

30 June 2010

Our ref: ICAEW Rep 59/10

Your ref:

Chris Kenny
Chief Executive
Legal Services Board
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Dear Chris

Third category professionals

Non reserved legal services can be provided by non law professionals such as accountants, surveyors and actuaries. In this note we call them Third Category professionals which is the phrase adopted by the ICAEW in previous consultation responses. Two urgent issues arise requiring LSB and OLC input.

Issues for consideration by the LSB and OLC

The first issue involves overlapping legal services which can be provided by legal and Third Category professionals. It is summarised in our letter to the SRA dated 16 March 2010 and the SRA's response.

The second issue involves the role of the OLC in handling complaints involving overlapping legal services.

We believe there is a pragmatic solution for the LSB to adopt to ensure clarity and compliance with the regulatory objectives and which will assist the OLC in its role.

SRA analysis

The SRA's current consultation paper The Architecture of Change states

- 'Our view is that, as an LA, the SRA's jurisdiction should be limited to:
- the reserved legal activities in respect of which the licence has been granted (e.g. conveyancing, litigation etc.);
 - non-reserved legal activities undertaken by the ABS (e.g. legal advice); and
 - non-legal activities (e.g. property management) which are subject to conditions imposed on the ABS's licence.'

A firm of Third Category professionals that decides to form an ABS could/will see much of its *advice* claimed by the SRA.

An obvious professional services example for accountants is taxation work. Such work could comprise 100% of the work undertaken by the accountancy firm which considers it an accountancy service. Under the SRA's analysis this would be legal advice which it could/would capture, even if the ABS firm was dominated by accountants and had just one lawyer performing a small proportion of reserved (or even unreserved) legal services. Similar considerations arise for surveying and actuarial practices too that may wish to form an ABS.

Gatekeeping issues

If the OLC does intend to handle all complaints about non reserved legal activities work delivered by a Third Category ABS (such as taxation) then this will

- oust the jurisdiction of current Third Category regulators such as the ICAEW, RICS and the Institute of Actuaries
- inadvertently concentrate complaints about professional services delivered by several professions in the hands of one complaints oversight regulator, ousting bodies such as the FRC.

Role of the LSB and OLC

The Act does not specifically deal with non law professionals but anticipates this regulatory conflict will be dealt with in a section 54 direction.

The LSB could state that regulatory reach in relation to "legal activity" in section 12 (3) of the LSA for Third Category firms should not extend to "non reserved legal activities" which form part of the regulated professional services covered by the relevant Third Category regulator *and* where an appropriate MOU exists.

This principle

- accords with the sentiments in the draft paper entitled Initial Analysis on ABS and the Scope of Regulation issued by the SRA which states "a licensing authority would have no jurisdiction over the accountancy work carried out by a MDP, other than to the extent of enforcing any conditions on the licensed bodies licence". We intend to provide our considered response to this draft paper to the SRA as soon as possible. The same approach would presumably apply to surveying and actuarial work
- can then be embodied inter regulator in a Memorandum of Understanding
- be carried forward into other non law professions such surveying and actuarial services and any other professions that may become involved in an ABS at a later date
- permits the OLC to perform its gatekeeping role effectively and clearly in the context of overlapping legal services provided by a Third Category ABS
- retains oversight regulation of professional services in the manner anticipated

The ABS licensing authority would be in a position of retaining overall oversight of legal and professional advice including through the function of the HOLP, but would delegate this by agreement to a more appropriate Third Category regulator. We recognise that this would not be the first interpretation that would be considered, taking into account section 12(3) and Part 5 of the LSA

together but it is a valid and appropriate interpretation in the context of Third Category professional work.

It would also anticipate and avoid a number of difficulties in the context of Third Category firms, such as that of the SRA being put in the position of regulating advice on such specialist areas as the interpretation of “true and fair” accounts under the Companies Act.

This letter was sent in draft to the SRA for comment before issue to you. The SRA suggest a meeting between the LSB ICAEW and SRA to discuss these issues in depth and we endorse that proposal.

Yours sincerely

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