



ICAEW RESPONSE TO LSB CONSULTATION ON FIRST-TIER COMPLAINTS

29 November 2023

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EXECUTIVE SUMMARY

Introduction

1. ICAEW welcomes the opportunity to respond to the Legal Services Board's (LSB) consultation on draft section 112 Requirements, Guidance and policy statement for approved regulators under the Legal Services Act, a copy of which is available [here](#).
2. ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports, and regulates more than 160,000 chartered accountant members in over 160 countries. [\[00\]](#)
3. This response dated 29 November 2023, reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW is an Approved Regulator and Licensing Authority for the administration of oaths and probate under the Legal Services Act 2007.
4. ICAEW's improvement regulator work is carried out by the Professional Standards Department (PSD). It supervises and monitors over 12,000 firms and 840 insolvency practitioners. On behalf of ICAEW, PSD undertakes the responsibilities of a regulator under statute in the areas of audit, insolvency, investment business, anti-money laundering and legal services. We also monitor compliance with the ICAEW Practice Assurance scheme. All work carried out by PSD is overseen by the ICAEW Regulatory Board.
5. ICAEW accredits around 360 firms to undertake probate activities. Our role as an improvement regulator is to strengthen trust in ICAEW Chartered Accountants and firms. We do this by enabling, evaluating, and enforcing the highest standards in the profession.

Summary of our position

6. We welcome broadly the LSB's proposals in the consultation document. This is a timely update to ensure that all consumers have access to effective and responsive complaints procedures. We strongly support the objectives underpinning the proposed provisions to improve accessibility and trust and to focus on continuous improvement. Many of the proposals are already established good practice in our regulations.
7. We are committed to ensuring complaints are dealt with promptly and efficiently so that potential resolutions can be explored. All ICAEW Chartered Accountants have a **duty** to investigate complaints under our institute bye-laws and provide clients with a written complaints procedure. We also separately set out complaints handling requirements for accredited probate firms in our **Legal Services Regulations** (Regulations). We support good practice by providing a model example of complaints information in our template engagement letters that are available to firms on our **probate resources web page**.
8. We monitor complaints handling processes through the visits conducted by our Quality Assurance Department (QAD) and by reviewing data on second tier complaints from the Legal Ombudsman (LeO). Our QAD visits enable us to monitor firms' compliance with our Regulations on a cyclical and risk-based approach. We use this insight to promote

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continuous improvement by highlighting examples of good and poor practice in our engagements with firms.

9. Our main concern with the proposals in the draft policy relates to the low numbers of first-tier complaints which are likely to be received in aggregate in any year by the small population of firms we regulate (while we do not currently collect first tier complaints data, we see only low numbers of second tier complaints being made to LeO). A very low number of complaints means that there is a very high risk of negative data (high % of complaints unresolved) being distorted by the failures to resolve in very small numbers of complaints. Indeed, the failure to resolve one complaint by one firm could distort the overall percentage significantly. Such a distortion risk will not be an issue for the regulators with much larger populations such as the SRA. We are also conscious that the publication of a high percentage of unresolved complaints may be viewed or commented on negatively even though the failure to resolve complaints within the eight week period may not actually be due to a lack of effort and responsiveness on the part of the firms themselves. We have suggested a couple of ways in which the risk of distortion of data might be reduced in our response to Question 11 below.

ANSWERS TO CONSULTATION QUESTIONS

Draft Requirements and draft Guidance

Question 1: do you have any comments on draft Paragraphs 1-6 and the associated draft Guidance?

10. Draft paragraphs 1-6 and the associated draft guidance are clear. We would not expect any changes required to ICAEW's Regulations on the basis that our regulatory arrangements already set out our requirements for establishing and maintaining complaints procedures, and our disciplinary procedures in the event our regulations are breached. Our newsletters, guidance and QAD visits also ensure and encourage the effective, efficient, and fair resolution of first-tier complaints.

Question 2: do you have any comments on draft Paragraphs 7 and the associated draft Guidance?

11. We support the inclusion of the provisions in draft Paragraph 7. We agree that a tailored and accessible complaints procedure ensures consumers of legal services understand they can challenge poor service and it will be acted upon. The requirements of this paragraph will involve minimal changes to our existing Regulations for accredited probate firms.

