#) work.

Act
Legal Services Act 2007.

[Administration of oaths](#)
[As defined in Schedule 2 paragraph 8 of the Act](#)

[Appeal Tribunal](#)
The First-tier Tribunal established under the Tribunals, Courts and Enforcement Act 2007

Approved Regulator
A body designated under Schedule 4 of the *Act* in respect of one or more *reserved legal activities*.

Associate
An associate is defined by *Regulation 6.3*.

Authorised firm
A *firm* authorised under these *regulations* to conduct authorised [probate-legal services](#) work.

Authorised individual
A *principal* or *employee* of an *accredited [probate-legal services](#) firm* who is designated under section 4 of these *regulations*.

Authorised person
A person or *firm* authorised or licensed by *ICAEW* or another *approved regulator* in relation to *authorised [probate-legal services](#) work*.

Authorised [Probate-legal services](#) work

- Probate- work: [preparing any probate papers to apply for a grant of probate or letters of administration for the purposes of the law of England and Wales](#).
- Estate Administration: Following a grant of probate or letters of administration, collecting in the assets of an estate, settling the liabilities and distributing the remainder in accordance with a will or letters of administration.
- [Administration of Oaths](#)

Business day
A day when banks are generally open for business (excluding weekends) in England or Wales (as appropriate).

<u>Complainant</u>	<u>A client, or former client of the accredited legal services firm, or a beneficiary of an estate or trust to whom an authorised person provides services.</u>
Conduct Committee	The Conduct Committee of ICAEW appointed in accordance with the bye-laws.
Contact partner	<p>An individual appointed by a <i>firm</i> to:</p> <ul style="list-style-type: none"> • ensure that it has procedures and practices that enable it to comply with its obligations under these regulations; • correspond with ICAEW in relation to the activities governed by these regulations; • give an annual declaration of the firm's compliance with its responsibilities under these regulations in the form from time to time determined by ICAEW; • from time to time supply ICAEW or its agents with information as required; and • ensure that an annual compliance review is undertaken as required under Regulation 3.11. <p>The role of the contact partner is to be responsible for ensuring that the firm complies with these regulations. The contact partner should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions.</p> <p>If one of more of the principals of the firm is an individual, one of those individuals should be the contact partner and it is recommended that they also be an authorised individual.</p> <p>If the firm is a sole practice, the sole practitioner is the contact partner. The Head of Legal Practice is the contact partner in a licensed firm.</p>
Employee	Anyone who carries out work for an <i>accredited legal services firm</i>, but excluding a <i>principal</i>, a subcontractor or a consultant.
Firm	A <i>firm</i> includes an individual, a partnership, a limited liability partnership or any other body corporate which is or seeks to be <i>accredited</i> under these <i>regulations</i> to conduct authorised legal services work.
Head of Finance and Administration	The individual appointed by a <i>licensed firm</i> who is responsible for taking all reasonable steps to ensure that the <i>firm</i> complies with the requirements in <i>Regulation 3.8</i> (clients' assets) and who is not disqualified under the <i>Act</i> from acting as a <i>Head of Finance and Administration</i> and who must report any breach of those requirements to <i>ICAEW</i> as soon as reasonably practicable.

The Head of Finance and Administration (HoFA) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. The HoFA should hold an appropriate qualification to enable the discharge of his duties with competence and skill.

Head of Legal Practice

The **authorised individual** appointed by a **licensed firm** who is responsible for taking all reasonable steps to ensure that:

- the **licensed firm** and its **principals** and **employees** comply with their duties under these **regulations** (other than **regulation 3.8**); and
- **non-authorised persons** do not do anything which causes or substantially contributes to any breach of these **regulations** by the **firm** or by any **authorised person** who is a **principal** or **employee** of the **firm**;

and who is not disqualified under the **Act** from acting as a **Head of Legal Practice** and who must report any breach of those requirements to **ICAEW** as soon as reasonably practicable.

The Head of Legal Practice (HoLP) should be of sufficient seniority and influence within the firm to ensure that others will act on their instructions. They should also have sufficient independence to be able to report matters freely if necessary. The HoLP in a licensed firm is also the contact partner.

ICAEW

The Institute of Chartered Accountants in England and Wales.

Legal Ombudsman

The body appointed by the Office of Legal Complaints under Part 6 of the **Act** to assist with resolving complaints.

Legal Services Board

The body established under Part 2 of the **Act**.

[Probate Legal services affiliate](#)

A person granted **[probate legal services affiliate](#)** status by **ICAEW** for the purpose of these **regulations**.

Legal Services Committee

The **ICAEW** committee responsible for discharging **ICAEW's** functions as set out in these **regulations** or any sub-committee of that committee.

Legal Services Compensation Scheme

The scheme for the payment of grants made in accordance with the Legal Services Compensation Scheme Regulations.

Licensing authority

A body designated under Part 1 of Schedule 10 of the **Act** in respect of one or more **reserved legal activities**.

Licensed firm

A **firm** licensed under these **regulations** to conduct authorised legal services work.

Material interest

A **material interest** is defined by **Regulation 6.2**.

Member

A **member** of **ICAEW** but not including a **[probate legal services affiliate](#)**.

- Principal**
- an individual in sole practice (if the *firm* is a sole practice);
 - a person who is a partner (including both salaried and equity partners) (if the *firm* is a partnership);
 - a member of a limited liability partnership (if the *firm* is a limited liability partnership);
 - a director (if the *firm* is a company);
 - a member of the governing body (if the *firm* is an unincorporated body, other than a partnership); or
 - any individual or person who is held out as being a director, partner, member, or member of the governing body.

Corporate practices or limited liability partnerships may be principals in a firm.

Probate work As defined in Schedule 2 paragraph 6 of the Act – this includes the preparation of papers to apply for a grant of probate or letters of administration and for the purposes of these regulations includes estate administration. Probate work but is restricted by these regulations to non-contentious activities ~~probate work.~~

Register The *register of licensed firms* held by ICAEW in accordance with section 87 of the Act.

Regulations These Legal Services Regulations, as modified or amended from time to time.

Regulatory penalty An amount paid by an *accredited probate legal services firm* by agreement for a breach of these *regulations* which the *accredited probate legal services firm* agrees has been committed.

- Relevant person**
- an *authorised individual*;
 - a *Head of Finance and Administration*;
 - a *Head of Legal Practice*; or
 - any other *principal* or *employee* of an *accredited probate legal services firm*.

Reserved legal activities For the purposes of these Regulations *ICAEW legal services practitioners are authorised to provide the following reserved legal services*

- ~~the exercise of a right of audience;~~
- ~~the conduct of litigation;~~
- ~~reserved instrument activities~~
- probate activities
- ~~notarial activities;~~
- the administration of oaths;

as defined in section 12(1) and Schedule 2 of the *Act*.

Review Committee	The committee appointed under <i>ICAEW's</i> bye-laws with responsibility for reviewing decisions made by <i>ICAEW</i> as specified in these <i>regulations</i> .
Tribunals Committee	The Tribunals Committee of <i>ICAEW</i> appointed in accordance with the bye-laws.

- 1.7 Words and expressions have the meanings given by the *Act* and the Interpretation Act 1978 unless defined above. The definitions in these *regulations* take precedence.
- 1.8 In these *regulations* words importing the singular include the plural and vice versa. Words importing the masculine gender include the feminine and neuter. Words importing the neuter gender include both the masculine and feminine genders. Headings do not affect the interpretation of these *regulations*. These *regulations* will be governed by, and interpreted in accordance with, the laws of England and Wales.
- 1.9 Any references to legislation, regulations, requirements, bye-laws, rules or other documents will apply to any re-enactment, re-issue or amendment.

2 ELIGIBILITY, APPLICATION, CONTINUING OBLIGATIONS AND CESSATION

Applications

- 2.1 A *firm* that wishes to be *accredited* under these *regulations* must apply in the manner decided by *ICAEW*, on a prescribed form. The application must include the following:
- a any information that *ICAEW* may require to assess the ability of the *firm* to carry out *authorised legal services work*;
 - b a statement by the *firm* of how its *accreditation* will promote the objective of improving access to justice;
 - c information on the *firm's* arrangements for diversity monitoring in relation to its *principals* and *employees* and existing data derived from diversity monitoring;
 - d a declaration by the *firm* that it agrees to be bound by these *regulations* and will ensure that it complies with them at all times;
 - e a declaration by the *firm* that it will deal with *ICAEW* in an open and cooperative manner and inform *ICAEW* promptly about anything concerning the *firm* as required by these *regulations*;
 - f an acknowledgement by the *firm* that none of *ICAEW*, its officers, staff, members of its Council or committees, their servants or agents can be held liable to the *firm* in damages for any act or omission arising out of the performance of any of their functions under the *Act*, or connected with the granting of authorisation or a licence, the enforcement of these *regulations* or the monitoring of compliance with these *regulations* in any respect, unless the act or omission is shown to have been in bad faith;
 - g an acknowledgement that *ICAEW* may make enquiries of or about the *firm* as *ICAEW* deems necessary;
 - h an acknowledgement that *ICAEW* may publish, in such manner as it may determine, information about the *firm's* status under these *regulations*; and
 - i an acknowledgement that *ICAEW* may disclose information about the *firm* as set out in *Regulation 2.26*.

Eligibility

2.2 ICAEW may authorise a *firm* only if:

- a** each *principal* in the *firm* is an *authorised person* (or becomes an *authorised person* by decision of ICAEW at the same time as granting authorisation to the *firm*) and if another body is a *principal* in the *firm*, *non-authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body; and
- b** in the case of a corporate body (other than a limited liability partnership) each person who has an interest in the *firm* is an *authorised person* (authorised by ICAEW under these *regulations* or by another *approved regulator*) and if another body has an interest in the *firm*, *non-authorised persons* are entitled to exercise, or control the exercise of, less than 10% of the voting rights in that other body.

The above sets out who is required to be an authorised person under these regulations. Generally, the principals and shareholders in the case of a company must all be authorised persons but certain de-minimis holdings by non-authorised persons are allowed. A firm applying for authorisation may at the same time apply for approval of designation of its principals as authorised individuals as set out in section 4. If a firm is unsure of its eligibility to be authorised or licensed it should contact ICAEW. A person has an interest in a firm if the person holds shares in the body or is entitled to exercise, or control the exercise of, voting rights in the firm.

2.3 If a *firm* does not meet the requirements of Regulation 2.2 ICAEW may license the *firm* only if at least one *principal* in the *firm* is:

- a** an authorised individual; or
- b** authorised by ICAEW under *Regulation 2.2* or authorised by another approved regulator in relation to authorised legal services work; but in either case is not a *licensed firm*.

2.4 Having taken account of the objective of improving access to justice, ICAEW may *accredit* a *firm* only if it is satisfied that:

- c** the *firm* is fit and proper to be *accredited*;
- d** each individual who will undertake, or control the undertaking of, authorised [probate legal services](#) work on behalf of the *firm* is an *authorised individual* and is fit and proper;
- e** the *firm* has appointed a *contact partner* whose name has been given to ICAEW;
- f** in the case of a *firm* applying to be licensed, the *firm* has appointed a *Head of Finance and Administration* and a *Head of Legal Practice* who have consented to act in these roles and whose appointment has been approved by ICAEW;
- g** the *firm* has at least one office in England and Wales from which it undertakes authorised [probate legal services](#) work (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- h** each *principal* who is not an *accredited probate-legal services firm*, a registered auditor, a DPB-licensed firm, a *member* of ICAEW, a member of the Institute of Chartered Accountants of Scotland, a member of Chartered Accountants Ireland or another *approved regulator* holds affiliate status under these *regulations*, ICAEW's Audit Regulations, ICAEW's DPB Handbook, ICAEW's Insolvency Regulations or ICAEW's regulations governing the use of the description 'Chartered Accountants' and general affiliates;
- i** in the case of a *firm* applying to be licensed, any *non-authorised person* who holds a *material interest* in the *firm* is approved by ICAEW under section 6;
- j** in the case of a *firm* applying to be licensed, the *firm* has:

- informed all *principals, employees* and shareholders who are *non-authorised persons* of the duties imposed on them by sections 90 and 176 of the Act; and
- put in place procedures to prevent such persons from improperly influencing the independence and integrity of authorised probate legal services work; and

k the firm has professional indemnity insurance under ICAEW's PII Regulations with a minimum level of indemnity of £500,000 per claim for authorised legal services work. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities.

Section 28 of the Act requires ICAEW to act in a way which is compatible with the regulatory objectives and which it considers most appropriate for the purpose of meeting those objectives. Under section 1 of the Act the regulatory objectives include the objective of improving access to justice. The application form contains guidance to firms on how their application may promote this objective.

2.5 ICAEW may:

- grant the application;
- reject the application;
- grant the application subject to restrictions or conditions; or
- postpone consideration of the application.

Under the Act, ICAEW has a period of six months (beginning when all the information required on the application form is received) to make a decision on an application. However, under Regulation 2.5d, ICAEW may decide that it can only properly consider a firm's application after it has additional information about the firm. ICAEW may decide this is best achieved by a visit to the firm and a charge may be made for this. If it is necessary to seek additional information, ICAEW may, before the expiry of six months, issue an extension notice to the applicant extending the period of time taken to reach a decision to nine months. The extension notice must set out the reasons for the extension.

