

CONSULTATION: on the proposal to become the regulator of Association of Chartered Certified Accountants (ACCA) firms for the reserved activity of probate

ABOUT YOU

Where you are responding on behalf of an organisation, please provide a contact name and telephone number for yourself.

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If you are responding on behalf of an organisation, please tell us the type of organisation for which you are providing a response (e.g. representative body, regulatory body).

Legal Services Regulator

Do you consent to CILEx Regulation publishing your response?

YES The CLC also publishes its responses to consultations on its own website.

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CONSULTATION QUESTIONS

Question 1: Do you agree that CILEx should become the regulator of Association of Chartered Certified Accountants (ACCA) Accredited firms for the grant of probate?

NO

Please provide reasons for your response:

The Legal Services Act allows providers of legal services a choice of the regulator that they believe is most appropriate for the services they provide and their business model.

ACCA-regulated firms that provide probate services should have such a free choice rather than being propelled toward and compelled to use regulation by one legal services regulator. The benefit of choice allows firms to choose a regulatory regime that best fits their business model and aspirations and therefore improves the client experience.

The proposed 'pre-pack' scheme to facilitate the exit of ACCA from legal services regulation may have an anti-competitive effect and reduce consumer choice and undermines one of the intents of the Legal Services Act 2007.

There must also be a question as to whether a regulator with limited experience of entity regulation would be the most appropriate choice if this model were to be implemented.

A media comment from the ACCA appeared in Legal Futures as follows:

'Mr Collins said this would allow the 52 ACCA firms accredited for probate work to be regulated by CILEx Regulation in a "seamless transfer", which would have "no impact at all" on their ownership or structure.'

This does not reflect at all the substance of the proposal, which requires the creation of a new 'CILEx ACCA' entity alongside the ACCA-regulated business. This contradiction raises questions about the degree of clarity between the two regulators as to key aspects of the proposals.

Question 2: What, if any, do you consider are the benefits and issues of providing this route to ACCA firms?

Please provide reasons for your response here:

Whilst at first glance it may appear that the proposal presents a neat solution for ACCA practices wishing to remain deliverers of legal services, that is in our opinion outweighed by the removal of freedom for ACCA practices to choose a regulatory regime that suits them and their client needs as at 1 above. More importantly perhaps, there are also issues in relation to the potential for client protection and client confusion as in our response to Question 4 below.

Question 3: 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?

Please provide comments here:

The clear separation of the entities regulated by the different regulators should help to ensure clarity of what exactly is covered by each regulator as well as the responsibilities and accountability of the regulated businesses. That only holds good however if the whole of the transaction is covered by the one regime. If that is not the case the consumer interest may well be jeopardised.

In the case of probate, we can see that confusion could arise very easily about responsibility when core estate management is undertaken by the entity regulated by ACCA and the probate application is assembled by the CILEx Regulation entity. Where there are errors or omissions that harm a client's interest or result in loss to a beneficiary of an estate, it may be difficult to ascertain which piece of work gave rise to them and which entity is responsible.

The definition of what CILEx Regulation will regulate in the case of ACCA-regulated firm's probate work is very narrow and limited to the reserved activity itself. This could mean that the new probate entity would in fact simply be a postbox and that it will be difficult to ascertain responsibility for any compliance issues in relation to the preparation and submission of applications for grants of probate, for example. Will one entity rely blindly on the work of the other or will they need to undertake their own checking to ensure that they are not opening themselves up to liability for errors made by the other? Managing the regulation, insurance and accountability for those risks appears very difficult indeed.

We therefore consider that it will be very difficult to police the boundary between the ACCA-regulated estate management activity and CILEx Regulation-regulated probate activities in response to complaints raised by clients or in the event of systematic failings identified through ongoing monitoring and compliance work by the regulators.

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Question 4: 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?

Please provide comments here:

As set out in our response to Question 3, above, it will prove very difficult to draw the line between estate management activity and the preparation of a probate application.

