



25 July 2012

Our ref: ICAEW Rep 97/12

Chris Kenny
Chief Executive
Legal Services Board

By email: chris.kenny@legalservicesboard.org.uk

Dear Chris

The Reservation or Regulation of General Legal Advice

LSB Plans

ICAEW has noted that the Legal Services Board (the Board) are planning to begin an investigation into the regulation of general legal advice this autumn. We are confident that the Board will carry out a thorough job, and that possible unintended detriments for consumers or the market in advisory services, are eliminated at an early stage.

Accountants and legal services

Our members and member firms provide much advice on legal matters to their clients as part of their general accountancy and business advisory services. This is evidenced, among other sources, by your own research published on 17 June 2010 on the *Legal services needs of small businesses*.

Accountants advise their clients on many issues of tax, regulation and other administrative and business requirements. Much of this would clearly be included within the definition of 'advice' set out in Section 12(3)(b)(i) of the Legal Services Act, as part of the definition of legal activity. This runs as follows:

'the provision of legal advice or assistance in connection with any matter concerning the application of the law or any form of resolution of legal disputes'

Nevertheless, we do not think it likely that any client seeking tax advice from their accountant would consider it to be legal advice. Nor do we consider that the client, or other consumers of an accountant's work, are in any way prejudiced by the fact that the regulatory standards imposed on our members are ours, not those of a legal services regulator or that their complaints are dealt with through our normal professional arrangements. In addition, some areas of advice given by chartered accountants, such as the financial reporting requirements of the Companies Act, are outside the competence of all but the most specialist of lawyers.

Professional and specialist advice

The impact of a reservation of general legal advice would affect many non-law professions who have been providing legal advice in their relevant specialties for many years, and whose regulators and members have so far failed realise the potential impact that reservation could have. Accordingly our concern is not limited to advice given by our own members.

The law in the UK is very extensive, pervading every area of family and business life. Many tradesmen, service providers and professionals develop a very competent knowledge of the law as it relates to their own specialism, as a necessary part of their work. This is likely to far exceed the knowledge of an average high-street solicitor in the law relating to that specialist trade or service. Further, the specialist is more likely to readily recognise the point at which a referral to a lawyer with the requisite specialist knowledge is required, and how the appropriate specialists can best be approached (in the way in which our tax adviser members are familiar with the Tax Bar). Other examples which spring to mind include the following:

- Members of the Royal Institution of Chartered Surveyors (RICS) advising on tenancy and similar property related law. The Bar has recognized the competence of RICS members (together with members of a number of other professional bodies including ICAEW) in their specialist areas of law, through the granting of a particular status in terms of Licensed Access to the Bar.
- Advice given by social workers or welfare advisers, including from welfare charities, on social security and other rights, as well as the resolution of family problems that might ultimately result in a legal dispute.
- Discussions held with a builder, preparatory to constructing a loft extension, on what is or is not permissible under building regulations and local planning policy.

Lawyers and legal advice

The Legal Services Act was specifically enacted to cover the regulation of ‘certain legal activities’¹ but not all. Indeed section 24 refers to the addition of any legal activity to the existing list of reserved activities which is a completely different proposition to reserve all legal activities.

We are very concerned that any moves to reserve ‘general legal advice’ (if it was possible) will:

- Intrude into advice provided by other professions such as accountants – surveyors- medics – architects.
- Reduce the availability of appropriate and competent legal advice, particularly to those consumers who would not normally consult a solicitor, due to considerations of cost, inconvenience or unavailability. If the availability of advice from providers other than solicitors is reduced, this could have the adverse effect of driving individuals to seeking incompetent and inappropriate advice from friends or family, or from advisers acting illegally.

Yours sincerely

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¹ Preamble to the legal Services Act 2007