If ICAEW rejects or grants the application subject to restrictions or conditions, it must explain in writing to the applicant the reasons for its decision. Decisions will come into effect as set out in section 10.

A firm can apply for a review of a decision to reject accreditation or to grant it subject to restrictions or conditions. Details of the review process are in section 11.

2.6 ICAEW may at any time vary or end a restriction or condition made under Regulation 2.5.

Continuing obligations

2.7 An accredited probate legal services ~~legal services~~ firm and its *principals* and *employees* must at all times:

- comply with these *regulations*, with any condition of the *firm's accreditation* and with any other relevant regulatory arrangements (and be able to satisfy ICAEW as to such compliance on request);
- not do or permit anything which causes or substantially contributes to any breach of these *regulations* by the *firm* or by any *authorised individual* who is a *principal* or *employee* of the *firm*;
- comply with ICAEW's PII Regulations;

- deal with *ICAEW* in an open and cooperative manner;
- if an *authorised firm*, have a *contact partner* (in the case of a sole practitioner, that person will be the *contact partner*);
- (if a *licensed firm*) have a *Head of Legal Practice* who is also the *contact partner*;
- (if a *licensed firm*) have a *Head of Finance and Administration*;
- ensure that each individual who undertakes, or controls the undertaking of, authorised [probate-legal services](#) work on behalf of the *firm* is an *authorised individual*;
- have at least one office in England and Wales from which the *firm* undertakes authorised [probate-legal services](#) work (unless it is a company or limited liability partnership whose registered office is in England or Wales);
- inform *ICAEW* as soon as practicable but not later than 10 *business days* after any change to the:
 - i *accredited* [probate-legal services](#) *firm's* registered address;
 - ii name or trading names of the *accredited* [probate-legal services](#) *firm*;
 - iii address(es) of the *accredited* [probate-legal services](#) *firm's* offices;
 - iv *accredited* [probate-legal services](#) *firm's* principals;
 - v name or principal business address of any of the *accredited* [probate-legal services](#) *firm's* principals;
 - vi name of the *contact partner*;
 - vii name of the *Head of Finance and Administration* who must be approved in that capacity by *ICAEW*;
 - viii name of the *Head of Legal Practice* who must be approved in that capacity by *ICAEW*; or
 - ix in the case of a body corporate (but excluding a limited liability partnership):
 - the name or address of any shareholder or anyone with any interest in the shares; and
 - the number of shares held by a shareholder or in the number of shares in which anyone has an interest.
- inform *ICAEW* as soon as practicable but not later than 10 *business days* after any event affecting the *firm's* eligibility to be *accredited*;
- in the case of a *licensed firm*, inform *ICAEW* as soon as practicable but not later than 10 *business days* after any non-*authorised person* acquires or ceases to hold, or increases or decreases a holding of, any interest in the *firm* which, either before or after the change, qualifies as a *material interest*;
- pay any of the charges required by *ICAEW* as set out in *Regulation* 2.14, 2.15 and 2.16. Such charges may be levied at any time, including after the termination of *accreditation* provided they relate to a period before the date of termination;
- respond, when required, to enquiries made by *ICAEW* (whether by writing, visiting the *accredited legal services firm's* offices or by any other method) about the *firm's* application or its activities as an *accredited* [probate-legal services](#) *firm*;
- arrange for the provision of any information about the *firm* or its clients (and to allow access to the *firm's* systems and personnel) that *ICAEW* may request about the activities as an *accredited legal services firm*, whether that information is held by:
 - i the *accredited* [probate-legal services](#) *firm*;

- ii any *principal* or *employee* (or former *principal* or former *employee*) of the accredited ~~probate~~ legal services firm;
 - iii any non-*authorised person* who holds shares in the accredited ~~probate~~ legal services firm, or is entitled to exercise, or control the exercise of, voting rights in the accredited legal services firm.
 - iv any non-*authorised person* who is entitled to exercise, or control the exercise of, at least 10% of the voting rights in 'A', where A is a *principal* of the accredited ~~probate~~ legal services firm or holds shares in the accredited ~~probate~~ legal services firm, or is entitled to exercise, or control the exercise of, voting rights in the accredited ~~probate~~ legal services firm;
- p. provide ICAEW with a periodic return in relation to its activities as an- accredited legal services -firm and provide the following information on complaints received about its legal services during the period:
- the number of complaints received
 - the category of complaints received
 - the number of complaints resolved within 8 weeks.
- q. subject itself and all its *principals* to any monitoring, inspection or review process specified by ICAEW, including its Practice Assurance scheme; including its Practice Assurance scheme;
- send any notice or other document to be served on ICAEW in the manner set out in *Regulation 1.4*, or as last notified to the accredited ~~probate~~ legal services firm;
 - monitor the diversity of the accredited ~~probate~~ legal services firm's principals and employees, and publish the findings of the monitoring, in the manner and format prescribed by ICAEW from time to time;
 - publish details of the total fees it charges for the service it provides to consumers, or an estimate of the likely fees for services it provides, including VAT and disbursements (if applicable). It must provide an explanation of the basis upon which fees are calculated, for example fixed fee or an hourly rate / time spent. It must provide an explanation of what services are covered by the published fee;
 - make readily available to consumers the following service information:
 - a clear and brief description of the services it offers;
 - a description of the key stages of a service; and
 - an indication of likely timescales of the service and any likely affecting factors.
 - in accordance with its duty under the bye-laws to investigate complaints, make the following information readily available to consumers:
 - details of its internal complaints procedure;
 - details of how and when its clients can make a complaint to ICAEW and / or the Legal Ombudsman and provide this information at appropriate stages during the engagement.

provide the following regulatory information:

- that it is regulated by ICAEW for ~~probate~~ legal services.
- details of the compensation arrangements, namely the consumer's ability to claim from the ICAEW compensation fund; and
- that it has professional indemnity insurance (PII).

2.8 An accredited ~~probate~~ legal services firm may not have as a *principal* or *employee* a person who is disqualified pursuant to section 99 of the Act from being a *principal* or *employee* of a body licensed under Part 5 of the Act.

As is reflected in Regulation 5.5, the Legal Services Board maintains a list of persons who have been disqualified from working in licensed firms by the approved regulators under section 99 of the Act. Firms are advised to refer to this list, which can be accessed on the LSB's website, before submitting their application for accreditation.

2.9 If an accredited **probate-legal services** firm ceases to have any *principal* or *employee* who is an *authorised individual* the firm will immediately cease to undertake **probate authorised legal services** work until it has notified *ICAEW* of the name of another *principal* or *employee* who meets the requirements of section 4.

Professional Indemnity Insurance and compensation

2.10 An accredited **probate-legal services** firm shall only carry out *authorised legal services* work if it has professional indemnity insurance under *ICAEW*'s PII Regulations with a minimum level of indemnity of £500,000 per claim. **This applies only to authorised legal services work. This may form part of, or be in addition to, the minimum limit of indemnity required for the firm's other activities.**

If a firm is conducting authorised work and the value of the estate is likely to exceed the level of the firm's own PII, firms must notify their clients in writing at the beginning of the engagement that their PII is capped and the level of cover.

2.11 An accredited **probate-legal services** firm or firm that was previously accredited must comply with the regulations of *ICAEW*'s *Legal Services Compensation Scheme*.

Modification

2.12 An accredited **probate-legal services** firm that wishes to modify the terms of its *accreditation* must apply in the manner decided by *ICAEW*. The application must include the following:

- a the terms of the proposed modification;
- b the reasons for proposing the modification; and
- c any information that *ICAEW* may require in connection with the application.

2.13 *ICAEW* may:

- a modify the *accreditation* in the terms of the application;
- b modify the *accreditation* in such other terms as it considers appropriate;
- c reject the application; or
- d postpone consideration of the application.

If *ICAEW* rejects the application for modification, it will inform the accredited legal services firm of its reasons in writing within **ten 40** business days. A firm can apply for a review of a decision to reject modification or to grant it subject to restrictions or conditions. Details of the review process are in section 11. A charge may be made for dealing with such an application.

Fees

2.14 An accredited **probate-legal services** firm must pay such registration fees (to include any costs that *ICAEW* is required or has agreed to pay to any other person or body exercising a regulatory or supervisory role in relation to it) as *ICAEW* determines, at the times and at the rates set by it. The first registration fee is due when a firm applies to be accredited under these regulations to conduct **authorised probate-legal services** work. An application fee is also payable with this first fee.

If a firm's application is not accepted, the first registration fee will be refunded.

2.15 ICAEW may charge a *firm* or an accredited [probate legal services](#) firm a fee if ICAEW has performed additional work. The *Legal Services Committee* will decide how much the fee will be.

Additional work may be performed, for example in:

- obtaining information for or about the firm or accredited [probate legal services](#) firm;
- collecting any charges due under these regulations;
- responding to enquiries or complaints regarding the accredited [probate legal services firm](#); ~~firm~~.
- reviewing the continuation of the firm's accreditation;
- visiting the accredited legal services firm where ICAEW has had to make a second or subsequent visit to the accredited legal services firm as a result of an earlier visit; or
- considering an application for modification under Regulations 2.12 and 2.13.

2.16 An accredited [probate legal services](#) firm must pay any levy for ICAEW's *Legal Services Compensation Scheme* (whether a periodic contribution or special levy) as ICAEW may decide from time to time. This includes levies raised after the *firm's accreditation* has ceased but excludes levies relating to claims in respect of services provided by any *firm* wholly after the date of termination of the *firm's accreditation*.

2.17 If an accredited [probate legal services](#) firm has not paid any amounts due under *Regulations 2.14, 2.15 or 2.16* within 60 days of the invoice date, ICAEW may withdraw its *accreditation*.

2.18 Any amounts unpaid under *Regulations 2.14, 2.15 or 2.16* may be recovered as a debt to ICAEW.

Dispensations

2.19 The accredited [probate legal services](#) firm must inform ICAEW in writing within 10 *business days* of a situation arising that may indicate that the accredited [probate legal services](#) firm cannot, or expects not to be able to, comply with any of these *regulations*. The notification must state what has happened and the action that the accredited [probate legal services](#) firm proposes to take.

2.20 ICAEW may grant the accredited [probate legal services](#) firm a dispensation, of no more than 90 days, from the requirement to comply with a *regulation* where, in response to a written request, it considers it reasonable to do so having regard to the public interest and the interests of any client.

2.21 If ICAEW rejects the application for a dispensation, it will inform the accredited [probate legal services](#) firm of its reasons in writing within ten *business days*. The accredited [probate legal services](#) firm will then be entitled to apply for a review of the decision in accordance with the procedures set out in section 11.

It is not expected that dispensations will be readily granted and any firm applying for a dispensation must clearly state why the dispensation is needed and what it is doing to remedy the situation.

Cessation of accreditation

2.22 A firm will cease to be an accredited [probate legal services](#) firm if:

- a ICAEW accepts an application from the *firm* to cancel its *accreditation*;
- b the *firm* becomes licensed by another *licensing authority*;
- c the *firm* ceases to exist; or
- d ICAEW withdraws *accreditation* under *regulation 10.3*.

If a firm's accreditation is to be withdrawn, the firm may ask for a review of the decision under the procedures in section 11. Withdrawal at the firm's request, because the firm no longer exists or it becomes licensed by another licensing authority, cannot lead to a review. If a firm which is no longer accredited wishes to apply again it can do so in the normal manner.

2.23 If a firm is no longer an accredited ~~probate-legal services~~ firm:

- a it must still respond to enquiries (made in writing or by visiting a firm's office or offices) from ICAEW in connection with any circumstance that relates to these regulations during the time that the firm was accredited and must co-operate with the work of the Legal Ombudsman, including the provision of papers and the payment of any remedies ordered;
- b disciplinary action (including a regulatory penalty) may still be taken for:
 - i. any failure to comply with these regulations during the time it was accredited;
 - ii. any failure to comply with any regulation continuing to have effect notwithstanding that accreditation has ceased;
 - iii. any failure to keep confidential any information received in the course of authorised ~~probate-legal services~~ work.

2.24 ICAEW's right to recover any amounts due from a firm under these regulations does not end when a firm is no longer accredited.

The effect of Regulation 2.23 is that a firm cannot escape disciplinary action by applying to have its accreditation withdrawn. If, in the process of withdrawing accreditation, ICAEW places a condition on a firm and that condition is broken then disciplinary action can be taken. There is a continuing obligation to deal with ICAEW's enquiries and requests for information under Regulation 2.23. Finally, under Regulation 2.24, applying to have accreditation withdrawn does not remove the firm's obligation to pay outstanding fees.

Regulatory conflicts

2.25 If an accredited ~~probate-legal services~~ firm is of the view that any other regulatory requirement to which it or an authorised individual is subject, including the requirements of another approved regulator, may cause it to cease complying with these regulations, it must inform ICAEW within 10 business days of becoming aware of the conflict.

