



# *Probate frequently asked questions*

## ELIGIBILITY

### **My firm is authorised, can you remind me what the eligibility criteria are?**

You must:

- ensure all principals and/or shareholders are authorised to conduct probate work;
- ensure non-authorised persons do not control 10% or more of the voting rights of the company/LLP/other body; and
- consider the impact of any employees 'holding out' as principals.

### **My firm is licensed, can you remind me what the eligibility criteria are?**

You must:

- appoint a head of finance and administration (HOFA) and/or a head of legal practice (HOLP);
- ensure principals hold affiliate status if they are not an accredited probate firm, a registered auditor, a DPB (Investment Business) licensed firm, an ICAEW member, ICAS member, CAI member or member of another approved regulator;
- ensure only principals and employees of a firm are authorised individuals. We can't license sub-contractors or consultants;
- ensure all non-authorised persons controlling 10% or more of the voting rights in a firm have been approved by ICAEW; and
- consider the impact of any employees 'holding out' as principals.

### **What should I do if I'm planning to make changes to my firm?**

If your firm is considering the appointment of a new principal, incorporating the firm, or changing the structure and/or ownership of the firm, it could have an impact on eligibility. Please discuss the implications of any intended changes with our regulatory support team +44 (0)1908 546 302 or [regulatorysupport@icaew.com](mailto:regulatorysupport@icaew.com).

The Probate Regulations require firms to inform ICAEW as soon as practicable, but not later than 10 business days, after any event affecting the firm's eligibility to be accredited. Otherwise, disciplinary action may be taken.

### **Is the definition of a principal the same as for other ICAEW regulated activities?**

No. The definition of a principal in the Probate Regulations is broader than in other ICAEW regulations, as it includes any individual or person who is held out as being a director, partner, member, or member of the governing body. These individuals may need affiliate status for the firm to continue to be eligible. See the ICAEW [statement on public practice](#) for more information.

### **Are there minimum professional indemnity insurance (PII) requirements?**

The minimum PII cover is £500,000 per claim. You must ensure that you have notified your PI insurers that you are licenced/authorised for probate work, especially if they don't require a proposal form to be completed on an annual basis.

## **SCOPE OF THE ACCREDITATION**

### **Does the accreditation only cover the activity of physically obtaining the grant of probate / grant of representation?**

No. Schedule 2 paragraph 6 of the Legal Services Act 2007 defines probate activities as preparing any probate papers for the purposes of the law of England and Wales. Probate papers are papers on which to found or oppose a grant of probate (or grant of letters of administration).

Preparing probate papers involves the following:

- PA1 form for personal applicants
- Inheritance Tax forms
- Paying the Inheritance Tax due
- The oaths

Obtaining the grant of probate involves the following:

- Swearing the oath
- Submitting the relevant papers to the probate office
- Obtaining copies of the grant

Additionally, some firms have not fully appreciated that authorised work covers both probate **and** estate administration. While the Probate Regulations only require probate work to be undertaken or controlled by an authorised individual (AI), there are various other requirements of the regulations which mean that it is sensible for the AI (or HOLP/HOFA) to have an understanding of what authorised work is being done under their accreditation, ie, including estate administration, to ensure compliance with the probate regulations more generally.

Ultimately the AI/HOLP/HOFA will be held to account if the firm fails to meet its obligations under the regulations. So, while they might delegate aspects of 'undertaking or controlling' authorised work (regulation 3.3 stipulates that they can't delegate this for probate work), they still need to know what work is being done and how it is controlled to comply with other aspects of the regulations and to be able to demonstrate that to us.

## **ONGOING REQUIREMENTS**

### **Are there specific training/CPD requirements?**

Yes. All authorised individuals need to keep their skills up to date with appropriate CPD training. We have found some staff conducting probate work under the supervision of an authorised individual who have not had adequate training.

## **Do we need to notify clients what will happen if we cease to be able to provide probate services?**

Yes. If you are a sole practitioner, you must provide your clients with details of your alternate in writing. If you are the sole authorised individual in a larger firm, you need to ensure that your fellow directors/partners understand that should you become indisposed, they will need to arrange for this work to be passed to someone who is eligible to undertake it. You could arrange for the appointment of an alternate in these circumstances and notify the client of this fact, as you would if you were a sole practitioner.

## **I understand there is a requirement to monitor diversity, what is this?**

All probate firms must monitor the diversity of its principals and employees. ICAEW will collect this information every two years. Further information including a questionnaire template is available at [icaew.com/diversitydata](https://www.icaew.com/diversitydata). Your firm's data should be published on your firm's website in a format of your choice. If your firm does not have a website, you must still publish the data on some appropriate form of documentation eg, as a paragraph in a letter of engagement or in advertising materials.

If the anonymity of individual members of staff may be compromised, you should adapt the information you publish accordingly, for example, by only publishing the less sensitive data.

## **Do we have to carry out an annual compliance review?**

Yes. These must be carried out every year. To be fully effective these reviews should include both whole-firm and cold file reviews. Please refer to the full [Probate Regulations](#) for a list of the full requirements for firms authorised and licensed for probate work.

A questionnaire to assist you in complying with this requirement, is available at [icaew.com/probate](https://www.icaew.com/probate)

We recommend you time your first annual compliance review to coincide with completion of your ICAEW annual return, and then complete on each anniversary after that.

