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CONSULTATION ANALYSIS – the proposal to become the regulator of Association of Chartered Certified Accountants (ACCA) firms for the reserved activity of probate.

The consultation ran from 12 August 2020 to 7 October 2020 and we received 6 responses from:

1. Barbri Altior
2. Council of Licensed Conveyancers
3. ICAEW
4. Legal Services Consumer Panel
5. The Notaries Society
6. A CILEx member

In most instances the responses were not framed around the specific questions contained within the consultation but addressed the issues that were important to each responder. We have set out the questions here for reference but have presented our response around the areas that the responders were seeking further clarity on.

Q1. Do you agree that CILEx should become the regulator of Association of Chartered Certified Accountants (ACCA) Accredited firms for the grant of probate?

Q2. What, if any, do you consider are the benefits and issues of providing this route to ACCA firms?

Q3. CILEx Regulation is proposing to regulate the specific reservation of probate through a separate business entity rather than within the ACCA regulated accountancy firm? What might be the benefits and issues of this approach?

Q4. It is proposed that ACCA will continue to regulate all the unreserved elements of estate administration. What are the benefits and issues of this approach?

Q5. Please review the rules being adopted within the new CILEx / ACCA Handbook, do these provide suitable protection? Are there any gaps?

Q6. Do you agree that this approach still offers the consumer appropriate protection? If not, please provide reasons with your response.

Q7. Do you agree with the proposed fee structure? If not, please provide reasons for your response.

Themes raised by the responders.

Choice of regulator

The Council of Licensed Conveyancers raised a concern that there was a lack of free choice to the ACCA firms as to which future regulator that they may choose and therefore they believed that the proposal could be contrary to the Legal Services Act.

A similar point was put forward by the ICAEW, who believed that there would be a lack of options for ACCA probate practitioners to choose their own regulator. They did not think that choice should be restricted to only one of the 8 currently designated regulators.

CILEx Regulation response:

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The offer has been developed to enable ACCA probate practitioners to continue to offer probate as an ancillary activity to their accountancy work under a similar regulatory framework to that currently offered by the ACCA. We believe that this will ensure that competition and choice remain as wide as possible in the future and allows ACCA probate practitioners to have the opportunity to develop the services that they offer to the public.

As a regulator of all reserved activities, apart from notarial services, CILEx Regulation is also well placed to offer ACCA firms the opportunity to expand their legal services offering into other areas of legal practice.

Each ACCA firm will have the opportunity to make its own decision as to their future regulator if they wish to continue to offer probate services. There will be no requirement on ACCA firms to choose CILEx Regulation and we are aware that other regulators have already been in contact with firms.

Short timeframe

The Legal Services Consumer Panel and the ICAEW both felt that the initial timescale to put in place alternative arrangements was too short to allow a thorough consideration of all the issues.

CILEx Regulation response:

Both CILEx Regulation and ACCA recognised that there were a number of issues to address with other stakeholders, which we believe have now been completed, and so CILEx Regulation is only now proceeding with the application.

Risks to consumer protection/separation of the probate activities from non-reserved activities

There were concerns raised about the risk to consumer protection and that consumers would not understand who to approach to seek redress.

There were also concerns around the separation of probate activities from estate administration activities and whether this would pose a risk to consumer protections.

CILEx Regulation response:

The proposal we are putting forward is founded upon the principle that the probate activities are an ancillary service to the main accountancy activities. To that extent we believe that the main relationship the consumer will have in most cases will be with the regulated ACCA accountancy firm and therefore they will seek assurance from the firm they are utilising.

The regulation of the distinct activities will be managed via an MoU with ACCA and will cover not only probate but any issues arising in relation to any other supervisory and disciplinary matters, such as AML.

To provide clarity to consumers and stakeholders we will be creating a directory with ACCA that lists the ACCA accountancy firm together with the associated CILEx-ACCA firm and that the consumer protections cover both firms for probate and estate administration.