Firms should note that section 176 of the Act requires individuals conducting ~~probate-legal services~~ work to comply with the regulatory arrangements of the approved regulator by whom they are regulated. For example, in the case of a solicitor working within an accredited ~~probate-legal services~~ firm this will be the Solicitors Regulation Authority (SRA).

2.26 ICAEW reserves the right to pass information (directly or indirectly) about an accredited ~~probate-legal services~~ firm to any ICAEW committee or person or body undertaking regulatory, disciplinary, redress or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

3 CONDUCT OF AUTHORISED LEGAL SERVICES WORK

- 3.1 An **accredited ~~probate~~ legal services firm** must act in accordance with the fundamental principles set out in the Code of Ethics issued by ICAEW's Council and must make arrangements so that it, its *principals* and *employees* comply with these *regulations* and the professional principles set out in the *Act* to:
- a act with independence and integrity;
 - b maintain proper standards of work;
 - c act in the best interests of their clients; and
 - d keep the affairs of clients confidential.

Firms of different sizes and with different types of clients will adopt different procedures to comply with these regulations and to act in accordance with the fundamental principles set out in the Code of Ethics. However, all firms will be aiming to provide a high quality and cost effective service, which complies with these regulations. For most firms this means having procedures for doing authorised work, and checks to make sure that the procedures are followed.

- 3.2 An **accredited ~~probate~~ legal services firm** shall only carry out **authorised legal services work** which it is competent to perform.
- 3.3 An **accredited ~~probate~~ legal services firm** must make sure that only **authorised individuals** undertake, or control the undertaking of, **authorised ~~probate~~ legal services work** on behalf of the *firm*.
- 3.4 An **accredited ~~probate~~ legal services firm** must make sure that all *principals* and *employees* undertaking **authorised legal services work** are, and continue to be, competent to carry out the **authorised legal services work** for which they are responsible.

The above places the responsibility on the firm to ensure that its principals and employees who undertake authorised legal services work are suitably competent in doing this work and are up to date with current developments.

- 3.5 An **accredited ~~probate~~ legal services firm** must make arrangements to prevent anyone who is not an **authorised individual** in the *firm*, or working under the supervision of that person, from having any influence which would be likely to affect the independence or integrity of **authorised legal services work**.

These arrangements need to include informing new principals, employees or shareholders who are non-authorised persons of the duties imposed on them by sections 90 and 176 of the Act.

- 3.6 An **accredited ~~probate~~ legal services firm** shall ensure that it is in full agreement with its clients as to the nature, scope and terms of the **authorised legal services work** which is or may be provided and that it retains evidence of this agreement.

The best way to obtain and record this agreement is by using an engagement letter. This could also deal with a firm's obligations under section 330 of the Code of Ethics to notify clients of the basis for charging fees. It could draw the client's attention to the arrangements for continuing the provision of authorised legal services work (see Regulation 3.12) and the complaints procedures established under section 7.

As a matter of best practice and in order to reduce the likelihood of future confusion and complaints, firms should also outline clearly for clients at the beginning of the engagement what is likely to occur and the nature and scope of the work that will be carried out, as well as the costs involved. They should also provide information to enable their clients actively to manage their costs, including being

prepared to explain to clients aspects of their work as it progresses and provide them with revised choices and costs estimates if the original estimates are likely to be exceeded.

The client should not be put under pressure by the firm to accept terms of engagement that may not be in accordance with their wishes.

3.7 The ~~accredited probate~~ legal services firm shall ensure that clients are advised in writing of the compensation arrangements at the beginning of the engagement and the time scales for making applications to the *Legal Services Compensation Scheme*.

It is recommended that firms use the following paragraph:

'In the unlikely event that we cannot meet our liabilities to you, you may be able to seek a grant from ICAEW's Legal Services Compensation Scheme. Generally, applications for a grant must be made to ICAEW within 12 months of the time you became aware, or reasonably ought to have become aware, of the loss. Further information about the scheme and the circumstances in which grants may be made is available on ICAEW's website: icaew.com/probate.

3.8 If an ~~accredited probate~~ legal services firm receives any property in connection with *authorised work*, details of the property received should be recorded. The firm should take all reasonable steps to ensure that such property is kept safely. Where the property is money this should be dealt with in accordance with ICAEW's clients' money regulations, except that monies received in connection with *authorised work* must be kept separate from other clients' monies.

3.9 Any property held by an ~~accredited probate~~ legal services firm must only be released on the client's written instructions and a receipt obtained.

Firms should consider carefully whether to hold property in connection with authorised legal services work. It is often the case that the value of such property may be unclear but to safeguard it properly a firm should check that it has appropriate insurance cover. A receipt should be given when any property is received and transferred to a third party.

3.10 An ~~accredited probate~~ legal services firm shall ensure that it has appropriate records of *authorised work* undertaken on behalf of clients.

Records should evidence the work undertaken on behalf of clients under these regulations, plus any specific instructions from the client. The records do not have to be on paper but could be held on microfilm or on computers. Whatever method of storage is used, the firm must keep a mechanism for gaining access to those records.

It is likely that ICAEW will only be satisfied if the firm keeps records relating to work performed under these requirements for at least 6 years. Firms should bear in mind that some legislation requires records to be retained for longer.

3.11 An ~~accredited probate~~ legal services firm must:

- a confirm on request that it meets the requirements of these *regulations* and supply such evidence as ICAEW may require to support such confirmation; and**
- b ensure that it conducts a review, at least annually, to consider whether systems it has maintained have been adequate to enable it to:**
 - i comply with these *regulations* and to confirm its compliance with these *regulations* when requested by ICAEW; and**
 - ii prepare any return required under *Regulation 2.7p*.**

The annual compliance review checks whether a firm has complied with these regulations.

3.12 If an accredited probate-legal services firm ceases to undertake authorised probate legal services work then there must be arrangements in place to protect the interests of those clients for whom it is undertaking such work.

Arrangements must be in place in case a firm ceases to undertake authorised legal services work. These arrangements are to protect the interests of clients and the firm may need to make some arrangements on a contingency basis.

Where a firm is ceasing to conduct authorised probate-legal services work, an orderly wind down or transfer of work to an identified successor firm may be arranged. However, particularly where the firm is a sole practitioner, additional measures will need to be in place to protect the interest of clients in the event of the death or incapacity of the practitioner. This may simply be an arrangement for another person to access the firm's records and then make arrangements for the authorised legal services work to be transferred to another probate legal services practitioner.

The firm should provide details of these arrangements within an engagement letter or similar. A suggested wording is:

'If, for any reason, I am unable to run my practice, I have made arrangements for the completion of any unfinished ~~probate or estate administration~~ legal services work to clients. [Add details of the person that the client can contact.]'

4 AUTHORISED INDIVIDUALS, HEADS OF FINANCE AND ADMINISTRATION AND HEADS OF LEGAL PRACTICE

All individuals who undertake, or control the undertaking of, authorised probate-legal services work on behalf of an accredited legal services firm must be individually authorised to do so under the Act by ICAEW or another approved regulator.

In an authorised firm, all the principals will need to be authorised persons. A sole practitioner must be an authorised individual and the firm's contact partner. In other authorised firms it is recommended that one of the principals be the contact partner.

A licensed firm must appoint a Head of Finance and Administration and Head of Legal Practice who have specific responsibilities and important duties as set out in Regulation 1.6. The Head of Legal Practice must be an authorised individual and the firm's contact partner.

In all firms (including sole practices) the contact partner can designate appropriately qualified principals or employees as authorised individuals as set out in the following regulations.

Authorisation and withdrawal of authorisation

4.1 Subject to Regulation 4.4 the contact partner (or the person who is intended to be the contact partner upon accreditation) may designate as an authorised individual any of the accredited probate-legal services firm's principals or employees (or any of the principals or employees of a firm applying for accreditation) who:

- a is a member of an accountancy body and has provided evidence to ICAEW of attendance at a course and assessment, which covered at least the following subjects:**
 - a general introduction to the Act as it applies to *probate work*;
 - a general introduction to the law of property, equity and trusts;
 - the need for a grant and its effect;

- the types of grant – probate, letters of administration;
- who can apply for probate / letters of administration;
- consideration of the validity, format and content of wills;
- intestacy provisions;
- obtaining information about the assets and liabilities of the estate and their valuation;
- finalising of inheritance tax, corrective accounts and obtaining a clearance certificate from HM Revenue and Customs;
- the completion of papers for an application for a grant;
- the administration of the estate; and
- ~~completion of administration of the oaths, oath and the filing of papers;~~

b holds a qualification issued or recognised by an *approved regulator* (other than *ICAEW*) that entitles the individual to undertake *authorised probate-legal services work*; or

c is otherwise qualified to undertake *authorised probate-legal services work* so as to satisfy *ICAEW* that it should approve his designation as an *authorised individual*.

Only principals and employees of a firm are eligible to become ‘authorised individuals’, not subcontractors or consultants.

There are no prescribed courses for the purpose of Regulation 4.1a but the firm or member must show that the course covered the above topics. Courses can include those where the learning is computer based ‘e-learning’, including training delivered over the internet.

The learning outcomes of the course must be assessed and the method of assessment can include objective testing. The pass mark for an assessment must be no less than 50%.

As the course outline set out in Regulation 4.1a builds on the existing qualifications and skills of a chartered accountant, only members of the accountancy bodies as defined in Regulation 1.6 may be eligible to become accredited for authorised legal services work through this route.

Applications in respect of individuals under Regulation 4.1c will be decided on a case by case basis, having regard to the sufficiency of the individual’s qualification to undertake authorised legal services work.

4.2 Subject to *Regulation 4.4* and with the agreement of the individual, a *licensed firm* must designate an *authorised individual* to be the *Head of Legal Practice*.

4.3 Subject to *Regulation 4.4* and with the agreement of the individual, a *licensed firm* must designate an individual to be the *Head of Finance and Administration*.

4.4 Any designation in accordance with *Regulation 4.1, 4.2* or *4.3* shall not be effective until an application has been made to *ICAEW* in a form specified by it and the application has been approved and this may be approved with conditions or restrictions.

Where a firm wishes to be accredited, and any principals or employees are not authorised individuals, the applications by the firm for accreditation and for approval of designation of authorised individuals should be made (and will be dealt with) simultaneously.

4.5 *ICAEW* may only approve a person’s status as an *authorised individual, Head of Legal Practice* or *Head of Finance and Administration*, if it is satisfied that that individual is a fit and proper person.

4.6 *ICAEW* may at any time vary or end a restriction or condition made under *Regulation 4.4*.

Cessation

4.7 *Authorised individual* status will cease if:

- a the *firm* in which the individual is an *authorised individual* ceases to be an *accredited legal services firm*;
- b the individual ceases to be a *principal* or *employee* in the *accredited legal services firm* to which the grant of *authorised individual* status related;
- c an event occurs which under ICAEW's Charter, bye-laws or other regulations the individual would cease to be a *member* or an affiliate;
- d the *contact partner* notifies ICAEW that the individual is no longer an *authorised individual*; or
- e ICAEW withdraws *authorised individual* status.

Firms are reminded to inform ICAEW of any changes to the authorised individuals of the firm.

4.8 *Authorised individual* status will not cease under Regulation 4.7a or 4.7b if:

- a the *accredited [probate legal services](#) firm* in which the *authorised individual* is a *principal* or *employee* merges with or is acquired by another *accredited [probate legal services](#) firm*; or
- b the *authorised individual* leaves the *accredited [probate legal services](#) firm* in which he is a *principal* or *employee* and immediately becomes a *principal* or *employee* in another *accredited [probate legal services](#) firm*;

provided that ICAEW is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and *authorised individual* status withdrawn.

4.9 Status as a *Head of Legal Practice* or a *Head of Finance and Administration* will cease if:

- a the *firm* to which the status relates ceases to be an *accredited [probate legal services](#) firm*;
- b the individual ceases to be a *principal* or *employee* in the *accredited [probate legal services](#) firm* to which the status relates;
- c an event occurs which under ICAEW's Charter, bye-laws or other regulations the individual would cease to be a *member* or an affiliate;
- d the *firm* or individual notifies ICAEW that the individual no longer consents to hold that status; or
- e ICAEW disqualifies the person from holding that status under Regulation 5.1.

4.10 If an individual is no longer an *authorised individual*, a *Head of Finance and Administration* or a *Head of Legal Practice* disciplinary action under section 12 (including the imposition of a *regulatory penalty*) may still be taken for any failure to comply with these *regulations*.

Decisions under this section will come into effect as set out in section 10. The person may request a review (with subsequent right of appeal) under section 11.

Section 12 applies ICAEW's disciplinary arrangements to breaches of these regulations by an authorised individual, a Head of Finance and Administration or a Head of Legal Practice. Regulation 4.10 provides that disciplinary action may be taken after a person has ceased to hold this status.

5 DISQUALIFICATION

The following regulations set out the circumstances in which a person may be disqualified under section 99 of the Act from acting as a Head of Legal Practice or Head of Finance and Administration, or from being a principal or an employee of any licensed firm. This is liable to occur in specific situations identified in the Act as detailed below.

