



Legal Services Board Discussion Paper – Are Regulatory Restrictions in Practising Rules for In-house Lawyers Justified?

ICAEW welcomes the opportunity to comment on the Discussion Paper, *Are regulatory restrictions in practising rules for in-house lawyers justified?* published by the Legal Services Board (LSB) on 26 February 2015, a copy of which is available from this [link](#)

This response of 24 April 2015 has been prepared on behalf of ICAEW by the Business Law Committee which includes representatives from public practice and the business community. The Committee is responsible for ICAEW policy on business law issues and related submissions to legislators, regulators and other external bodies

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MAJOR POINTS

General

1. We welcome the chance to comment on the Legal Services Board's (LSB) discussion paper, 'Are regulatory restrictions in practising rules for in-house lawyers justified?'
2. We are responding in ICAEW's capacity as a representative of its members, though we have also discussed the response with our regulatory arm and taken into account their comments.
3. Whilst we agree that it is useful for the LSB to undertake a review of the current regulations and to assess the potential opportunities for further deregulation of the legal services market, we are not aware that reform of the practising rules for in-house lawyers is a matter of priority.
4. That being said, we are concerned that if the current regulatory restrictions were slackened or removed, this could create more problems than it solved. We are particularly concerned that any such slackening or removal would increase the potential for conflicts of interest, particularly if there were no clearly defined boundaries put in place to reduce this possibility.
5. We believe that any relaxation in the rules is largely unnecessary in view of the availability of Alternative Business Structures (ABS) as these effectively allow lawyers in non-law firms (such as an accountancy-led ABS regulated by ICAEW) to provide legal services to the general public. An ABS provides protection for clients that we would not like to see weakened: such protections include professional oversight of unreserved and reserved services provided to consumers by lawyers and provision for the management of potential conflicts of interest between the employing organisation and external clients.
6. The discussion paper refers to the position of legal departments within Local Authorities. We would argue that it would be more appropriate for Local Authorities to set up an ABS to provide legal services to consumers, particularly more vulnerable consumers who may have limited, if any, access to a traditional law firm. As we note in paragraph 16 below, there is a very real risk of conflicts of interest arising if an in-house lawyer is advising both his employer and the consumer on the same legal matter. If the aim is for local authorities to provide a cheaper and more accessible service to ratepayers, we would suggest that removing the restrictions on the practising rules for in-house lawyers is not the most appropriate way to achieve these aims: because of the potential for conflicts of interest to arise it may, in fact, place consumers at greater risk.
7. If the rules are amended, the boundaries of 'legal activities' covered by any rule change would need to be made very clear. In particular there are a number of our members who are qualified as both a lawyer and as a chartered accountant and practise as both. It would not be appropriate for the ability of such professionals to advise clients as an accountant to be inadvertently and unnecessarily restricted as a result of new legal services regulation.

In-House Accountants

8. ICAEW has comprehensive rules for members who work as 'in-house accountants,' that is members who are not in practice but are employed as an accountant. We give a brief overview of these in the following paragraphs but we would be happy to discuss these further with the LSB if that would be helpful.
9. As a member they are subject to ICAEW's disciplinary bye-laws and can be held to account for falling short on the ethical and professional standards imposed by ICAEW, especially where they bring the profession into disrepute. These can even be for any activities outside the accountancy profession where their conduct sullies the profession. Moreover the Financial Reporting Council can call cases in where they believe such cases raise, or appear to raise, important issues affecting the public interest as well as levy penalties and fines. All members

are required to regularly confirm that they have complied with the requirements for Continuing Professional Development (CPD), and remain competent as a professional.

10. In addition, ICAEW requires all members to carry a practising certificate and be subject to the professional assurance inspection whenever they offer services to the public that fall within the definition of accountancy as set out in the ICAEW Council Statement on Engaging in Public Practice, specifically in the activities set out in Annex 2 to that statement. This is irrespective of whether or not they consider themselves to be in-house accountants.

RESPONSES TO SPECIFIC QUESTIONS (Q1-3 inclusive) FOR REGULATORS

Q1. What is the rationale to support your current approach to regulating in-house practice?

11. As noted in the discussion paper ICAEW does not currently make specific provisions for in-house lawyers. This is because, as noted in paragraph 26 of the discussion paper, ICAEW's regulatory arrangements apply only to non-contentious probate activities and do not allow authorised individuals to undertake probate activities as an in-house member of staff for a non-authorised employer.
12. ICAEW does, however, expect all member firms and members (whosoever they are employed by) to adhere to its *Code of Ethics*. This sets out the five principles - integrity, objectivity, professional competence and due care, confidentiality and professional behaviour - by which ICAEW expects all members and all those employed by members to abide.
13. Moreover an ABS that is an ICAEW accredited probate firm is also subject to the regulatory and disciplinary arrangements put in place by ICAEW. These include abiding by the complaints handling process and compensation schemes stipulated by the Legal Services Act 2007.

Q2. If you have specific regulatory arrangements, how have you assured yourself that there is compelling evidence to support those arrangements?

14. N/A.

Q3. Having reflected on your specific regulatory arrangements, are there any areas you intend to remove or review?

15. We do not expect the regulatory arm of ICAEW to change its current arrangements for in-house lawyers employed in an ICAEW member firm.

RESPONSES TO SPECIFIC QUESTIONS (Q4-5 inclusive) FOR INTERESTED PARTIES

Q4. What is your experience of current arrangements for in-house lawyers?

16. We understand from our members that the current arrangements are not considered onerous and in fact many in-house lawyers employed by ICAEW members would be reluctant to see them removed. This appears to be particularly the case amongst the larger accountancy firms. The concern is that it would be very difficult for an in-house lawyer, employed by an accountancy firm, to advise an external client and then advise their employer if the same client were to sue their employer. Similarly an in-house lawyer would find it difficult to advise their employer on, for example, the terms of any contract with client A whilst also advising client A on their contract with their supplier (i.e. the lawyer's employer). In both these cases it would be more appropriate for the client to be advised by lawyers working for a law firm associated with the accountancy firm or a law firm completely independent of the accountancy firm. Many of the larger accountancy firms have, or are in the process of setting up, associated law firms

to avoid such conflicts, whilst at the same time increasing consumer choice and access to the legal services market.

Q5. What, in your view, could be changed?

- 17.** We agree with your analysis that the current system whereby the rules for in-house lawyers vary according to the regulator is unhelpful. We would suggest that it would be more helpful if the rules regarding in-house lawyers were more consistent across all legal service providers. In particular it would be helpful if there was consistency between the rules for barristers and those for solicitors.