



## **EMPOWERING CONSUMERS PROPOSED STATEMENT OF POLICY**

ISSUED X DECEMBER 2021

ICAEW Professional Standards welcomes the opportunity to respond to the Legal Services Board's draft statement of policy Empowering Consumers issued 15 September 2021 a copy of which is available from this [link](#).

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 154,000 chartered accountant members in over 160 countries.

This response dated 17 December 2021 reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW Professional Standards is the regulatory arm of ICAEW. Over the past 30 years, ICAEW has undertaken responsibilities as a regulator under statute in the areas of audit, insolvency, investment business and most recently Legal Services. In discharging its regulatory duties, it is subject to oversight by the Financial Reporting Council, the Insolvency Service, the Financial Conduct Authority (FCA), the Legal Services Board (LSB) and the Office for Professional Body Anti-Money Laundering (OPBAS).

All the regulatory and disciplinary work carried out by ICAEW is overseen by the ICAEW Regulatory Board which has a primary objective to act in the public interest and has a parity of lay and chartered accountant members with a lay Chair.

Amongst ICAEW's regulatory responsibilities it is;

- the largest Recognised Supervisory Body (RSB) and Recognised Qualifying Body (RQB) for statutory audit in the UK, registering approximately 2,500 firms and 7,000 responsible individuals under the Companies Act 2006.
- the largest RSB for local audit in England. It has eight firms and over 90 key audit partners registered under the Local Audit and Accountability Act 2014
- the largest single insolvency regulator in the UK, licensing some 840 of the UK's 1,600 insolvency practitioners as a Recognised Professional Body (RPB) under the Insolvency Act 1986.
- a Designated Professional Body (DPB) under the Financial Services and Markets Act 2000 currently licensing approximately 1,900 firms to undertake exempt regulated activities under that Act.
- a Supervisory Body, recognised by HM Treasury for the purposes of the Money Laundering Regulations 2007, dealing with approximately 11,000 member firms.

- designated an Approved Regulator and Licensing Authority for the administration of oaths and probate under the Legal Services Act 2007 (the Act), currently accrediting approximately 350 firms to undertake probate work.

## QUESTION RESPONSES

### **Question 1: Do you agree with our approach of using expectations, outcomes and principles? Do you agree that the expectations and outcomes we have identified are the right ones?**

1. We agree with the suggested approach of using expectations, outcomes and principles given the wide range of legal service regulators who fall under the oversight of the LSB and their different areas of focus.
2. We are also presuming that the assessment of a regulator's performance against some of the expectations and outcomes will be set against, and proportionate to, the breadth of the legal services which they regulate. In the case of ICAEW, we regulate probate and we would be happy to participate in programmes / projects to further the public's legal education in respect of this niche area. However, the impact of the Statement of Policy would be disproportionate if it was interpreted as meaning that a regulator regulating a narrow band of legal activity would be expected to participate actively in wider education of the public about legal services other than through collaborative efforts with other legal service regulators, for example, the work being carried out on Legal Choices.
3. We would also suggest that the outcomes should take into account the different types of organisation that may provide legal services. Our understanding of the 6<sup>th</sup> objective is that it is not just addressing the 9 protected characteristics under the Equalities Act but the type of businesses which provide legal services. This can be a sole practitioner, lawyer only partnerships, mixed partnerships and even large corporations that have legal service supply as a small part of their business. This richness of supply is still not there, as the LSB's own findings on the evolution of the ABS market have shown, and we believe that there needs to be more stimulus in that direction. An outcome promoting different types of supply would seem to us to be an important element of a consumer empowerment strategy. (We note that it is touched on in "principles" but not in terms of development).
4. We agree that changes in policy by regulators should be tested through consultations with the public and that regulators should be testing on a regular basis whether consumers' reasonable needs are being met with those who are being regulated albeit the regulators are one step removed from the consumers and any testing would need to be done of the public in general rather than able to be particularly targeted. We believe that this testing and research would also work better as a collaborative activity across regulators relating to particular areas of work and the particular consumer needs in those areas.

