

Probate practitioner roundtable – summary of Q&A session

How will the transition from ACCA to CILEx Regulation work – are we still covered by ACCA if not transferring until the middle to end of next year?

There will be no gap in authorisation. We will align the move from ACCA to CILEx Regulation so there is no break and we will make the transition as smooth as possible within the regulatory framework. The key point is that we intend to lift what we currently have in terms of the framework under ACCA for probate authorisation into an arrangement that CILEx Regulation will have to allow for a seamless transition across.

Can my firm provide estate administration services under the proposed new Regulation? I gather CILEx Regulation will not be regulating estate admin work, Therefore, will the ACCA continue to regulate that area?

Estate administration work is not a reserved activity so anybody can do that. The piece of work that CILEx Regulation is looking to regulate is the piece that is defined in the Legal Services Act – the preparation of any probate papers for the purposes or in relation to any proceedings in England and Wales on which to found or to oppose grant of probate and grant of letters of administration. CILEx Regulation will regulate the reserved activity.

Estate administration work can carry on being done through the existing accountancy firm. Client money related to the estate will be held within the accountancy firm and that will fall under ACCA arrangements for that non-reserved piece of work.

In taking this approach we are seeking a clear separation between the reserved and non-reserved parts of this work, so as to allow CILEx Regulation to replicate the existing ACCA framework for probate as closely as possible and avoid duplication of regulation on a firm. The provisions about client money rules will be the ones that ACCA would apply in any event.

All the non-reserved accountancy elements will continue to be done under your ACCA practising certificate and through the ACCA authorisation.

This will mean that the ACCA remain your primary regulator with CILEx Regulation acting as a regulator just for probate, as defined in the Legal Services Act.

How do PII arrangements work – why does it have to be tied into the accountancy firm?

The intention is that we continue the existing PII arrangements where the cover is primarily for accountancy work with a limited amount of fee income related to probate work.

If we can continue to be able to roll the probate work into the same policy as the accountancy practice thereby reducing the percentage exposure to 10-20% of total fee income, we can get insurers more comfortable with a combined exposure and we believe they will continue to offer it on an accountancy policy wording.

Appendix 1

The intention is that the existing arrangement will continue to offer Fidelity Insurance. However we may be seeking an increase in the minimum level of PI cover that firms are required to have in place to bring this more in line with other regulators.

For firms seeking to offer other legal services or with larger percentages of fee income related to legal services, then they will need to consider insurance under a minimum wording policy and discuss this with CILEx Regulation.

The professional indemnity market has hardened over the last 12-18 months and premiums have increased significantly and access to cover become more difficult.

Why is a separate entity needed when I never handle client moneys? For me, probate work is usually an add on to work for clients or their relatives who have died so a separate entity makes no sense to me.

The issue for ACCA and for CILEx Regulation is around being able to clearly identify those aspects of a piece of work that are being carried out under each regulator. By having the probate activity being carried out through a separate firm enables them to put that ringfence around it.

For ABS and firms that offer differing professional services but through one firm – there is always the question of where the regulation sits. ACCA and CILEx Regulation have very differing regulations and approaches and our concern is around uncertainty over what part of what activity is being carried out by the accountancy side of the business or the legal side of the business. If it is legal services, then does it fall under CILEx Regulation's other rules and regulations – for example Accounts Rules, PII Minimum Wording, Compensation Arrangements, AML supervision etc.

The intention is for us to create an option that allows firms to operate under a similar framework and rules to that which is in place now.

CILEx Regulation understands that setting up a separate entity may be perceived as an extra requirement but hopes that in the greater scheme of things in what you are looking to do, that it is not too onerous a thing to do.

It is a way for CILEx Regulation to be able to deliver the ability for a firm to be able to do the reserved activity of probate, to minimise the regulatory arrangements that are in place against it to those that are needed to be able to regulate it, but actually to allow for the fact that fundamentally you are ACCA regulated firms. That's the simplest way for CILEx Regulation to be able to deliver this and enable firms to be able to carry on doing it in a way that is structured around the ACCA regulation.

One question that I have is regarding the new separate legal entity and involves the billing of probate work to the client and can we bill solely for the probate work via the new entity and the other estate administration work via our existing accountancy firm?

Yes – arranging that billing in the way that way makes sense as you are quite clearly differentiating between that activity that is reserved and that activity that is not reserved so that is an entirely sensible way to approach this.

Appendix 1

Will I need to set up a separate entity now and does this mean I need a separate PI policy where probate would be included, new branding, new website, etc. Do I need a totally separate PI agreement?

If you decide to move to regulation by CILEx Regulation, the intention is that you will be able to access PI on the same basis as you do now. There will be no need for a separate policy nor have a separate website provided you are able to advise consumers clearly about who regulates you for which activities.