Question 3: do you have any comments on draft Paragraphs 8, 9 and 10 and the associated draft Guidance?

12. We welcome the inclusion of the requirements in draft Paragraphs 8, 9 and 10 and the associated draft Guidance. While we do not believe that there is a need for firms to be obliged to send out a further notification of complaint processes at the end of an engagement, we will incorporate that requirement into our regulations if this is the consensus

view from the consultation. As we have referenced above, the consumers of probate services at ICAEW accredited firm tend to be sophisticated consumers of legal/accountancy services who are seeking help with probate as part of a wider relationship. Such consumers are likely to be able to access complaints processes without difficulty.

Question 4: do you have any comments on draft Paragraphs 11, 12 and 13 and the associated draft Guidance?

13. We agree that it is important that firms communicate clearly with clients and keep them up to date on progress with their complaint with clear timeframes.
14. In terms of the expected timelines for dealing with complaints we agree that acknowledging a complaint within five working days is a reasonable timeframe. ICAEW probate firms are already required to meet this metric.
15. We also agree that it is helpful for firms to tell complainants that they have a right to complain to LeO if the firm has not resolved the complaint satisfactorily within eight weeks of making the first-tier complaint.
16. The proposed requirement to communicate the outcome of the complaint promptly and comply promptly with the remedy if accepted by the client would ensure firms do not unduly delay matters.

Question 5: do you have any comments on draft Paragraphs 14 and 15 and the associated draft Guidance?

17. We agree that firms should respond to complaints fairly, consistently, and promptly, and resolve them, at the earliest possible opportunity. Our revised Continuing Professional Development (CPD) requirements place a greater focus on ensuring that all members including probate practitioners are sufficiently competent to carry out their roles and responsibilities.
18. However, while we discuss and ensure that firms' have appropriate procedures in place for signposting their complaints process during QAD visits, we do not review individual complaint files. This means that determining whether a firm has failed to deal with a complaint competently and diligently may only be apparent if we receive a second-tier complaint from a dissatisfied client or concerns are subsequently raised by LeO.

Question 6: do you have any comments on draft Paragraphs 16 and 17 and the associated draft Guidance?

19. We agree that the requirements in draft Paragraphs 16 and 17 and the associated draft Guidance are appropriate actions for an authorised person to take to learn from complaints. We already encourage firms to focus on continuous improvement and to use complaints as a learning opportunity. Our CPD requirements also encourage practitioners to identify learning needs and engage in regular training and development.

Question 7: do you have any comments on draft Paragraph 18 and the associated draft Guidance?

20. We agree that in general, approved regulators' regulatory arrangements should specify what action may be taken for non-compliance with regulatory arrangements. Our Regulations make reference to regulatory and disciplinary procedures, including the ability to issue regulatory penalties. The requirements for complaint handling are also integrated into our Regulations. Therefore, we believe it is implicit that the Regulations set out that disciplinary or regulatory action may be taken for non-compliance with any part of the Regulations. It would be useful if the LSB could clarify if it expects specific reference to enforcement action relating to compliance with complaints procedures, rather than the general overarching material currently included.

Draft statement of policy

Question 8: Do you have any comments on the proposed draft outcomes?

21. ICAEW broadly supports the proposed draft outcomes, and we agree that data gathering, and analysis can help to identify risks. However, this data has limitations in smaller regulated communities where typically lower numbers of complaints arise.

Question 9: do you have any comments on draft expectations (i) and (ii)?

22. Lower numbers of recorded complaints limit the extent to which we can identify wider thematic trends from data. Anecdotal evidence suggests that, in general, this is not because these clients are vulnerable 'silent sufferers' or face specific barriers but that users of probate services at ICAEW firms are sophisticated long-standing clients, accessing probate services as an add on to existing accountancy services.
23. However, the collection of data from all firms regarding receipt of first tier complaints will allow us to identify firms with a higher than expected number of complaints which will bring in consideration as to whether the firm should be the subject of an accelerated QAD visit to see whether there is an underlying issue either in the way the firm is operating or in the operation of its complaints process.

Question 10: do you have any comments on draft expectations (iii) and (iv)?