CILEx Regulation and ACCA have been working with insurers to ensure that the cover will straddle the ACCA firm and the CILEx-ACCA probate firm, which will in turn ensure that any consumer claims can be dealt with through a single application, irrespective of the part of the group which has given rise to the claim. They have confirmed that this is the existing arrangement that is in place and have no concerns about the proposed structure.

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CILEx Regulation and ACCA have been working together to ensure that there are appropriate minimum protections in place, and we are proposing an increase in the minimum PII requirements to £500k. This will bring CILEx-ACCA firms in line with the minimum level of cover required by the ICAEW. Alongside the continuation of the fidelity scheme currently in place, we believe that this will ensure that there is adequate consumer protection to cover the risks.

We have confirmed with the Legal Ombudsman that service complaints in relation to probate activities can come to them as the ACCA probate practitioners will be authorised persons. They have also confirmed that they will deal with any complaints in respect of estate administration activities within the ACCA accountancy firm.

ACCA has been keen to retain full responsibility for all anti-money laundering supervision and this was a key driver in prohibiting CILEx-ACCA firms from holding client money. This will only be permitted through the ACCA accountancy firm.

We have confirmed with OPBAS that the proposed structure is appropriate to facilitate this arrangement for AML supervision and they are comfortable that it gives clarity as to where any risk and therefore supervision should occur.

We will also extend the transparency rules to CILEx-ACCA firms so improving the provision of information to consumers.

By adopting a ring-fenced approach to the CILEx-ACCA firms, we have identified that we will be able to extend our powers of intervention to cover the work carried out by these firms. This we believe will be an improvement on the current position as the ACCA does not appear to have these powers.

We have discussed with ACCA that the boundaries between the non-reserved and reserved activities will be a back-office process, which should not impact on consumer protections. As set out above these will be offered through a single insurance product and therefore the issue of where liability falls for this purpose will be unaffected. The proposed scheme mirrors the one already in place at ACCA.

Creating a two-tier regulation

The ICAEW also raised the concern that the proposal effectively created an issue of two-tier regulation based on the issue of different standards and quality.

CILEx Regulation response:

We do not believe that this is the case and have been very careful to ensure that there is a clear distinction between firms which are regulated only by CILEx Regulation and those that are regulated jointly by ACCA and CRL for different elements of the process.

The standards as they apply to probate activity will be the same for individuals and firms across both schemes. By adopting a similar approach to that currently in place with ACCA, we are continuing the existing standards that are in place.

CILEx Regulation has a precedent for this in its regulation of Associate Prosecutors working at the Crown Prosecution Service, and CILEx Criminal Litigators and Advocates, where the standard of litigation and advocacy is not diminished, although the scope is restricted through the title.

Lack of regulation of estate administration.

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The ICAEW raised a question in relation to how estate administration is regulated throughout the whole of the legal sector, as in itself it is not a reserved activity and is offered by many unregulated firms.

CILEx Regulation response:

The point raised is beyond the scope of this consultation.

In respect of this proposal, the work will be carried out by a regulated accountancy practice subject to the rules of the ACCA in respect of client money and consumer protection. We have also engaged with the Office for Professional Body Anti-Money Laundering Supervisors to clarify that they are content with arrangements for supervision of AML activities to rest with the ACCA.

Qualification recognition

The ICAEW raised an issue with future qualification recognition.

CILEx Regulation response:

CILEx Regulation will take over the administration of the ACCA qualification run by Barbri Altior which will not alter the current position. CILEX Regulation is also in the process of amending its exemptions policy which will enable recognition of authorised persons who have qualified through other approved regulators. This would address the issue raised by ICAEW and there would seem to be strong support for the recognition of approved regulator qualifications without further requirements.

Resources and costs

It was raised whether the proposed fees were set at a level sufficient to cover our regulatory activities for the firms and individuals.

CILEx Regulation response:

CILEx Regulation has a regulatory infrastructure which will enable the absorption of the additional regulated individuals and firms with limited additional costs. We believe that the majority of risks will remain with the accountancy firm, which will remain under the regulation of ACCA, and therefore we are able to reduce our regulatory costs to the firm.

Some activities and support, such as practice advice, will be provided by CILEx which will be funded outside of the practising certificate fee.