To try to drive some costing efficiency we would advise that you to try to obtain coverage for the probate entity on the same schedule as the coverage for the accountancy entity. There is nothing stopping you from finding it separately and there is nothing to stop you from insuring both entities separately on different schedules of insurance, but as mentioned previously, to provide coverage for a 100% probate entity in the current market will not be cost efficient.

What safeguards are there for those taking the exams in July?

At the time of the probate roundtable, a training and assessment course was underway – the prerequisite for gaining the authorisation to practices. There is another course planned for March/April 2021 and BARBRI Altior ordinarily run three courses through out the year so would continue on in that way so long as the regulations allow for that. If between now and when the change comes in we find that we need to put into place additional re-sit opportunities for those who don't pass the assessment on the first occasion, then BARBRI Altior will look into it at that time.

What will be the plan if ACCA probate practitioners are unable to transfer over to CILEx Regulation?

ACCA does not believe that any ACCA probate practitioner will be in that position – all ACCA probate practitioners should be able to transfer over to CILEx Regulation. If they decide that they do not want to go with CILEx Regulation, then there are other approved regulators that they can consider.

Will ACCA be renewing probate licenses after 31 December 2020?

Yes – your current authorisation will continue until such point as we have determined the date on which the transfer should happen. By way of example, if that transition date is 30 April then your ACCA probate licence will run to 30 April and from 1 May it will be a licence form CILEx Regulation and there will be no gap. For ACCA probate practitioners, the ACCA probate licence for 2020 will extend into 2021 at no additional cost.

Can we still use one website for both probate and non-probate services?

The Consumer Panel will be keen that ACCA probate firms adhere to transparency requirements following the CMA review of the Legal Services Market, but fundamentally there are no requirements for a separate website. CILEx Regulation envisages that you are primarily an ACCA regulated firm that delivers the application for grant of probate or the letters of administration via a CILEx/ACCA regulated entity. That is discreet so when you are advertising probate services on your website, that would be the appropriate place to put reference to that.

Appendix 1

ACCA's view is that you can use the one website. As far as your reserved legal activities and your non-contentious probate activities – provided you are clear about the authorisation and you meet the underlying requirements such as the transparency requirements – so long as that is all included in the probate page of your website then you will meet the requirements.

What will be the CPD material available to us from CILEx?

CILEx is discussing an Introduction to Wills course with ACCA at the moment. CILEx's law school and training provider partners are already providing CPD to CILEx members annually – some of whom are similarly probate practitioners – so they are already developing resources for that group of members. In addition to the specialist CPD for members in practice, CILEx also offers members an all-round professional development platform. CILEx would anticipate mapping that offer to ACCA members coming to over to CILEx. They also offer regional network events that offer CPD. So, there is a broad range of CPD and different delivery models.

Can you have non-licensed individuals as directors and shareholders? If so, how much holding can they have?

In a probate firm, non-licensed persons will need to be an authorised person to enable us to continue to offer the firm as a CILEx/ACCA firm.

If somebody is looking to have a firm with a non-authorized person as an owner or joint owner with a person who is authorised person, then you will need to talk to CILEx Regulation about having a CILEx Authorised Entity. This would be subject to their normal rules and requirements.

The current position with ACCA authorisation is that you need all of the partners to be probate or have some sort of legal services authorisation so the proposed partnership and arrangement that CILEx Regulation is seeking to offer is about replicating that. But where the partnership has benefits is that ability for people who then meet the eligibility requirements to get that broader CILEx Regulation authorisation for other reserved legal activities. That will help practices to diversify their offerings.

Two associated questions – one of our partners is non-ACCA but has a probate certificate. How would he be impacted by these changes? AND We are an ACCA-regulated firm – one partner is ICAEW and both cover probate. Training was by SWAT. Would we be eligible to join?

CILEx Regulation is working with LSB at the moment to allow them to provide an exemption for those practitioners who have gained their authorisation through another approved regulator. CILEx Regulations' intention is to allow what is in place to continue through the rules that have been lifted across. For the ACCA/ICAEW practice in question, the only requirement for them is that they maintain that link with ACCA.

So, if we take that the mixed firm is currently authorised for probate by ACCA as a probate firm then in terms of the transition, they will be eligible for that transition.

Would completion of IHT400 fall under the probate entity or the accountancy entity?

Appendix 1

If it is about getting the grant of probate, then that would fall under the probate side – the paperwork around getting grant of probate would be part of that reserved activity.

At present, we write “authorised by ACCA for reserved legal activity of non-contentious probate”. Which logo can we use – the ACCA and CILEx’s?

As far as the authorisation is concerned, it would be CILEx Regulation so the text would be that the authorisation is by CILEx Regulation. In terms of the logo – your eligibility to use the ACCA logo does not change because to all intents and purposes, it will still be an ACCA firm. With regard to the CILEx Regulation logo, their firms have access to digital/smart logos that provide confirmation that the consumer has landed on a correct website and provides information on access to consumer protections. However, CILEx Regulation has not yet considered how its logo can be used by ACCA/CILEx firms and will now take this forward as an action point.