- 5.1** If both of the conditions set out in *Regulation 5.2* and *5.3* are satisfied, *ICAEW* may disqualify a person from:
- a** acting as the *Head of Legal Practice* of any licensed firm;
 - b** acting as the *Head of Finance and Administration* of any licensed firm;
 - c** being a *principal* of any licensed firm; or
 - d** being an *employee* of any licensed firm.
- 5.2** The first condition referred to in *Regulation 5.1* is that the person, intentionally or through neglect:
- a** has breached a duty to which the person is subject:
 - as a *Head of Legal Practice* by section 91 of the Act;
 - as the *Head of Finance and Administration* by section 92 of the Act;
 - as a regulated person by section 176 of the Act (within the meaning of that section); or
 - as a *non-authorised person* by section 90 of the Act; or
 - b** has caused, or substantially contributed to, a significant breach of the *licensed firm's accreditation*.
- 5.3** The second condition referred to in *Regulation 5.1* is that *ICAEW* is satisfied that it is undesirable for the person to engage in the activity or activities referred to in *Regulation 5.1*.
- 5.4** Upon the application of any person so disqualified under *Regulation 5.1*, *ICAEW* may, if the second condition referred to in *Regulation 5.3* is no longer satisfied, decide that a person's disqualification shall cease to be in force on a date specified in the decision.
- 5.5** *ICAEW* will notify the *Legal Services Board* within 7 days of any decision under *Regulation 5.1* that a person should be disqualified, of the results of any review of such a decision under *Regulation 11.3* and of any decision under *Regulation 5.4* that a person's disqualification should cease to be in force.

If *ICAEW* disqualifies a person as set out above, the decision will come into effect as set out in *Regulation 10.10*. The person may request a review (with subsequent right of appeal) under section 11.

6 OWNERSHIP OF LICENSED FIRMS

This section only applies to licensed firms.

The following regulations set out the requirements where any non-authorised person holds or proposes to hold a material interest in a licensed firm.

Firms applying to be licensed must provide full details of any non-authorised person who holds or is expected to hold a material interest, even if it becomes aware of this after submitting the application.

Licensed firms must also inform ICAEW if any non-authorised person acquires or is expected to acquire a material interest, or if there is any change in the extent to which any interest in the firm is held by a non-authorised person. ICAEW will need to approve any non-authorised persons holding or intending to hold a material interest, and changes to the firm's ownership structure may affect its eligibility to be licensed.

ICAEW will decide whether to grant approval of the holding under this section. Approval may be granted unconditionally or subject to conditions as set out in these regulations.

If ICAEW objects to a holding or decides to permit it subject to conditions, an applicant or the non-authorised person may request a review (with subsequent right of appeal) under section 11.

As set out in Regulation 6.2 there are different kinds of material interest. If ICAEW has approved a non-authorised person to hold a specific kind of material interest and that person then acquires a different kind of material interest, this needs to be approved as set out above. No approval is needed if an existing material interest is increased or decreased but notification under Regulation 2.7I is required.

6.1 A non-authorised person may not hold a material interest in a licensed firm without a grant of approval by ICAEW.

6.2 A person holds a material interest in a body (B) if the person:

- a. holds at least 10% of the shares in B;
- b. is able to exercise significant influence over B's management by virtue of the person's shareholding in B;
- c. holds at least 10% of the shares in a parent undertaking (P) of B;
- d. is able to exercise significant influence over P's management by virtue of the person's shareholding in P;
- e. is entitled to exercise, or control the exercise of, voting power in B which, if it consists of voting rights, constitutes at least 10% of the voting rights in B;
- f. is able to exercise significant influence over B's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in B;
- g. is entitled to exercise, or control the exercise of, voting power in P which, if it consists of voting rights, constitutes at least 10% of the voting rights in P; or
- h. is able to exercise significant influence over P's management by virtue of the person's entitlement to exercise, or control the exercise of, voting rights in P.

Regulation 6.2 sets out the different kinds of material interest that require ICAEW's approval.

6.3 For the purposes of this section, the interest held by a person in a firm will consist of the total of the interest held by the person and the interest held by any of his associates, and a person's associate is defined as:

- a the person's spouse or civil partner;

- b the person's child or stepchild if aged under 18;
- c the trustee of any settlement under which the person has a life interest in possession;
- d an undertaking of which the person is a director;
- e any employee of the person;
- f any partner in a firm (other than the *licensed firm*) of which the person is a partner;
- g if the person is an undertaking, any director or subsidiary undertaking or any director or employee of such subsidiary undertaking;
- h any person with whom the person has an agreement or arrangement regarding the acquisition, holding or disposal of any share or interest in the shareholding or voting rights referred to in *Regulation 6.2*; or
- i any person with whom the person has an agreement or arrangement to act together in exercising their voting power in relation to the shareholding or voting rights referred to in *Regulation 6.2*.

Acquisition of a material interest before a firm is licensed

6.4 A *firm* which applies to *ICAEW* to become a *licensed firm* must:

- a identify in the application any *non-authorised person* who holds, or is expected when the *firm* has been licensed to hold, an interest to which *Regulation 6.1* applies;
- b identify in the application the kind of interest which is so held or expected to be held;
- c in any such case, inform the *non-authorised person* that *ICAEW* may require the person to provide *ICAEW* with documents and information and that failure to comply with such a requirement is a criminal offence; and
- d inform *ICAEW* of any change in the identity of such *non-authorised person* or the kind of relevant interest so held or expected to be held occurring after the application but before the *firm* is licensed, such information to be given in writing within seven days of the occurrence of such change or, if later, the day on which the *firm* becomes aware of such change.

Firms must make any non-authorized person aware of the importance of the requirement to provide ICAEW with documents and information and ensure that the person understands that failure to comply would make them guilty of a criminal offence under paragraph 14 of schedule 13 to the Act, which is punishable by a fine and/or imprisonment.

An applicant who fails to comply with *Regulation 6.4c* is also guilty of an offence under paragraph 13 of schedule 13 to the Act, which is punishable by a fine.

6.5 *ICAEW* will not license the *firm* unless it grants approval to the holding of the *non-authorized person* either unconditionally or subject to conditions.

6.6 In deciding whether to grant approval to the holding of the *non-authorized person*, *ICAEW* may require the person to provide it with any documents or information and will have regard to all relevant circumstances including:

- a the probity and financial position of the person and any person listed in *Regulation 6.3*;
- b whether the person and any person listed in *Regulation 6.3* has been disqualified (by *ICAEW* under section 5 of these *regulations* or by any other

licensing authority) from acting as a Head of Legal Practice, a Head of Finance and Administration, a principal or an employee of any licensed body; and

- c** whether the person or any person listed in ***Regulation 6.3*** has been named in a list maintained by the Legal Services Board of persons in respect of whom a ***licensing authority*** has objected to or imposed conditions on the holding of a ***material interest***, or of persons who acquire a holding of a ***material interest*** exceeding a limit specified in the licensing rules of any ***licensing authority***.

In determining whether an applicant (together with their associates) is fit and proper, ICAEW will have regard to whether they have previously been disqualified under section 99 of the Act, and whether any other licensing authority has previously objected to, or imposed a condition on, their holding of a material (or other restricted) interest in a licensed body.

6.7 ICAEW may grant approval to the holding of the non-*authorised person* unconditionally if it is satisfied that:

- a** the person's holding of the ***material interest*** does not compromise the regulatory objectives set out in section 1 of the ***Act***;
- b** the person's holding of the ***material interest*** does not compromise compliance by ***authorised persons*** or the ***principals*** or ***employees*** of the ***firm*** with these ***regulations*** or with any of ***ICAEW's*** regulatory arrangements; and
- c** the person is a fit and proper person to hold the ***material interest***.

6.8 If ICAEW is not satisfied as required by *Regulation 6.7* it may:

- a** grant approval to the holding of the non-***authorised person*** subject to conditions if it is satisfied that compliance with the conditions makes this appropriate; or
- b** object to the holding.

6.9 Before deciding either to grant approval to the holding of the non-*authorised person* subject to conditions or to object to the holding, ICAEW will:

- a** give written notice of the proposed objection or conditions, with reasons for it, to the applicant for the licence and to the non-***authorised person***, explaining the nature of any proposed conditions and stating that representations may be made to ***ICAEW*** within 28 days;
- b** consider any representations if made within the time specified by paragraph (a) above; and
- c** notify the applicant for the licence and the non-***authorised person*** as soon as reasonably practicable of any objection or any conditions imposed, with reasons.

In all such cases the notice will explain the effect of ICAEW's enforcement powers under Part 5 of Schedule 13 of the Act.

Acquisition of material interest after issue of licence

These regulations impose duties on non-authorized persons who acquire or propose to acquire a material interest in a firm which is already licensed. A failure, with knowledge of the relevant facts, to comply with any of these duties to notify is a criminal offence punishable with a fine.

Licensed firms should ensure that any non-authorized person who acquires or proposes to acquire a material interest in the firm is aware of the obligation to provide such documents or information as ICAEW may require. Failure to comply with this obligation is a criminal offence punishable by a fine and/or imprisonment.

- 6.10** If a non-authorized person who proposes to take a step which would result in his acquiring a *material interest* in a licensed firm or, if he already has any *material interest* in the firm, an additional kind of *material interest* in the firm, then he must:
- a give written notification of the proposal to the *licensed firm* and to *ICAEW*; and
 - b must not take the proposed step unless *ICAEW* has granted approval of his holding the *material interest*.

As set out in Regulation 6.2 there are different kinds of material interest. If ICAEW has previously approved a non-authorized person to hold a specific type of material interest, and that person then acquires a different kind of material interest, this needs to be approved as set out above.

- 6.11** If a person only becomes aware of the notification requirements referred to in *Regulation 6.10* after making such a proposal, he must give written notification of the proposal to the *licensed firm* and to *ICAEW* within 7 days of becoming aware of them and before taking the proposed step.
- 6.12** A non-authorized person who acquires a *material interest* in a licensed firm without taking a step as referred to in *Regulation 6.10* must give written notification of the acquisition to the *licensed firm* and to *ICAEW* within 7 days of becoming aware of the acquisition.
- 6.13** When *ICAEW* receives a notification under any of *Regulations 6.10, 6.11* or *6.12*, or if it becomes aware that a person has failed to comply with an obligation to make such a notification, it may require the person to provide it with any documents or information and, within 90 days of the notification, will decide whether to:
- a approve the person's holding unconditionally;
 - b warn the person that it proposes to approve the holding subject to conditions;
 - c approve the holding subject to conditions;
 - d warn the person that it proposes to object to the holding; or
 - e object to the holding.
- 6.14** *ICAEW* may grant approval to the holding of the non-authorized person unconditionally if it is satisfied of the matters specified in *Regulation 6.7*.
- 6.15** If *ICAEW* is not satisfied as required by *Regulation 6.14*, it may exercise either of the powers referred to in *Regulation 6.8*.
- 6.16** Subject to *Regulation 6.17*, before deciding either to grant approval to the holding of the non-authorized person subject to conditions or to object to the holding *ICAEW* will:
- a give written notice of the proposed objection or conditions, with reasons for it, to the *licensed firm* and to the non-authorized person, stating that representations may be made to *ICAEW* within 28 days;

- b consider any representations made within the time specified by paragraph (a) above; and
- c notify the *licensed firm* and the *non-authorised person* as soon as reasonably practicable of any objection or any conditions imposed, with reasons.

6.17 ICAEW may approve the holding subject to conditions or may object to the holding without giving the notice referred to in *Regulation 6.16* if it considers it necessary or desirable to do so for the purpose of protecting any of the regulatory objectives set out in section 1 of the Act.

6.18 Any approval granted by ICAEW under *Regulations 6.14* or *6.15* is effective only if the *material interest* is acquired within such period as may be specified in the written notice by ICAEW of the approval or, if no period is specified, within one year of the date of the notice.

The approval granted by ICAEW is subject to the material interest being acquired either within the period set out in the notice, or, if no period is given, within one year. If the interest is not acquired within this time, approval will need to be sought again.

Powers of ICAEW in relation to existing material interests

ICAEW is empowered to give notice objecting to, or imposing conditions on, the holding of existing material interests where necessary.

A person who holds a material interest subject to any condition may apply to ICAEW for variation or cancellation of the condition.

6.19 If at any time ICAEW ceases to be satisfied as required by *Regulation 6.7*, or if it is satisfied that a condition imposed by any of the *regulations* in this section has not been, or is not being, complied with, it may, within 90 days of becoming aware of the matters in question:

- a impose a condition on the holding; or
- b object to the holding.

6.20 *Regulations 6.16* and *6.17* also apply to the exercise by ICAEW of the power referred to in *Regulation 6.19*.

6.21 A condition imposed under any of the *regulations* in this section may be varied or cancelled by written notice by ICAEW:

- a on the application of the person who holds the *material interest*; or
- b on the initiative of ICAEW.

Enforcement of conditions and objections

Where a material interest is held in contravention of the regulations in this section, ICAEW may give notice restricting the rights attached to the holding and, subject to the procedural requirements imposed by the Act, may apply to the High Court for an order requiring a non-authorised person to sell shares.

Where a material interest is held in breach of a condition imposed under any of the regulations in this section, ICAEW may, subject to the procedural requirements imposed by the Act, apply to the High Court for an order securing compliance.