## **Question 2: Do you agree with the proposed principles to be adopted?**

5. While the four principles appear to be more in the nature of advisory directions, we do not see any issue with any of them being incorporated into the statement of policy. In particular, we believe that the principles which recognise that there are different pathways to achieving the outcomes according to the positioning of the regulator within its regulated community, and that there should be more focus on individual consumers and small businesses, are the most important. Collaboration is also a key need for this sector as small regulators (like ICAEW in terms of legal service regulation) will not be able to achieve some of the outcomes and expectations on their own.
6. We believe that some further thought should be given to the construction of the third principle about improving access of vulnerable individuals. We naturally support this objective, but the challenge of access to services from vulnerable individuals is not something that individual firms can tackle on their own though they can mitigate certain barriers. A regulator's role may be limited to working with relevant agencies to aid access in those circumstances.

## **Question 3: Do you agree with the proposed expectation around public legal education?**

7. We agree that public legal education is an important element of empowering a consumer to make good choices and that this is a laudable aim of the LSB.
8. We believe, however, that the assessment of compliance of regulators with this expectation should be proportionate to the legal services which they regulate. See our response to Question 1 above.

**Question 4: Do you agree with the expectations set out in the statement of policy around minimum levels of information about price, service and quality**

9. While we understand that many of the examples provided would be useful for a consumer in trying to make an informed decision on choice of legal service provider, we have a number of practical concerns about how regulators are expected through their regulatory arrangements and activities to make some of this information available and also the usefulness of some of the information referenced to consumers.
10. Starting with Information on Price, we agree with the factors set out in paragraph 17 of the Statement of Policy but we also agree with the point made in paragraph 59 about the importance of the pricing advertised by legal service providers making it clear whether the prices are inclusive or exclusive of VAT.
11. Our concerns are mainly focused on the expectations inherent in the reference to Information on Quality some of which we set out in our response to the Quality Indicators Consultation. Firstly, while we understand the need to make disciplinary records available to the consumer, we are very conscious that disciplinary records can be misleading in the hands of someone who does not understand the professional regulatory landscape which will be the case for most individual consumer and small businesses. For example, the consumer may discover that there is a disciplinary record against a firm the consumer wishes to instruct and this immediately informs their decision not to use that firm. Such a decision may be made without any knowledge or understanding that the disciplinary record for the firm could have been caused by a different department (carrying out work completely unconnected to the consumer's desired service) or by a different individual to the one they were thinking of instructing. The disciplinary record, particularly older disciplinary records, may even have been caused by an individual who is no longer with that firm (who may have been fired, as often happens, when the issue has come to light). Such records provide no indication of the quality of service which the consumer might receive from that firm and may result in the consumer ruling out the engagement of a legal service provider who might be the best fit for what they need.
12. Secondly, in paragraph 19, it is not clear what the Statement of Policy is going to expect from regulators in respect of the *"information about the quality of work done"*. While we understand that the LSB is keen to advance its initiative on Quality Indicators, this has not concluded with any specific requirements given to regulators. Is this reference suggesting that regulators will be required to carry out some form of quality assurance monitoring? If not, how is it suggested that the regulators, through their regulatory arrangements and activities, will be in a position to ensure that information on *"the quality of work done"* is made available to consumers?

13. We have indicated in response to past consultations that we support the introduction of a quality assessment process into legal services regulation so that the consumer is protected from poor quality legal work like consumers of other regulated professional services so we support the Statement of Policy and its intention for regulators to help to provide information on the quality of the work carried out. However, we know how high the cost of such a monitoring programme can be as we have comprehensive quality assurance monitoring programmes for audit, insolvency, investment business and AML compliance. We believe that the LSB should, therefore, make clear its intentions for what it would expect here as this factors into impact and time for implementation.
14. We are presuming that, if quality assurance monitoring is the expectation as the means to provide this information, then any such requirement will not extend beyond regulators taking action against failing firms and public information being made available about those actions? If so, it would be essential for this to be introduced to a timeframe which allows legal services regulators to be clear about what will required and ensure they have the capacity to provide it. However, It is not clear from the current wording of this part of the Statement of Policy whether there is an intention for regulators to go further and provide some form of differentiation between an Excellent / Very Good / Good firm, almost akin to an Ofsted inspection. If this is the case, then we would note that grading firms on different levels of quality so that this information can be made available to consumers is not something which is seen elsewhere in any monitoring of the quality of professional services work.
15. As a body with significant experience over a long period of time in quality assurance monitoring, we have offered, and will continue to offer, to the LSB and other regulators, the benefit of our expertise and experience if the policy intention here is for all legal services regulators to engage in some form of ongoing assessment of the quality of work carried out by the firms / individuals they regulate.
16. As for the other information on quality referred to in paragraph 19, while we understand that consumers might benefit from other information including on outcomes, complaints data and success rates, some caution or explanation would need to be applied to using such data as a fully reliable source to guide a consumer's choice. For example, successful outcomes in litigation could be misleading as a firm could have provided high quality legal advice but not achieved an outcome which it had advised a client would not be achievable. Quantitative complaints data could also be useful but also misleading if not properly contextualised. For example, Firm A could be the subject of one very serious complaint and Firm B could be the subject of 10 very minor complaints. If quantitative data is made available to consumers in that example (1 / 10), most consumers would not use Firm B. We would therefore suggest that any expectation around regulators helping to make this information available should explain / make clear how regulators are expected to evaluate the reliability of such information.