What will be the other reserved activities that we can do in future via CILEx Regulation?

The full suite of the reserved and regulated activities – probate, conveyancing, civil, criminal, family litigation and immigration. –

The firm will need to have people who can demonstrate the knowledge and experience in those areas, as we do authorise our firms by specialism. The only exclusion we have from the reserved activities is notarial.

As we authorised by specialism, this means that unlike a solicitors firm, you don’t get a general authorisation for all activities. That appeals to those who are specialists in their particular fields.

For people who have just qualified for probate and are in the process of applying for authorisation with ACCA, should new firms still register with ACCA now and then transfer to CILEx Regulation in due course? Or are new firms in limbo until next year?

We would suggest that they sign up and register with ACCA if they are ready to do so. If they are holding on purely to wait for the transition, then there is no need to do so - if you have met the eligibility requirements to get your probate licence then take advantage of that and register now. When the transition happens, it will happen in a seamless manner.

Would we need two engagement letters – one for each entity?

CILEx Regulation will produce guidance on this area. Its initial thoughts are that it could be managed within one letter and their intention is to make it as straight forward as possible for practices and consumers. Their approach will be mindful of the best approach for the consumer in making sure they have the information they need and require to understand the nature of the service that they are engaging you for. This is an area that CILEx Regulation will be working with ACCA on.

Does the separate probate entity need a client account?

No - the rules will state that no money is held in the probate entity. Client money will all be held in the ACCA firm. This is about what is the reserved part and what is the non-reserved part - so estate administration is the non-reserved part and that is where the monies from the estate will be held and distributed.

Appendix 1

We have a separate probate services entity, but we do estate administration as well under that separate probate entity. Is that going to be an issue under the new system?

CILEx Regulation will need to consider this scenario further. CILEx Regulation had not been advised that any practice had that existing arrangement in place so will need to explore this question in more detail. Fundamentally there is a model that CILEx Regulation has agreed with ACCA that will make it difficult for them to deal with exceptions, but further consideration will be given to this area.

How will the monitoring work?

CILEx Regulation will have an MOU in place with ACCA to allow the exchange of information.

CILEx will require an annual return but do not envisage that to be much different from what is already in place. Where they can, they will work with ACCA on particular information gathering to avoid duplication of requests for the same information from practices. This is part of ongoing discussions with ACCA.

CILEx Regulation's approach is that by ringfencing client money within the ACCA firm, that allows money laundering supervision to be delivered by ACCA. So the primary monitoring will remain through ACCA.

Will we still be listed on the ACCA register of members qualified to provide probate services?

Yes – those adjustments can be made to ACCA's directory of members. Probate specialisms will still be highlighted as part of their record. CILEx Regulation will also publish a list of those CILEx./ACCA firms and those members who are authorised to provide probate.

As a small practitioner authorised for probate work, will there be a forum for best practice and CPD so that we can have comfort that we are operating in the best way?

CILEx has special interest groups that are joined up members with special interests. Good practice exchange can take place in those forums. In a similar way, ACCA members will be able to engage with other practitioners in a similar position to themselves.

CILEx has a practice advice function – a team within the membership structure, so if you have questions you need to ask around your professional responsibility, then they are able to provide advice and guidance there.

Do I need sit a new exam to do conveyancing?

Yes, you do. CILEx Regulation can provide advice on about gaining a practice right in conveyancing or any other of the reserved activities, but you will need to have a background and experience in that area to enable you to do that. For all the additional rights to practice in those areas, you need to be able to demonstrate the knowledge and experience and submit evidence of that experience.

Appendix 1

Another question about the use of client accounts and estate administration and how to keep that under one entity?

This will need to be considered further. CILEx Regulation is looking to retain existing arrangements but both ACCA and CILEx Regulation recognise that unfortunately there will be instances where ACCA members may have to make changes to their existing arrangements. CILEx Regulation will look at various situations and look at what is the best approach or what can be done to mitigate the changes required. Alternatives will be considered as more information about such situations come to their attention.

Going forward, you may decide that if you are going to offer a range of legal services, a single entity doing all of that (including other elements that may not be part of the reserved areas like estate administration) may be more suitable but then you are looking a quite a different type of authorisation.

How will supervision for compliance with Money Laundering requirements be addressed?

The intention is that firms will be supervised by ACCA for compliance with the Money Laundering Regulations and discussions have been held to confirm that this approach is acceptable to our oversight body OPBAS.

Will clients still be able to escalate complaints to the Legal Ombudsman under this arrangement?

CILEx Regulation is having discussions with the Legal Ombudsman on this matter as we want to ensure that clients retain all their expected consumer protections.