6.22 If a person holds a *material interest* in breach of any condition imposed by ICAEW under any of the *regulations* in this section, ICAEW may:

- a give written notice to the person that it intends to apply to the High Court for an order securing compliance if the conditions are not complied with before

the end of the period specified in the notice (at least 28 days); and

- b upon expiry of the period specified in the notice, apply to the High Court to make such order securing compliance as the High Court thinks fit.

The High Court will not make an order securing compliance with a condition until the end of the period in which the person can appeal against the imposition of the condition and, if an appeal is made, until the appeal has been determined or withdrawn.

6.23 If a *non-authorised person*, who holds a *material interest* by virtue of a shareholding in a *licensed firm*, breaches:

- a *Regulation 6.10b*; or
- b any condition or objection imposed by *ICAEW* under any of the *regulations* in this section;

then *ICAEW* may:

- give a notice under *Regulation 6.24*; and
- apply to the High Court in accordance with paragraphs 43-45 of schedule 13 to the *Act* for an order requiring the sale of shares to secure that the *non-authorised person* no longer holds a *material interest* in contravention of any of the *regulations* in this section.

6.24 A notice under this *regulation* is a written notice to the person holding the *material interest* directing that one or more of the following restrictions apply until further notice:

- a any transfer of, or agreement to transfer, the shares, or the right to be issued with the shares, is void;
- b no voting rights are to be exercisable in respect of the shares;
- c no further shares are to be issued in right of the shares or in pursuance of any offer made to their holder; or
- d except in a liquidation, no payment is to be made of any sums due from the body corporate on the shares, whether in respect of capital or otherwise.

If *ICAEW* applies to the High Court for a divestiture order, it will at the same time give a restriction notice to the non-*authorised person* and send a copy of this notice to the firm.

6.25 A notice under *Regulation 6.24* ceases to have effect:

- a if the High Court so orders under paragraph 45(4) of schedule 13 to the *Act*;
- b at the end of 90 days if *ICAEW* does not within that time make the application referred to in *Regulation 6.23*; or
- c if the *licensed firm* ceases to be licensed by *ICAEW*.

Part 5 of Schedule 13 of the Act requires *ICAEW* to inform the Legal Services Board of decisions and actions taken under this section.

7 COMPLAINTS RESOLUTION

[The following regulations detail how an accredited legal services firm \(firm\) should approach and respond to complaints raised by a complainant. Their purpose is to give complainants confidence in the firm's complaints procedures. Complaints procedures should be accessible, and complaints should be responded to fairly and promptly to ensure a fair resolution for complainants who may be dissatisfied with the service they have received.](#)

The *Legal Ombudsman* defines a complaint as an “oral or written expression of dissatisfaction”. It is good practice to be attentive to any early signs that a client or beneficiary might be unhappy with the firm’s service, so that issues can be addressed before they become formal complaints.

Firms should ensure that complainants feel their concerns are being taken seriously and addressed in a timely manner. Feedback and complaints should be used to reflect on the quality of the firm’s service and embed a culture of continuous learning. This helps to maintain trust in the complaint handling process

~~The following regulations detail how complaints should be dealt with. The Act requires that an accredited probate firm has procedures for dealing with complaints. Firms should take care to notify their existing clients of their right to make a complaint. This should be done at the first appropriate opportunity (eg, if a client complains or at the beginning of the next engagement). It is clearly to the benefit of clients and firms if any complaints that may arise are dealt with promptly and efficiently. Firms should bear in mind that this may be a particularly stressful time for the client.~~

Establishing effective complaints procedures

~~7.1 An accredited probate firm must establish procedures to deal with complaints~~

7.1 An accredited legal services firm must provide clear and comprehensive written complaints information, (a complaints procedure) that sets out:

- a. the right to make a complaint free of charge
- b. how to make a complaint
- c. who to contact
- d. how the complaint will be handled
- e. the steps that will be taken to resolve the complaint
- f. an indication of possible outcomes; and
- g. the client’s right to make a complaint to the *Legal Ombudsman*.

The named contact will usually be the relevant person, a principal in an authorised firm, or the Head of Legal Practice (HOLP) in a licensed firm. However, all staff should be aware of the firm’s complaints procedure

If the principal or HOLP is the subject of the complaint, or otherwise unable to investigate the complaint, they should confirm the name and contact details for the member of staff who will respond on their behalf. The member of staff should be supervised by the principal or HOLP. Where it is not possible for the complaint to be investigated by anyone other than the subject of the complaint, the client should be reassured that the investigation will be carried out fairly.

~~7.2 An accredited *legal services* probate firm must ensure that all clients are notified in writing at the beginning of the engagement of the name of the individual to be contacted in the event of a complaint and of their right to complain to the *Legal Ombudsman*. This individual should be a principal in an authorised firm or the *Head of Legal Practice* in a licensed firm.~~

firm’s complaints procedure must be managed and endorsed by a *principal* in an authorised firm, or the *Head of Legal Practice* in a licensed firm.

The principal or HOLP who is responsible for the firm’s complaints procedure must ensure that it is available in writing to all staff and that it is implemented consistently and reviewed periodically.

~~firm’s complaints procedure must be managed and endorsed by a *principal* in an authorised firm, or the *Head of Legal Practice* in a licensed firm.~~ The principal or HOLP who is responsible Details of the complaint resolution procedure can be included within the terms of engagement or in any other material supplied to the client at the beginning of the engagement. The following is a suggested paragraph for inclusion:

~~'If you would like to talk to us about how we could improve our service to you, or if you are unhappy with the service you are receiving, please let us know by contacting [state name of principal]. We will consider carefully any complaint you may make about our probate or estate administration work as soon as we receive it and do all we can to resolve it. We will acknowledge your letter within five business days of its receipt and endeavour to deal with it within eight weeks. If we do not deal with your complaint in this time, or if you are unhappy with our response, you may of course take up the matter with the Legal Ombudsman.'~~

~~You must include the contact details for the Legal Ombudsman, which are:~~

- ~~• T 0300 555 0333~~
- ~~• Post Legal Ombudsman, PO Box 6806, Wolverhampton WV1 9WJ~~
- ~~• E enquiries@legalombudsman.org.uk~~

~~You must also advise the client of the timescales for making a complaint to the Legal Ombudsman. Ordinarily, the following timescales apply:~~

- ~~• the act or omission, or when the complainant should reasonably have known there was cause for complaint, must have been after 5 October 2010; and~~
- ~~• the complainant must refer the complaint to the Legal Ombudsman no later than:
 - ~~- six years from the act/omission; or~~
 - ~~- three years from when the complainant should reasonably have known there was cause for complaint; and~~
 - ~~- the complainant must refer the complaint to the Legal Ombudsman within six months of the date of your firm's written response.~~~~

~~As many complaints arise out of a misunderstanding of what services the firm has been retained to do, the progress in delivering those services and the cost involved, firms should ensure that they advise their clients in writing at the beginning of the engagement of the likely scope and nature of the intended work and the costs involved.~~

~~Firms should ensure that their clients understand and agree to the process and these costs, and should keep their clients updated on matters as the engagements proceed. Firms should also bear in mind the importance of learning from complaints. It is recommended that at the conclusion of the complaints process firms reflect on whether procedures and/or systems could be introduced or modified to avoid similar complaints arising in the future~~

~~7.3 If an accredited probate firm receives a complaint from a client or a former client it must acknowledge the complaint within five business days.~~

Providing an accessible complaints procedure

7.3 An accredited legal services firm must provide information about their complaints procedure:

- in writing at the beginning of a new engagement**
- upon request**
- at the conclusion of the matter; and**
- if reasonable and proportionate, when a complaint is made.**

What is proportionate will depend on timing. Where the start of the engagement and the conclusion of the matter are very close, it may be sufficient to provide the firm's complaints procedure only once. Consider how the client or complainant will best absorb the information provided, for example by presenting it in different formats such as a separate leaflet or fact sheet.

If you are acting in your capacity as an executor of an estate, for an executor of an estate, or as a trustee of a trust, you should provide your complaints procedure to the beneficiaries.

7.4 An accredited legal services firm must ensure that their complaints procedure is clear, prominent, and accessible by:

- a. including it in engagement letters, or other introductory materials**
- b. offering it in tailored formats, where appropriate to meet individual needs**
- c. displaying it prominently on the firm's website, or in other marketing materials**
- d. allowing complaints to be made in any reasonable manner.**

Providing fair and accessible complaints procedures includes considering whether the client or beneficiary is vulnerable or has specific needs and accessibility requirements. It is important to ensure complaints procedures are easy to locate, access, and initiate, especially for clients and beneficiaries who are digitally excluded or who may have diverse needs or disabilities.

For example, this could include providing for complaints to be made through a third party, face to face or by telephone call. If an audio or video complaint is made, it should be documented by the firm in a written attendance note and shared with the client.

7.5 An accredited legal services firm must ensure that complainants are informed of their options if they are dissatisfied with the outcome of their complaint. This information must be provided in the firm's written and published complaints procedure and in the firm's final response to the complainant. This must outline the complainant's right to escalate their complaint to the Legal Ombudsman, how to make such a complaint, the timescales for doing so, and the Legal Ombudsman's contact details.

The contact details for the Legal Ombudsman are:

- Tel 0300 555 0333
- Post Legal Ombudsman PO Box 6167 Slough SL1 0EHE
- Email enquiries@legalombudsman.org.uk

From April 2023, the time limits for referring a complaint to the Legal Ombudsman are:

- within six months of the firm's final response
- one year from the date of the act or omission being complained about,
- one year from the date when the complainant should have realised that there was cause for complaint

The Legal Ombudsman's Scheme Rules state that they will not investigate a complaint submitted more than six months after a firm has issued a final response. However, this rule does not apply if the complainant was not provided with the information set out in Regulation 7.5. In such cases, the Legal Ombudsman can waive the six-month limit and accept a complaint for investigation out of time.

Responding to complaints

7.6 An accredited legal services firm must acknowledge a complaint within five business days and provide the complainant with:

- a. the firm's complaints procedure;**
- b. the name of the individual to contact about their complaint;**
- c. clear information about how the complaint will be handled;**
- d. anticipated timescales to resolve the complaint; and**
- e. regular updates on progress as appropriate.**

7.7.4 The **accredited probate legal services firm** **must begin immediately to investigate the complaint promptly and ensure the investigation is conducted competently, diligently, and impartially in a fair, prompt, constructive and honest manner.** The investigation should be conducted or supervised by the *Head of Legal Practice* in a *licensed firm*, or by a *principal* in an *authorised firm*. **The firm must aim to resolve the complaint within 8 weeks of receipt.**

Complainants must exhaust the firm's internal complaint process before raising their complaint with the Legal Ombudsman. The 8-week period in Regulation 7.7 serves as the threshold for escalating the complaint. Therefore, unless an extension has been agreed upon, if a final response has not been issued within 8 weeks, the client does not need to wait before referring the complaint to the Legal Ombudsman.

In the case of serious complaints, firms should bear in mind their obligations and duties under the firm's professional indemnity insurance. If cover is not to be affected, firms should notify insurers of matters that could give rise to a claim as soon as possible. However, the firm must still investigate the complaint, and this does not affect the rights of the client to take the matter up with the Legal Ombudsman.

7.8.5 **The accredited legal services firm must communicate the outcome of the investigation to the complainant in writing promptly and in clear, plain language. If appropriate, alternative formats should also be offered. The accredited probate firm accredited legal services firm must keep a full record of the way in which the complaint has been handled. This documentation must be kept in a separate complaint file.**

The final complaint outcome should be provided in writing. Where reasonable and proportionate, the option of a telephone or video call should also be offered to communicate the outcome and provide any necessary clarification.

~~**7.8.5** **The accredited legal services firm must communicate the outcome of the investigation to the complainant in writing promptly and in clear, plain language. If appropriate, alternative formats should also be offered. The accredited probate firm accredited legal services firm must keep a full record of the way in which the complaint has been handled. This documentation must be kept in a separate complaint file.**~~

~~The final complaint outcome should be provided in writing. Where reasonable and proportionate, the option of a telephone or video call should also be offered to communicate the outcome and provide any necessary clarification.~~

7.6-7.9 **If following such an investigation the accredited probate legal services firm is of the opinion decides that the complaint is justified in whole or in part, an appropriate remedy should be offered to the complainant to resolve the complaint. it must do whatever is appropriate to resolve the complaint, whether by way of remedial work, apology, providing information, returning books or documents, reduction or repayment of fees, or otherwise. If a remedy is accepted, the firm must comply promptly.**

An appropriate remedy is a matter for the firm to decide depending on the circumstances of the complaint. It may include remedial work, an apology, providing information, returning books or documents, a reduction or repayment of fees, or compensation.

The complainant may wish to negotiate with the firm before accepting a remedy. Once negotiations have concluded and a final offer has been made, the firm should clearly state that this is its final response and remind the complainant of their right to escalate the matter to the Legal Ombudsman.

Once a firm has concluded its investigation of the complaint, it should notify the client in writing of the outcome and how, if appropriate, it intends to rectify the matter. This may lead to more

discussions with the client. However, the firm should make it clear to the client when it has made its final response. At this stage the client should also be informed of their right to refer the matter to the Legal Ombudsman.

