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20 September 2021

Dear Peter,

### **Consultation: ICAEW Reserved Legal Services Strategy**

The Legal Services Panel welcomes the opportunity to comment on ICAEW's reserved legal services strategy for 2021 to 2023. The Panel appreciates the ICAEW's overall aim to strengthen trust in the chartered accountant profession and protect the public by enabling, evaluating and enforcing the highest standards and encouraging the profession to act in the public interest. We have reviewed both the strategy in the consultation document as well as the detailed medium term strategy articulated in the business plan with corresponding objectives and operational plans.

#### **Consultation question 1**

**Do you agree that this strategy supports the IRB's mission which is to strengthen trust and protect the public by enabling, evaluating and enforcing the highest standards in the profession?**

The refreshed reserved legal services strategy does appear to support its mission. However, the Panel notes there is no further reference to consumer protection beyond the mission. The mission statement in full states:

Our mission is to strengthen trust and protect the public by enabling, evaluating and enforcing the highest standards in the profession. In doing so, we ensure our firms, members and students uphold the highest standards and act in the public interest.

The Panel agrees that legal services regulators must act in the public interest, this being the first statutory objective and indeed one which relates to all the other statutory objectives for regulators.<sup>1</sup> We encourage all regulators to actively consider the many facets of acting in the public interest as well as all the specific statutory objectives.

The ICAEW should explicitly consider how regulation, or the way service providers offer legal services, affects consumers. This would help ensure that the public interest

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<sup>1</sup> See subsection 1(1) of the Legal Services Act 2007 (c. 29).

as well as access to justice, the rule of law, consumer interests and competition in the provision of services are supported. In addition, an independent and diverse profession that is competent and ethical, as well as an informed citizenry will also be reaffirmed. Strengthening confidence in the profession and protecting the public are aspects of considering legal services consumers, but always considering their needs goes even further in ensuring regulators have regard to all of the statutory objectives.

Therefore, while the Panel appreciates the ICAEW's stated intention to improve their regulation, educate, inform and encourage actions in the best interests of the consumer (as expressed in the Business Plan Foreword), we would rather see this intention captured in the reserved legal services strategy itself. We encourage the ICAEW to specifically include a focus on legal services consumers in the strategy.

## **Consultation question 2**

### **Do you support the objectives set out in the ICAEW reserved legal services strategy?**

The Panel supports the key objectives as set out below:

- Ensure the Professional Standards Department (PSD) is best set up to deliver legal services regulation
- Ensure regulated firms are delivering a good service
- Ensure transparency and effective communications
- Ensure collaboration
- Contribute to a more inclusive culture
- Future development.

The Panel is pleased to see collaboration as well as an inclusive culture as key objectives. This collaboration with other regulators would be easier if proactive consideration of the legal services consumer formed part of the strategy. There is a real opportunity for regulators to collaborate and learn from each other on various issues. Diversity and inclusion plans will also benefit from varying viewpoints including a specific consumer focus.

Proactive consideration of consumers may also clarify some of the operational plans to implement the reserved legal services strategy. For example, it may make actions such as the proposed merging of the membership database with the disciplinary database more likely. Such a merger would encourage ethical conduct in service providers, foster trust in the profession and give consumers tools to be able to make better choices and protect themselves. Showcasing these databases separately means the database of disciplinary actions would not be very useful to consumers as they would be less likely to use it when choosing a service provider. Merging the databases together, however, benefits consumers as well as the profession.

The Panel is also pleased to see that there are references to monitoring and evaluation plans contained in the more detailed medium term reserved legal services strategy. For example, fostering a commitment to culture change and creating a learning environment for better evaluation of the regulatory function is welcome.

It is more evident from the detailed version of the strategy in the Business Plan that some parts of the strategy have received more attention than others. The Panel, however, understands that the reserved legal activities strategy is a three year strategy and therefore multiple business plans will be used to implement it. The Panel would like the ICAEW to continue making plans to implement the strategy especially with regard to transparent and effective communication with consumers about service quality and prices and widening access to legal services through a diverse profession, technology and alternative ways of offering services.