24. We would note again the limitations of data analysis to identify systematic themes and trends from low numbers of complaints across a small regulated population. We do, however, act when any concerns arise during QAD monitoring visits or are reported to us.
25. Although we do not currently collect data on first tier complaints, we do consider complaints processes at probate firms through our QAD visits. This has advantages as it enables us to provide targeted interventions as well as individual ongoing support. We also publish newsletters to share good practice and regulatory updates on issues found during QAD visits to promote continuous learning. For example, we published an [article](#) for probate firms about common complaints and how to avoid them.

Question 11: do you have any comments on draft expectation (v)?

26. As we noted in paragraph 9 of the Summary, our main concern regarding the reporting of

aggregated data regarding the % of complaints resolved within 8 weeks is the ease and severity at which the % could be distorted by the outcome of a handful or even 1 or 2 complaints. If there are, for example, only 2 first tier complaints received in relation to work carried out by our regulated population of c. 360 firms and they are both unresolved at the end of an 8 week period, this will result in the publication of data which suggests a 100% failure to resolve complaints by ICAEW accredited probate firms. We believe that the publication of % of complaints resolved for smaller regulators should be accompanied by a footnote specifying the number of complaints on which the percentage is based so as to provide a fuller, more informed position to readers.

27. In order to avoid such distortion (which will, we believe, impact other smaller regulators too), we believe that the LSB should give consideration to the policy statement providing for the amalgamation of data collected by all regulators on the percentage of resolved complaints either instead of, or in addition to, the regulators' own published data. If, for example, data was amalgamated in relation to first tier complaints relating to probate between the four regulators authorised to regulate probate, this might produce much richer data to draw out trends which would help regulators with small populations.

Question 12: do you have any comments on draft expectation (vi)?

28. We agree that it is important to consider the experiences of vulnerable legal services users and those with protected characteristics when managing complaints. Any strategies should be proportionate to the size of the practice, but we encourage signposting and offering clear, tailored methods of communication.

Question 13: do you have any comments on draft expectation (vii)?

29. Our Regulations already encourage firms to keep records and learn from complaints and we encourage our probate firms to collect client feedback on their services.

Question 14: do you have any comments on draft expectation (viii)? Implementation and impact assessments

30. We agree that regulators should put in place proportionate and targeted measures to facilitate compliance with complaints procedures.

Question 15: do you have any comments on the proposed timescale for implementation?

31. We note that it is proposed that regulators make the necessary changes to regulatory arrangements within 12 months of publication following this consultation. The LSB is asked to note that the proposals on data collection may require changes to our annual returns process (or the creation of a separate data collection exercise) in addition to amendments to our Regulations. This will take some time to implement internally, and data would only begin to be collected in the following annual return cycle. As such, it would be helpful if implementation is phased in over 18 months to allow time to make the necessary system changes to collect first-tier complaints data and allow us to implement the proposed outcomes.

Question 16: do you have any comments on regarding equality impact and issues which, in your view, may arise from our proposed Requirements, Guidance and statement of policy? Are there any wider equality issues that you want to make us aware of?

32. No.

Question 17: Do you have any comments on the potential impact of the draft section 112 Requirements, draft Guidance and draft statement of policy, including the likely costs and anticipated benefits?

33. No.

Question 18: do you have any comments in respect of whether there should be different expectations on legal service providers depending on the basis on which they are providing their service?

34. Some of our practitioners do provide probate services pro bono, but we believe it is still important for client complaints to be dealt with to a high standard. Consistent standards are important for promoting trust and confidence in the provision of legal services.

Question 19: Do you have any other comments about the draft section 112 Requirements, draft and draft statement of policy?

35. No.

Our role as an improvement regulator

Our mission is to strengthen trust in ICAEW Chartered Accountants and firms. We do this by enabling, evaluating and enforcing the highest standards in the profession.

ICAEW's regulatory and conduct roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department (PSD) and overseen by the ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

Chartered accountants are talented, ethical and committed professionals. ICAEW represents more than 198,500 members and students around the world. 99 of the top 100 global brands employ our ICAEW Chartered Accountants.*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally. And, as a world-leading improvement regulator, we supervise and monitor around 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

ICAEW is a founding member of Chartered Accountants Worldwide (CAW), a global family that connects over 1.8m chartered accountants and students in more than 190 countries. Together, we support, develop and promote the role of chartered accountants as trusted business leaders, difference makers and advisers.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

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*includes parent companies. Source: ICAEW member data at 27 July 2022, Interbrand, Best Global Brands 2021



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