## **Are there specific requirements for handling estate monies?**

Yes. These must be dealt with in accordance with our Clients' Money Regulations as specified in the Probate Regulations. Specifically, monies received in connection with authorised work must be kept separate from other clients' monies in a designated account. Each engagement for which monies are received in connection with authorised work must be held in a separate, individually designated account.

## **Can we recharge the estate for bank charges?**

The Clients' Money Regulations stipulate that bank charges are not clients' money and must be charged to an office account. Therefore you would need obtain agreement from the client, eg, through the engagement letter, to recharge them as a disbursement.

## **What should be included in an engagement letter?**

Use an engagement letter to advise clients of matters that must be put in writing. These should be sent to the client before starting any probate work. The Probate Regulations stipulate firms must advise clients of:

- the nature, scope and terms (including the basis of fees and complaints procedure) of the authorised work as agreed with them;
- the compensation arrangements and timescales for making an application to the Probate Compensation Scheme;
- the firm's PII cap, if the value of the estate exceeds the firm's PII cover. This must be done at the start of the engagement. In practice you may not know the value of an estate at the start of the engagement so consider advising probate clients of this anyway; and
- their right to complain to the Legal Ombudsman and provide the contact details. The information you will need to include in your engagement letter will depend on the services you are providing.

Further information about what to include in engagement letters is available at [icaew.com/probate](https://www.icaew.com/probate)

### **Are there other matters we should consider when managing the quality and risk of probate and estate administration work?**

Always consider your firm's competence and independence before you take on probate and estate administration work. Our [Ethical considerations for probate practitioners helpsheet](#) will help with this decision process. Proprietary probate systems also have checklists to prompt your firm with these considerations and ensure you gather all the necessary information.

- Monitoring independence – your firm could include questions on probate in your annual declarations. Make sure staff are made aware of their meaning and implications.
- Don't forget to conduct anti-money laundering client due diligence on the executors of the will. This is sometimes overlooked if your firm was acting for the deceased before he or she died.
- Only authorised individuals can undertake or control probate work. We look for evidence of how authorised individuals have directed and controlled this work in our monitoring reviews.
- You must document authorised work in enough detail to show what has been done and by whom.
- Clients' property should be safeguarded at all times – it's essential to record details of estate assets received by your firm in connection with authorised work. Assets must not be released without written instruction from the client and a receipt.
- Notify potential creditors and other claimants – publish details of the death in the London Gazette and/or local newspaper.
- Draw up a family tree of the deceased for all probate clients – this will help ensure you have details of all parties who are likely to be interested in each estate.
- Use regular progress meetings with the probate team to ensure deadlines are met and cases are progressing at a reasonable rate. Issue your probate clients with regular updates on the progress of the case. These could be supported by an explanation for anything that has delayed or speeded up the process.
- Consider issuing interim fee notes given the length of time it can take to complete a probate case.
- For estate administration cases:
  - consider obtaining identification from beneficiaries as soon as you know who they are. This will help prevent delays in distributions and ensure you are paying out to the right people; and

- maintain an easily accessible list of assets to be collected in. Mark them off as you receive them so there is a simple snapshot view of what remains outstanding at any point in time.
- Set out a policy indicating the areas where consultations and hot file reviews should take place and who can conduct these. Appropriate triggers could be where:
  - there are any potentially contentious issues;
  - the estate involves subjective valuations;
  - the authorised individual is also the sole executor; and/or
  - the cases are complex or drawn out.
- At the completion of an assignment, issue the executors with:
  - a summary of the estate’s assets and liabilities leading down to the final distributions; and
  - all important documents (the will, the grant, any relevant accounts and valuations) and any other documents that you think are appropriate.

**Can I describe my firm as being registered with ICAEW for the provision of probate activities?**

Yes. We have updated the **probate legend** since we approved some probate firms.

- Authorised firms may use the legend:  
'Authorised by the Institute of Chartered Accountants in England and Wales to carry out the reserved legal activity of non-contentious probate in England and Wales.'
- Licensed firms may use the legend:  
'Licensed by the Institute of Chartered Accountants in England and Wales to carry out the reserved legal activity of non-contentious probate in England and Wales.'

We will shortly provide a logo which authorised and licensed firms will be able to use.

**What can I expect from a probate monitoring visit?**

It is a Legal Services Board requirement that ICAEW aims to visit all probate registered firms within two years of granting that firm’s license.

The visit will always:

- be onsite;
- cover Practice Assurance and probate; and
- consider your compliance with the Probate Regulations by reviewing:
  - details of probate and estate administration activities in the last two years;
  - records of clients’ property;
  - publication of diversity monitoring;
  - annual fit and proper declarations;
  - probate complaints procedures;
  - notifications to the Probate Compensation Scheme; and
  - The most recent annual review of compliance with the Probate Regulations.

You should ensure that authorised individuals, HOLPs and HOFAs (as applicable) are available for the visit.

Obviously we hope that all firms will have conducted some authorised work by the date of our visit. However, if your firm hasn't undertaken any probate or estate administration work, as part of concluding the visit we will ask you to tell us when you consider an appointment in the future.

**My firm is an alternative business structure with a solicitor providing other services within our firm. What jurisdiction does the Legal Ombudsman have?**

The Legal Ombudsman has jurisdiction over any service rendered by a licensed firm, although it has limited it to probate, services provided by a solicitor in a firm and any service providing legal advice. Access the full guidance [here](#).