### **Consultation question 3**

#### **Is there anything that you feel is missing or does not support this mission?**

Although there is reference to service quality and price transparency and engagement with consumers, there is little else that focuses on the legal services consumer. The Panel wholeheartedly agrees that an effective process for ensuring quality service benefits both the profession and legal services consumers alike. Nevertheless, the Panel would like to see the ICAEW focus on consumer protection especially as it is one of the primary aims of their mission. As the ICAEW recognises, building confidence in the profession and protecting consumers are benefits that accrue to a regulated profession but these attributes must be safeguarded and not taken for granted.

One important area of consumer protection that does not feature in the detailed reserved legal services strategy contained in the Business Plan is maintaining the protection provided to consumers via mandatory professional indemnity insurance and compensation funds. While these systems are already in place, the Panel is aware of the current challenges facing them due to rising premiums and insurance companies exiting the market. The Panel would like to see the ICAEW acknowledge these systems as important parts of the protection afforded to consumers against negligence and dishonesty in the profession. This protection is especially important for probate activities, which involve many people who are especially vulnerable, having had a person close to them die. Compensation schemes that are functional from a cost and protection perspective are vital given that the ICAEW is considering expanding the profession's right to practise reserved activities.

As the ICAEW implements its members' ability to provide the service of administering oaths, this expansion into the market demands careful attention to ensure member applications are evaluated appropriately and risks to the consumer are kept to a minimum. A pilot scheme could be useful and may provide learning for future applications to expand the realm of reserved legal services that chartered accountants may offer. The provision of this type of service also reinforces the importance of stamping out any problems with integrity or unethical behaviour.

### **Consultation question 4**

#### **Do you have any general comments about this strategy or consultation?**

It is difficult to comment on the strategy and objectives listed in the main consultation document in isolation. The operational plans provide more substance and inform others how the ICAEW will interpret the strategy. The Panel suggests that a separate consultation on the Business Plan (a large part of which is the detailed medium term

reserved legal services strategy including objectives and specific operational plans) might attract more meaningful consultation responses. The Panel does not usually comment on consultations solely addressing the setting of a regulator's annual practice fees, but would welcome the opportunity to review a regulator's business plan and strategy.

### Consultation question 5

**We aim to ensure that our activity and strategy will not result in a worse outcome or quality of service for anyone due to their background or life circumstances. Please tell us if you think any clients will be adversely impacted by our strategy, due to a protected characteristic (such as age, disability or race) or due to individual practicing arrangements?**

The Panel does not generally have contact with individual legal services consumers. However, our 2021 Tracker Survey<sup>2</sup> found that 16% of legal services consumers who used probate services were assisted by an accountant or financial adviser and these consumers were of all ages and ethnic backgrounds. ICAEW may wish to collect this type of information from firms and individual chartered accountants.

In addition, the Panel sees the promotion of equality and inclusion as an important responsibility of all regulators. A diverse profession is better able to respond to the needs of all members of society, many of whom have unmet legal needs. In addition, the LSB includes promoting a diverse profession as an important part of their sector-wide strategy to foster fairer outcomes, stronger confidence and better quality services. Accordingly, the Panel is pleased that the ICAEW is performing Equality Impact Assessments but would like to see regulators consider these assessments more broadly. In pursuing the statutory objectives of increasing access to justice and promoting a diverse and effective legal profession, regulators could choose to consider how their actions could foster more diversity within the profession and to serve consumers from different ethnic backgrounds and with other protected characteristics as equally and effectively as possible, as opposed to just ensuring no one is excluded or disadvantaged. In other words, regulators may ask whether service providers are meeting everyone's legal needs.

In conclusion, the Panel always appreciates the opportunity to provide input from our unique vantage point and is open to further discussions in this vein. We hope you find these comments helpful. Please contact Heidi Evelyn, Consumer Panel Associate, with any enquiries.

Yours sincerely,



Sarah Chambers  
Chair  
Legal Services Consumer Panel

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<sup>2</sup> LSCP Tracker Survey, 2021 < <https://www.legalservicesconsumerpanel.org.uk/what-we-do/research-and-reports>>.