~~7.7 When the accredited probate firm notifies the client of its final response, which should be provided within 8 weeks of receiving the complaint, the client must be informed of their right to refer the matter to the Legal Ombudsman.~~

~~7.8 If the complaint is not resolved within eight weeks of receipt of the complaint, the client must be informed in writing of their right to request that the Legal Ombudsman investigate the matter.~~

~~If the complaint is not resolved within eight weeks of receipt of the complaint, the client must be informed in writing of their right to request that the Legal Ombudsman investigate the matter. This does not prevent a firm continuing to try to resolve the matter with the client, but the client could still request that the Legal Ombudsman look into the matter.~~

7.9 10 The accredited probate legal services firm must cooperate with the Legal Ombudsman.

7.4011 The accredited probate legal services firm must comply with any decision that the Legal Ombudsman may make and promptly comply with any remedy ordered by the Legal Ombudsman.

If the complaint is referred to the Legal Ombudsman, they may decide that a firm should pay the complainant compensation for any loss, inconvenience or distress caused arising from the matter. The decision may also include an apology, reimbursement of all or part of the firm's fees paid by the client, the requirement that the firm take remedial action to put the matter right or pay another firm to do so, or any other action which the Legal Ombudsman deems necessary.

7.12 The accredited legal services firm must maintain accurate records of complaints, including any correspondence, information on the type of complaint and resolution times. Complaints documentation must be kept in a separate complaint file.

Reflection and review

7.13 The accredited legal services firm must review their complaints procedures periodically to ensure they are effective, implemented consistently and compliant with these regulations.

7.14 At the conclusion of the complaints process, the accredited legal services firm should reflect on how similar complaints can be avoided in future. This means implementing measures to:

- a) identify any risks or issues, including systemic issues, in how the firm has assessed and sought to resolve complaints and, in its service; and**
- b) address those risks and issues**

The accredited legal services firm must also consider and undertake appropriate training and provide suitable support to address the identified risks and issues.

7.15 The accredited probate legal services firm must provide ICAEW with such details of complaints as ICAEW may request (whether by writing, visiting the firm's offices or by any other method) within 20 business days of receiving such a request.

7.16 A failure by an accredited legal services firm to comply with the requirements under Regulation 7, or to uphold any guidance under these provisions, may be liable to disciplinary action under these regulations or other regulations or bye-laws of ICAEW.

8 PROBATE LEGAL SERVICE AFFILIATES

ICAEW may accredit a firm which has a principal (an individual or a corporate body) who is not:

- a member;
- a member of one of the bodies listed below;
- an ~~accredited probate~~ accredited legal services -firm;
- a registered auditor; or
- a DPB-licensed firm

and who, at the time of the proposed accreditation, is not an affiliate under the audit regulations, the DPB Handbook, the insolvency regulations or ICAEW's regulations governing the use of the description 'chartered accountant' and general affiliates, only if that principal is granted probate legal services affiliate status by ICAEW.

The bodies referred to above are:

- the Institute of Chartered Accountants of Scotland;
- Chartered Accountants Ireland; or
- another approved regulator.

~~Probate affiliate~~ Legal services affiliate status does not confer membership of ICAEW or entitle the individual or body corporate to use the title 'chartered accountant'. However, it does mean that a ~~probate~~ legal services - affiliate is bound by the same rules and regulations that govern a member of ICAEW.

Granting legal services affiliate status

- 8.1 ~~Probate affiliate~~ Legal services affiliate -status does not give the ~~probate affiliate legal services affiliate~~ any rights other than those contained in these *regulations*. Neither the ~~probate legal services~~ affiliate nor his ~~accredited probate firm~~ accredited legal services firm shall make any public representation that the ~~probate legal services~~ affiliate has any rights other than those contained in these probate legal services affiliate -regulations.
- 8.2 A person must apply for ~~probate~~ legal services affiliate status in the manner decided by ICAEW. To carry out its responsibilities under these ~~probate legal services~~ affiliate -regulations, ICAEW may make any enquiries necessary to assess the eligibility of the applicant.
- 8.3 ICAEW may grant ~~probate legal services~~ affiliate status if it is satisfied that the applicant:
- a is a fit and proper person to be granted ~~probate legal services~~ affiliate -status;
 - b has agreed to comply with these *regulations*;
 - c has agreed to observe and uphold ICAEW's Code of Ethics; and
 - d has agreed to provide ICAEW with all the information it needs.
- 8.4 ICAEW may, on receiving an application for ~~probate~~ legal services affiliate status:

- a grant ~~probate~~ legal services ~~affiliate~~ status;
- b reject the application;
- c grant ~~probate~~ legal services ~~affiliate~~ status with restrictions or conditions; or
- d postpone consideration of the application.

8.5 ICAEW may at any time vary or end a restriction or condition made under *Regulation 8.4*.

Withdrawal of ~~probate~~ legal services ~~affiliate~~ status

- 8.6 ICAEW may in its sole discretion withdraw ~~probate~~ legal services ~~affiliate~~ status if the ~~probate~~ legal services ~~affiliate~~:
- a is in the opinion of ICAEW no longer a fit and proper person;
 - b fails to pay on time any fines or costs ordered by any committee or tribunal of ICAEW;
 - c has a disciplinary order made against him by any committee or tribunal of ICAEW;
 - d fails to pay the annual subscription within 30 days of the date of a notice to renew ~~probate~~ legal services ~~affiliate~~ status; or
 - e fails or ceases to comply with any of these *regulations* and, in the circumstances, ICAEW considers that withdrawal is justified.

Decisions under Regulations 8.4, 8.5 or 8.6 will come into effect as set out in section 10.

If a ~~probate~~ legal services ~~affiliate~~ is dissatisfied with a decision made by ICAEW under Regulations 8.4, 8.5 or 8.6 ~~it~~ they may apply for a review of the decision in accordance with the procedures set out in section 11.

Cessation of ~~probate~~ legal services ~~affiliate~~ status

- 8.7 ~~Probate~~ Legal services ~~affiliate~~ status will cease if:
- a subject to *Regulation 8.8*, the *firm* in which the ~~probate~~ legal services ~~affiliate~~ is a *principal* ceases to be *accredited*;
 - b subject to *Regulation 8.8*, the ~~probate~~ legal services ~~affiliate~~ ceases to be a *principal* in the ~~accredited~~ probate ~~firm~~ accredited legal services firm to which the grant of ~~probate~~ legal services ~~affiliate~~ status related;
 - c the ~~probate~~ legal services ~~affiliate~~ is an individual and has a bankruptcy order made against him;
 - d the ~~probate~~ legal services ~~affiliate~~ is a body corporate which:
 - has been the subject of an effective resolution passed by the shareholders (or in the case of a limited liability partnership, by its members) for it to be wound up or has had a winding up order made against it on the grounds of insolvency;
 - has had an administration order made against it on grounds of insolvency; or
 - has had a receiver appointed by a creditor or by a court on the application of a creditor.
- 8.8 ~~Probate~~ Legal services ~~affiliate~~ status will not cease under *Regulation 8.7a* or *8.7b* if:
- a the ~~accredited~~ probate ~~firm~~ accredited legal services firm in which the ~~probate~~ legal services ~~affiliate~~ is a *principal* merges with or is acquired by another ~~accredited~~ probate ~~firm~~ accredited legal services firm; or
 - b the ~~probate~~ legal services ~~affiliate~~ leaves the ~~accredited~~ probate ~~firm~~ accredited legal services firm in which he is a *principal* and immediately becomes a *principal* in another ~~accredited~~ probate ~~firm~~ accredited legal services firm;

provided that *ICAEW* is informed within 10 *business days* of the event. Otherwise, disciplinary action may be taken and ~~probate-affiliate~~ legal services affiliate status withdrawn.

Changes in circumstances

8.9 A ~~probate-affiliate~~ legal services affiliate or the ~~accredited-probate-firm~~ accredited legal services firm's contact partner must inform *ICAEW* in writing within 10 *business days* of any changes relevant to matters considered by *ICAEW* under Regulation 8.3.

Fees

8.10 ~~Probate-affiliate~~ Legal services affiliates must pay a fee each year in addition to the ~~accredited-probate-firm~~ accredited legal services firm's annual fee. The first annual fee for ~~probate-affiliate~~ legal services -affiliate status is due when an application is made for such status, together with any application fee.

8.11 The amount of the fees for ~~probate-affiliate~~ legal services affiliate status will be determined by *ICAEW* from time to time.

Disciplinary arrangements

8.12 The disciplinary provisions of *ICAEW* that apply to a *member* also apply to a ~~probate~~ affiliate legal services affiliates.

8.13 A ~~probate-affiliate~~ legal services affiliate shall be liable to disciplinary action for any failure to observe and uphold any guidance issued by *ICAEW*, including any ethical guidance.

8.14 A ~~probate~~ legal services -affiliate will remain liable to disciplinary action under these *regulations* for any acts or omissions relating to the obligations in these *regulations* during the period in which ~~probate~~ legal services -affiliate status was held, regardless of any subsequent cessation of such status.

9 LEGAL SERVICES AND OTHER COMMITTEES

This section describes the various committees involved in the regulatory process and their powers. Some, but not all, of the powers may be delegated by the Legal Services Committee to either sub-committees or staff.

A firm generally has the right to seek a review of a decision. Details are in section 11.

Legal Services Committee

9.1 There shall be a *Legal Services Committee* which must:

- a** comprise ten members, half of whom must be lay members; and
- b** have a quorum of five members, the majority of whom must be lay members.

The chair of the Legal Services Committee must be a lay member and will have the casting vote where required. A lay member is a person who has never qualified or practised as a professional accountant. Solicitors and persons with legal training are also unable to act as lay members on the committee.

Members of ICAEW's Council and Board are excluded from membership of this committee.

9.2 The *Legal Services Committee* is responsible for discharging *ICAEW's* functions as an *approved regulator* and *licensing authority* as set out in these *regulations* and is also responsible for:

- a** reviewing the returns and reports made under these *regulations*, and investigating failure to make returns or reports;
- b** making appropriate enquiries into the eligibility of applicants for *accreditation*; *authorised individual status*; *Head of Legal Practice status*; *Head of Finance and Administration status*; or *probate-affiliate legal services affiliate status* (by writing, visiting a *firm's* office or offices, or in any other way);
- c** making appropriate enquiries into the eligibility of applicants for status as non-*authorised persons* who hold *material interests* in *licensed firms*;
- d** making appropriate enquiries to confirm that an *authorised person*, *Head of Legal Practice*, *Head of Finance and Administration* or *probate-affiliate legal services affiliate* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- e** making appropriate enquiries to confirm that a non-*authorised person* who holds a *material interest* in a *licensed firm* is complying with these *regulations* (by writing, visiting a *firm's* office or offices, using a periodic return, or in any other way);
- f** publishing, in any manner it decides, its decisions if it considers this appropriate; and
- g** compiling and maintaining a *register of licensed firms* and supplying information to the *Legal Services Board* as required.

In discharging its functions the Legal Services Committee will have regard at all times to the public interest, and the requirements and regulatory objectives of the Act.

9.3 The *Legal Services Committee* may delegate the following functions to sub-committees, *ICAEW* staff, or another duly appointed agent:

- granting applications for *accreditation* under *Regulation 2.5a*;

- granting applications for *accreditation* subject to conditions under *Regulation 2.5c*;
- varying or ending a condition or restriction under *Regulation 2.6*;
- granting applications for *authorised individual, Head of Legal Practice or Head of Finance and Administration* status under *Regulation 4.4*;
- granting applications for *authorised individual, Head of Legal Practice or Head of Finance and Administration* status subject to conditions under *Regulation 4.4*;
- varying or ending a condition or restriction under *Regulation 4.6*;
- granting approval to a holding of a *material interest* by a non-*authorised person* with or without conditions under *Regulations 6.7, 6.8a, 6.14 or 6.15*;
- deciding to vary or end a condition on the holding of a *material interest* by a non-*authorised person* under *Regulation 6.21*;
- granting applications for ~~probate-affiliate~~ legal services affiliate status under *Regulation 8.4a*;
- granting applications for ~~probate-affiliate~~ legal services affiliate status subject to conditions under *Regulation 8.4c*;
- varying or ending a condition or restriction under *Regulation 8.5*;
- withdrawing ~~probate-affiliate~~ legal services affiliate status under *regulations*:
 - 8.6b - failure to pay on time any fines or costs;
 - 8.6c - disciplinary order; or
 - 8.6d - failure to pay annual subscriptions;
- reviewing the returns and reports made under these regulations, and investigating failure to make returns or reports;
- making appropriate enquiries into the eligibility of applicants for accreditation, authorised individual status, Head of Legal Practice status, Head of Finance and Administration status or ~~probate-affiliate~~ legal services affiliate status (by writing, visiting a firm's office or offices, or in any other way);
- making appropriate enquiries into the eligibility of non-*authorised persons* who seek approval as holders of material interests in a licensed firm;
- making appropriate enquiries to confirm that an authorised person, Head of Legal Practice, Head of Finance and Administration, or ~~probate-affiliate~~ legal services affiliate is complying with these regulations (by writing, visiting a firm's office or offices, using a periodic return, or in any other way);
- making appropriate enquiries to confirm that a non-*authorised person* who holds a material interest in a licensed firm is complying with these regulations (by writing, visiting a firm's office or offices, using a periodic return, or in any other way);
- publishing, in any manner it decides, its decisions if it considers this appropriate;
- compiling and maintaining a register of licensed firms and supplying information to the Legal Services Board as required;
- imposing a condition on accreditation under *Regulation 10.1*;
- varying or ending a condition or restriction under *Regulation 10.2*; or
- withdrawing accreditation under regulations:
 - 10.3b - non-compliance with the PII Regulations;
 - 10.3c - failure or delay in submitting a return or report;

- 10.3d - failure to pay amounts due;
- 10.3e - failure to pay costs awarded by the *Review Committee*; or
- 10.3f - failure to pay fines or costs awarded by ICAEW's disciplinary committees or the *Appeal Tribunal*.