Where the unreserved portion of that work takes place within an entity that is regulated for the provision of probate services, the consumer protection is clear and genuinely seamless. The current proposal to split the activity, consumer protection arrangements, professional indemnity arrangements, public legal education effort and accountability between two regulators plainly creates new risks and opportunities for confusion and reduced consumer protection through blurred accountability.

We note that the intention is that the ACCA entity will hold the client money under these arrangements. This clearly highlights the risks of splitting one transaction across two entities. Will the ACCA entity rely on the CILEx ACCA entity's instruction on the distribution of the estate or will it undertake its own checks? If the ACCA entity has prepared the estate for the probate application, will the CILEx ACCA entity rely in that work for the application or undertake its own checks?

It will be vital to understand the attitude of insurers to the significantly different possible scenarios here before any final steps are taken to go down this route. While the consultation paper states that the majority of the risk remains with the ACCA entity, harms arising within CILEx ACCA entity could give rise to substantial claims.

Consideration must also be given to how consumers will be guided through these issues, can be helped to understand the regulatory protections in place at each stage of the process and the question of how they can be helped to submit complaints to the correct ombudsman.

Question 5: Please review the rules being adopted within the new CILEx Regulation / ACCA Handbook, do these provide suitable protection? Are there any gaps?

Please provide comments here:

Paragraph 42 of the Consultation Paper states 'the existing requirements for PII and Compensation arrangements that ACCA Accredited firms are expected to comply with [have been maintained] recognising that the majority of risks that these protections are in place to mitigate will remain with the accountancy activities. We will be entering into discussions with the existing providers of PII so they can clearly understand the risks and within which firm that these sit'.

It appears from [ACCA's application](#) to the LSB of October 2017 that these are the same PII arrangements required by ACCA of a practice providing accountancy services. In its [decision notice](#) dated 17 January 2018 the LSB queried the PII arrangements at paragraph 14 'A concern we initially had was the relatively low minimum PII requirement compared to other approved regulators' but confirmed that concern was addressed because in practice the PII cover ACCA practices had were broader and had higher limits than the minimum required.

Given the fact that query was raised by the LSB it is surprising that the consultation paper does not provide any analysis of the potential risks nor any assessment whether the PII requirements provide an appropriate level of protection for consumers.

Similar considerations apply to the proposals for fidelity guarantee insurance (FGI).

Question 6: Do you agree that this approach still offers the consumer appropriate protection? If not, please provide reasons with your response.

Please provide reasons for your response:

We do not believe that it does, because of the risks arising from two regulators covering different elements of the same legal service as set out in our responses above.

For the same reason, there is significant risk of consumer confusion through the introduction of complicated arrangements when consumer expectation will be that one regulator will cover the legal service provided.

The consultation document mentions that OPBAS will be engaged in relation to AML supervision. It will also be important to have the view of the FCA, which is not mentioned in the consultation document and to set out what the ombudsman arrangements will be for the handling of consumer complaints.

Question 7: Do you agree with the proposed fee structure?

Please provide reasons for your response:

We only observe that fees will need to reflect the full cost of providing the full range of regulatory oversight and activities that are required under the Legal Services Act. It would be helpful to have more detail about how the modest fees proposed will cover the oversight, monitoring and compliance work in relation to CILEx ACCA entities and the other regulatory activities such as public legal education - which could require some effort in the case of this novel arrangement – diversity and inclusion, and so on.

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HOW TO RESPOND

Please send your response to CILEx Regulation by email to consultations@cilexregulation.org.uk. Please mark your reply for the attention of David Pope, Entity Authorisation and Client Protection Manager.

Our office is closed until further notice because of the government requirements due to the corona virus and we can only receive responses via email. Please check on our website for information to find out if this situation changes before the consultation closes on 7 October 2020.

SUBMISSION DEADLINE

The deadline for responses is **5pm on 7 October 2020**.

Thank you.

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