17. While the increasing use of customer feedback sites for professional services may also provide a consumer with valuable information regarding the quality of the service and we understand the expectation that regulators should seek to harness the critical feedback and even promote the use of such sites to consumers, we believe that any such expectations should take into account the perennial issues regarding the truthfulness and reliability of customer reviews which are posted. As has been seen in other industries / sectors, customer feedback sites will only be as valuable as the accuracy and truthfulness of the reviews placed by other consumers of those services and the ability of the authors of reviews to distinguish between good legal work carried out despite an adverse result (which was not within the gift of the provider) and poor legal work which resulted in the right result (more by luck than judgement).
18. We believe that the expectation of regulators should be to ensure that consumers are made aware of the existence of customer feedback sites and how they might be useful to inform a consumer's choice of legal service provider but to provide warning also as to the potential risks to the consumer of relying only on this source in trying to determine who might be the best provider.

**Question 5: Do you agree with the expectations around making information available to consumers ?**

19. We agree that information provided to consumers should conform with all of the elements set out in paragraph 22 of the Statement of Policy and with the requirement in relation to the provision of information about any regulated firm set out in paragraph 23. However, we are presuming that the reference to "*Details of the Provider's Professional Indemnity Cover*" is limited to just providing the name of the Provider's insurer and a confirmation that the cover is in compliance with the PII regulations put in place by the regulator. If, for instance, the requirement seeks to go beyond that to requiring the disclosure of the cover limits, such a disclosure could lead to insurers avoiding policies so the exact requirements should be carefully considered.

**Question 6: Do you agree with our proposed plan for implementation?**

20. We have raised some concerns in this paper about how regulators are being expected through their regulatory arrangements to make available to consumers certain information, particularly around quality of service. We would suggest that the Statement of Policy should not be implemented or, at least, no regulator should be assessed against it until further clarity is provided about the expectations of regulators in this area as, otherwise, regulators could end up in default from the start.
21. We hope that the LSB will work closely with those it regulates to ensure that any implementation of change in this area is made with clear expectations and is willing, if need be, to modify its implementation timetable accordingly.

**Question 7: Do you have any comments regarding equality impact and issues which, in your view, may arise from our proposed statement of policy? Are there any wider equality issues and interventions that you want to make us aware of?**

22. Whilst the policy addresses the characteristics and vulnerability of the consumer it does not take account of similar dynamics within the practitioner community who are supplying the legal services. Some of the expectations set out in the policy are likely to impose increasing burdens on smaller practices who are the practices who are most likely to interact with individual consumers and small businesses. Smaller practices make up the vast majority of the firms we regulate. The LSB may want to explore the impact on smaller firms in relation to the expectations in the Statement of Policy.

**Question 8: Do you have any comments on the potential impact of the draft statement of policy, including the likely costs and anticipated benefits?**

23. Until further clarity is given by the LSB on certain aspects we have highlighted such as how it will be expecting regulators through their regulatory arrangements to make information available to the consumer regarding the quality of work done or the quality of service or outcomes, it is unclear to us what the costs and the potential impact might be. At one extreme, the costs involved in complying with the Statement of Policy could be very high if it requires all legal services regulators to invest in building quality assurance monitoring teams who would be expected to evaluate and grade the quality of the work carried out by firms and release those results publicly.
24. The LSB will need to ensure in finalising the Statement of Policy that it strikes the right balance between ensuring good, reliable information is provided to consumers without the potential consequence of causing either a sharp increase in the cost of those services or, alternatively, a large exodus of smaller firms from the legal services market through the passing down of these costs which will only reduce consumer choice and lead to higher prices through a lack of local competition.

**Question 9: Do you have any further comments?**

Nothing further to add.