9.4 All information obtained under these *regulations* will be confidential but may be disclosed by ICAEW (directly or indirectly) to any person or body undertaking regulatory, redress, disciplinary or law enforcement responsibilities for the purpose of assisting that person or body to undertake those responsibilities or as otherwise required or allowed by law.

All information that ICAEW receives will remain confidential except in the above circumstances.

9.5 In carrying out its responsibilities under these *regulations*, ICAEW, the *Legal Services Committee*, the *Review Committee* and the *Appeal Tribunal* may consider any disciplinary findings, orders, ongoing investigations or any other information (including criminal and civil court judgments) concerning or affecting the *firm* or its *principals* or *employees*, any non-*authorised persons* holding a *material interest* in a *firm* (either actual or proposed), an applicant for *authorised individual* status, an *authorised individual*, an applicant for *Head of Legal Practice* status, a *Head of Legal Practice*, an applicant for *Head of Finance and Administration* status, a *Head of Finance and Administration*, an applicant for ~~probate~~ legal services *affiliate* status or probate legal services *affiliate*.

Regulation 9.5 allows consideration of any disciplinary or other matter that affects the firm.

Notification to committees

9.6 The *Legal Services Committee* must notify the *Conduct Committee* about any fact or matter which:

- a suggests that an ~~accredited probate firm~~ accredited legal services firm, an *authorised individual*, a *Head of Legal Practice*, a *Head of Finance and Administration*, a ~~probate affiliate~~ legal services -*affiliate* or any other person (including a non-*authorised person* holding a *material interest*) may be liable to disciplinary action under these *regulations* or other regulations or bye-laws of ICAEW; and
- b in the opinion of the *Legal Services Committee* needs to be investigated.

9.7 The *Conduct Committee* must inform the *Legal Services Committee* about any fact or matter which appears to it to be relevant to the powers and duties of the *Legal Services Committee* under these *regulations*.

Under Regulations 9.6 and 9.7 information may be exchanged between the ICAEW committees responsible for regulation and discipline.

REGULATORY ACTION

This section explains how ICAEW may take regulatory action against an ~~accredited probate firm~~ accredited legal services firm, including withdrawal of accreditation if necessary.

Regulatory decisions come into effect as set out in Regulations 10.9 to 10.11.

A firm may ask for a review of a decision and this is dealt with in section 11. A firm must apply for a review within 10 business days (or in some cases 28 days) of the decision being given to the firm.

Restrictions and conditions

- 10.1** ICAEW may impose restrictions or conditions on an ~~accredited probate firm~~ accredited legal services firm if it considers that:
- a any of the circumstances mentioned in *Regulation 10.3a to 10.3f or 10.3j* exist, or may exist, and the restrictions or conditions are justified;
 - b the *firm* has not or may not have complied with these *regulations* in the past, and the restrictions or conditions are justified;
 - c there is reason to believe that the *firm* may cease to comply with these *regulations* in the future and the restrictions or conditions are justified;
 - d being ~~accredited~~ or continuing ~~probate work~~ legal services work without restrictions or conditions could adversely affect a client or any other person; or
 - e it is appropriate to do so to ensure that ~~probate work~~ legal services work is undertaken, supervised and managed effectively.

10.2 ICAEW may at any time vary or end a restriction or condition made under *Regulation 10.1*.

ICAEW may place conditions on how an ~~accredited probate firm~~ accredited legal services firm carries out or manages its ~~probate work~~ legal services work. These could be that a firm should undertake specified training or change its procedures.

ICAEW may place restrictions on an ~~accredited probate firm~~ accredited legal services firm such as: against the firm, for example that it cannot accept any new clients or ~~probate work~~ legal services work;

against a principal, for example that a particular principal may no longer be an authorised individual; or

that an employee may no longer be involved in ~~probate work~~ legal services work.

If conditions or restrictions are imposed by ICAEW, a firm will have to undertake to comply with the terms of the restriction or condition. Any failure to deal with these matters is likely to be viewed extremely seriously.

As an alternative to regulatory action, ICAEW may accept a written undertaking from a firm that it will undertake a particular course of action.

Withdrawal of accreditation

10.3 ICAEW may withdraw a *firm's accreditation* if:

- a it considers that the *firm* no longer meets one or more of the eligibility requirements of *Regulations 2.2 or 2.3*;
- b it considers that the *firm* is not complying with the PII Regulations;
- c the *firm* is over 30 days late submitting the required returns or reports;
- d the *firm* has not paid the amounts due under *Regulations 2.14, 2.15 or 2.16* within 60 days of the date of an invoice under *Regulation 2.17*;
- e the *firm* has not paid the costs in the time set by the *Review Committee* under *Regulation 11.4*;
- f the *firm* has not paid in the time set any fines or costs ordered by the *Conduct Committee, the Tribunals Committee, or the Appeal Tribunal*;
- g it considers that the *firm* has not complied with any restriction or condition under *Regulation 10.1* or any written undertaking that the *firm* has given to ICAEW;
- h it considers that the *firm* or any of its *principals, employees* and shareholders have not complied with any other *Regulation* and, in the circumstances, withdrawal is

justified;

- i it considers that the continued *accreditation* of the *firm* may adversely affect a client or any other person; or
- j in the case of a *licensed firm*, a *non-authorized person* holds an interest in the *firm* as a result of which the *firm* has ceased to comply with any of the *regulations* in section 6.

Suspension

- 10.4 ICAEW may suspend an ~~accredited probate firm~~ accredited legal services firm's *accreditation* for a period if it considers that:
- a any of the circumstances mentioned in *Regulation 10.3a to 10.3g* or *10.3j* exists or may exist;
 - b the *firm* is not, or may no longer be, complying with these *regulations*; or
 - c the continuation of the *firm's* ~~probate work~~ authorized legal services work could adversely affect a client or any other person.
- 10.5 During a period of suspension an ~~accredited probate firm~~ accredited legal services firm:
- a may continue with any ongoing ~~probate~~ authorized legal services work with the permission of the *Legal Services Committee*; but
 - b may not accept any new appointments for ~~probate work~~ authorized legal services work.
- 10.6 ICAEW may vary or end a suspension made under *Regulation 10.4*.

ICAEW can decide that a firm's accreditation is suspended rather than withdrawing accreditation. This allows ICAEW to consider further evidence while protecting the public interest.

Urgent orders

- 10.7 ICAEW may impose restrictions or conditions on a *firm's accreditation* in the terms permitted by *Regulation 10.1* by means of an urgent order if it considers that, in addition to the matters justifying the imposition under *Regulation 10.1*, there is:
- a a risk of loss to a client of the firm if an urgent order is not made, or
 - b another reason justifying the making of an urgent order.
- 10.8 *Regulation 10.7* is subject to ICAEW allowing the ~~accredited probate firm~~ accredited legal services firm an opportunity to make oral or written representations within 10 *business days* of the urgent order being made. Having considered any representations ICAEW may:
- a end the order; or
 - b continue the order.

Regulation 10.7 allows ICAEW to take immediate regulatory action if the need arises. ICAEW may do this in the case of, for example, serious allegations or if there is a potential or actual loss of client money. As well as making immediate representations on the fact that an urgent order has been made, a firm can ask for a review under Regulation 11.2 of any underlying decision made under Regulation 10.1. The order comes into force when it is served on the firm (see Regulation 10.9) and is not lifted if a review is requested.

Implementation of decisions and orders

10.9 A decision made under *Regulations 2.5, 2.6, 2.13, 2.20, 2.21, 4.4, 4.6, 5.4, 6.7, 6.8, 6.13, 6.19, 6.21, 8.4, 8.5, 10.2, 10.6, 10.7, or 11.7* will come into effect as soon as notice of it is served on the *firm*.

The regulations quoted in regulation 10.9 concern the following:

- the grant or refusal of an application for accreditation under Regulation 2.5;
- the decision to vary or end a condition or restriction on accreditation under Regulation 2.6;
- decisions on applications to modify accreditation under Regulation 2.13;
- the grant or refusal of dispensations under Regulations 2.20 and 2.21;
- the grant or refusal of authorised individual status, or status as a Head of Legal Practice or Head of Finance and Administration under Regulation 4.4;
- the decision to vary or end a condition or restriction on a person's status as an authorised individual, Head of Legal Practice or Head of Finance and Administration under Regulation 4.6;
- the decision to end a person's disqualification under Regulation 5.4;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to the holding, prior to the grant of a firm's accreditation under Regulations 6.7 and 6.8;
- the decision to approve a holding by a non-authorised person either unconditionally or subject to conditions, or to object to a holding, following a firm's accreditation under Regulation 6.13;
- the decision to approve a holding of a material interest by a non-authorised person subject to conditions, or to object to such a holding, following a firm's accreditation under Regulation 6.15;
- the decision to impose conditions on a holding, or to object to a holding, of an existing material interest by a non-authorised person under Regulation 6.19;
- the decision to vary or end a condition on a holding of a material interest by a non-authorised person under Regulation 6.21;
- the grant or refusal of an application for [probate affiliate legal services](#) affiliate status under Regulation 8.4;
- the decision to vary or end a condition or restriction on a person's status as a [probate affiliate legal services work](#) affiliate under Regulation 8.5;
- the decision to vary or end a condition or restriction on accreditation under Regulation 10.2;
- the decision to vary or end a suspension on accreditation under Regulation 10.6;
- orders in respect of restrictions or conditions on a firm's accreditation that are made on a urgent basis under Regulation 10.7; and
- Appeal Tribunal decisions under Regulation 11.7.

10.10 A decision made under *Regulations 4.7e, 5.1, 8.6 or 10.1* will come into effect 10 *business days* after notice of it is served on the *firm* or any later time that *ICAEW* specifies, save that:

- a if a *firm* has applied for a review under *Regulation 11.2*, the effect of the decision will be suspended pending a decision on the review under *Regulation 11.3* or the withdrawal of the request for a review; or**
- b if a *firm* appeals to the *Appeal Tribunal* the effect of the decision will be suspended until the appeal is finally determined or withdrawn.**

Decisions made under the regulations referred to in Regulation 10.10 come into effect 10 business days after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or Appeal Tribunal is the one that will come into effect.

The regulations referred to in Regulation 10.10 concern the following:

- ~~Withdrawal~~ Withdrawal of status as an authorised individual under Regulation 4.7e;
- disqualification from status as a Head of Legal Practice or Head of Finance and Administration or from being a principal or an employee of a licensed firm under Regulation 5.1;
- withdrawal of status as a ~~probate~~ legal services affiliate under Regulation 8.6; and
- the imposition of conditions or restrictions on an ~~accredited probate firm~~ accredited legal services firm under Regulation 10.1.

Regulation 1.5 details how decisions and orders are served on firms.

10.11 A decision made under *Regulations 10.3 or 10.4* will come into effect 28 days after notice of it is served on the ~~accredited probate firm~~ accredited legal services firm or any later time that *ICAEW* specifies, save that:

- a if a *firm* has applied for a review under *Regulation 11.2*, the effect of the decision will be suspended pending a decision on the review under *Regulation 11.3* or the withdrawal of the request for a review; or**
- b if a *firm* appeals to the *Appeal Tribunal* the effect of the decision will be suspended until the appeal is finally determined or withdrawn.**

Decisions made under the regulations referred to in Regulation 10.11 come into effect 28 days (rather than business days) after the firm has been given the decision. However, the decisions are postponed if an application for review or appeal is made. The decision of the Review Committee or Appeal Tribunal is the one that will come into effect.

The regulations referred to in Regulation 10.11 relate to the following: withdrawal of a firm's accreditation under Regulation 10.3; and suspension of a firm's accreditation under Regulation 10.4.

11 REVIEW AND APPEAL PROCESS

At the request of a firm or an ~~accredited probate firm~~ accredited legal services firm, a decision to refuse an application, grant it with conditions, withdraw a firm's accreditation or only allow it to continue with conditions or restrictions may be reviewed by ICAEW using the following process.

The same process may be used against a decision to reject an application for authorised individual status, Head of Legal Practice status, Head of Finance and Administration status or affiliate status. It may also be used against a decision to grant these applications with restrictions or conditions or to withdraw status altogether.

Similarly, this process may be used against a decision to object to the holding or continued holding of a material interest or a decision to allow a holding subject to conditions.

11.1 In Regulations 11.2 to 11.8, 'affected party' means:

- a *firm*;
- an ~~accredited probate firm~~ accredited legal services firm;
- an applicant for *authorised individual* status;
- an *authorised individual*;
- an applicant for *Head of Legal Practice* status;
- a *Head of Legal Practice*;
- an applicant for *Head of Finance and Administration* status;
- a *Head of Finance and Administration*;
- an applicant for ~~probate~~ legal services work *affiliate* status;
- a ~~probate~~ legal services *affiliate*;
- a person seeking approval of the holding of a *material interest*; or
- a person holding a *material interest* in a *licensed firm* which is affected by a decision of ICAEW under these *regulations*.

Review

- 11.2a** An affected party may apply for a review in accordance with *Regulations 11.2b* and *11.2c*.
- 11.2b** An application for review must be made in writing to ICAEW within 10 *business days* of service on the affected party of a decision made under:
- | | |
|------------------------|---|
| Regulation 2.5b | refusing to grant a <i>firm accreditation</i> as an authorised or <i>licensed firm</i> ; |
| Regulation 2.5c | granting <i>accreditation</i> to a <i>firm</i> subject to conditions or restrictions; |
| Regulation 2.6 | refusing to vary or end a condition or restriction on a <i>firm's accreditation</i> or varying a <i>firm's accreditation</i> in terms other than those sought in the <i>firm's</i> application; |
| Regulation 2.13 | refusing to modify a <i>firm's accreditation</i> or modifying a <i>firm's accreditation</i> in terms other than those sought in the <i>firm's</i> application for modification; |
| Regulation 2.21 | refusing to grant a dispensation from the <i>regulations</i> ; |

- Regulation 4.4** refusing to grant *authorised individual, Head of Legal Practice or Head of Finance and Administration* status or granting such status subject to conditions or restrictions;
- Regulation 4.6** refusing to vary or end a condition or restriction on a person's *authorised individual, Head of Legal Practice or Head of Finance and Administration* status, or varying the condition or restriction in terms other than those sought in the person's application;
- Regulation 4.7e** withdrawing *authorised individual* status;
- Regulation 5.1** disqualifying a person from acting as a *Head of Legal Practice or Head of Finance and Administration* or from being a *principal or employee* of any *licensed firm*;
- Regulation 5.4** refusing to order that a person's disqualification shall cease to be in force;
- Regulation 6.8** objecting to the holding of a *material interest* or granting approval subject to conditions;
- Regulation 6.15** objecting to a change in the holding of a *material interest* or granting approval subject to conditions;
- Regulation 6.19** objecting to the continued holding of a *material interest* or imposing conditions on that holding;
- Regulation 6.21** refusing to vary or end a condition on the holding of a *material interest* by a *non-authorised person*, or varying the condition in terms other than those sought in the person's application;
- Regulation 8.4b** refusing to grant ~~probate~~ legal services *affiliate* status;
- Regulation 8.4c** granting ~~probate~~ legal services *affiliate* status subject to conditions or restrictions;
- Regulation 8.5** refusing to vary or end a condition or restriction on a person's status as a ~~probate~~ legal services *-affiliate*, or varying the condition or restriction in terms other than those sought in the person's application;
- Regulation 8.6** withdrawing ~~probate~~ legal services *affiliate* status; and
- Regulation 10.1** imposing restrictions or conditions on *accreditation*.
- 11.2c An application for review must be made in writing to *ICAEW* within 28 days of service on the affected party of a decision made under:
- Regulation 10.3** withdrawing an ~~accredited probate firm~~ accredited legal services firm's *accreditation*; or
- Regulation 10.4** suspending an ~~accredited probate firm~~ accredited legal services firm's *accreditation*.
- 11.3 A meeting of the *Review Committee* will be arranged as soon as practicable after an affected party has applied under *Regulation 11.2b* or *11.2c*. The *Review Committee* will consider the matter afresh and will hear new material put forward by the affected party. The *Review Committee* may make any decision which *ICAEW* could have made.
- 11.4 The *Review Committee* may require an affected party to contribute to the costs of the review.

The Review Committee has the same powers as ICAEW when making decisions in relation to a firm, an ~~accredited probate firm~~ accredited legal services firm, an applicant for authorised individual status, an authorised individual, an applicant for Head of Legal Practice status, a Head of Legal Practice, an

applicant for Head of Finance and Administration status, a Head of Finance and Administration, an applicant for affiliate status or a ~~probate~~ [legal services](#) affiliate. It can also make decisions disqualifying persons from holding positions in licensed firms (as set out in section 5) or from holding material interests in those firms (as set out in section 6).

It can impose the same, more severe or less severe decisions. It can also award costs. Costs are likely to be awarded if, for example, the affected party fails to attend the review when it said it would, does not send in further material it has promised, or the application is frivolous.

Appeal

A firm or person who is the subject of a decision of the Review Committee and is dissatisfied with that decision can appeal to the Appeal Tribunal.

The Appeal Tribunal is the General Regulatory Chamber of the First-tier Tribunal. This is the independent public body established under the Tribunals, Courts and Enforcement Act 2007 for deciding appeals. Such appeals will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Parties should note in particular the time limit (28 days from when the notice of the Review Committee's decision was sent to the affected party, subject to a discretionary power to extend or shorten the time limit) and the requirements for a notice of appeal imposed by those Rules.

The Appeal Tribunal can only consider an appeal on any of the grounds in Regulation 11.5. On appeal, the decision of the Review Committee is postponed until the Appeal Tribunal confirms or varies the decision (see Regulation 10.10 and 10.11).

Upon an appeal the Appeal Tribunal has the powers set out in Regulation 11.7.

11.5 The affected party may appeal to the *Appeal Tribunal* against the *Review Committee's* decision on one or more of the following grounds:

- a that the *Review Committee*:**
 - i was wrong in law; or**
 - ii wrongly interpreted any relevant regulation, bye-law, or associated guidance;**
- b that the *Review Committee* made a decision which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or**
- c that there was evidence which the *Review Committee* had not considered and which:**
 - i could reasonably have led the *Review Committee* to make a different decision; and**
 - ii could not have been put before the *Review Committee* even if those concerned had done their best to produce it, including evidence that was not in existence at the time the *Review Committee* made its decision.**

Regulations 10.9 to 10.11 explain when decisions come into effect.

11.6 An appeal to the *Appeal Tribunal* cannot be made if the appeal is only against the costs awarded by the *Review Committee*.

11.7 On appeal the *Appeal Tribunal* may:

- a affirm the *Review Committee's* decision wholly or in part;**
- b set aside the *Review Committee's* decision wholly or in part;**

- c substitute for all or part of the *Review Committee's* decision a new decision which the *Review Committee* could have made;
- d send the matter back to the *Review Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *Appeal Tribunal*); or
- e dismiss the appeal.

11.8 If the *Appeal Tribunal* sends a matter back to the *Review Committee* under *regulation 11.7* then *Regulation 11.3* will apply when the *Review Committee* reconsiders. The meeting of the *Review Committee* to reconsider the matter will be arranged as soon as is practicable.

12 DISCIPLINARY ARRANGEMENTS

The Legal Services Committee does not have the power to apply the disciplinary arrangements of ICAEW to the firms that it accredits. Only the Conduct Committee or the Tribunals Committee can do this. The bye-laws already provide a framework for disciplinary action to be taken against members, affiliates and firms and the purpose of this section is to apply the disciplinary arrangements of ICAEW to the firms that it accredits. If the terms of these regulations differ from those of the bye-laws, these regulations prevail.

Any fine imposed by a Tribunal in the exercise of ICAEW's powers as a licensing authority cannot exceed the amount(s) from time to time stipulated by the Legal Services Board under section 95 of the Act (currently £250m in the case of a firm or £50m in the case of an individual: see the Legal Services Act 2007 (Licensing Authorities) (Maximum Penalty) Rules 2011 (SI 1659/2011).

Under regulation 12.2 the Tribunals Committee shares with the Legal Services Committee the power to withdraw status as an authorised individual or to disqualify an individual from holding the status of Head of Legal Practice or Head of Finance and Administration or from being a principal of, or employed by, any licensed firm.

Appeals against decisions of the Tribunals Committee are made to the Appeal Tribunal. This is the General Regulatory Chamber of the First-tier Tribunal, which is the independent public body established under the Tribunals, Courts and Enforcement Act 2007 for deciding appeals. Such appeals will be subject to the Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009 (SI 2009/1976). Parties should note in particular the time limit (28 days from when the notice of the Tribunal's decision was sent to the affected party, subject to a discretionary power to extend or shorten the time limit) and the requirements for a notice of appeal imposed by those Rules.

12.1 Save as provided below, the Disciplinary Bye-laws apply to breaches of these *regulations* and **references in the Disciplinary Bye-laws to a 'member' shall be construed as also including references to a relevant person.**

12.2 **In addition to the powers of the *Tribunals Committee* set out in the Disciplinary Bye-laws, if a Tribunal finds a formal allegation or formal allegations against a *relevant person* proved, it may order:**

- a that the *relevant person* be reprimanded or severely reprimanded;
- b that the *relevant person* be fined;
- c that the *relevant person's* status as an *authorised individual* be withdrawn; or

d that the *relevant person* be disqualified under *Regulation 5.1* from acting as the *Head of Legal Practice*, as the *Head of Finance and Administration* or as a *principal* or *employee* of any *licensed firm*.

12.3 The affected party may appeal to the *Appeal Tribunal* against a Tribunal's order(s) under this section on one or more of the following grounds:

a that the Tribunal:

i was wrong in law; or

ii wrongly interpreted any relevant regulation, bye-law, or associated guidance;

b that the Tribunal made an order which no tribunal, correctly applying the law to the facts before it and acting reasonably, would have made; or

c that there was evidence which the Tribunal had not considered and which:

i could reasonably have led the Tribunal to make a different order; and

ii could not have been put before the Tribunal even if those concerned had done their best to produce it, including evidence that was not in existence at the time the Tribunal made the order; and/or

d in the case of an appeal against the imposition of a fine:

i that the imposition of the fine is unreasonable in all the circumstances of the case;

ii that the amount of the fine is unreasonable; or

iii that it is unreasonable of the Tribunal to require the penalty imposed or any portion of it to be paid by the time or times by which it was required to be paid.

12.4 An appeal to the *Appeal Tribunal* cannot be made if the appeal is only against a costs order of the Tribunal.

12.5 On appeal the *Appeal Tribunal* may:

a affirm the Tribunal's order;

b set aside the Tribunal's order;

c substitute for all or part of the Tribunal's order a new decision which the Tribunal could have made; or

d send the matter back to the *Tribunals Committee* to be considered again (generally, or in accordance with a finding made or direction given by the *Appeal Tribunal*); or

e dismiss the appeal; and/or

f in the case of an appeal against the imposition of a fine:

i quash the fine;

ii substitute a fine of such lesser amount as it considers appropriate; or

iii change the time by which the fine is required to be paid.

Regulatory penalties

ICAEW may decide that a referral to the Conduct Department to investigate an apparent failure to comply with these regulations is not appropriate. Instead, with the agreement of the firm, ICAEW may propose a regulatory penalty. The following regulations explain this process.

12.6 ICAEW may propose a regulatory penalty to an accredited probate firm accredited legal services firm subject to the following:

a the accredited probate firm accredited legal services firm must have agreed that the breach of these *regulations* has been committed;

- b **ICAEW will decide the amount of the penalty and when it is to be paid and will set this out in the letter to the ~~accredited probate firm~~ accredited legal services firm proposing the penalty; and**
 - c **if the ~~accredited probate firm~~ accredited legal services firm wishes to accept the terms on which the penalty is proposed, it must notify ICAEW within 10 *business days* of the date of service of the letter from ICAEW containing the proposal.**
- 12.7 **There are no rights of review or appeal against a *regulatory penalty*.**
- 12.8 **ICAEW will take account of any comments an ~~accredited probate firm~~ accredited legal services firm makes about the terms of the *regulatory penalty*. It may then reduce the amount of the penalty.**
- 12.9 **If the ~~accredited probate firm~~ accredited legal services firm accepts the penalty under *Regulation 12.6c*, ICAEW, as soon as is practicable:**
- a **will make a decision; and**
 - b **may publish the decision in any way it decides.**
- 12.10 **Details of any penalty accepted, and the decision made, will be kept by ICAEW and it may, if it wishes, use that information in the future.**
- 12.11 **If an ~~accredited probate firm~~ accredited legal services firm does not agree that the breach has been committed, or does not agree to the terms of the penalty proposed or fails to comply with the terms of the penalty, the matter may be dealt with under the **Disciplinary Bye-laws**.**

Regulatory penalties are likely to be used, for example, if a firm has consistently been late in replying to letters from ICAEW, has failed to submit annual returns, has given incorrect information on the return, or has not honoured undertakings given to ICAEW.

There is no right of appeal, as a regulatory penalty can only be made with the firm's agreement. Once a matter has been settled by a regulatory penalty, there will be no further regulatory or disciplinary action against the firm on the matter. However, the details of the regulatory penalty will be put on the firm's record and may be taken into account in the future.

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