



4 October 2021

Vibeke Bjornfors
Legal Services Board

Dear Vibeke

AMENDMENTS TO ICAEW'S REGULATORY APPOINTMENTS PROCESS

I Overview

1. The ICAEW Regulatory Board (IRB) following the implementation of the Legal Services Board's (LSB's) Internal Governance Rules (IGRs) in July 2020 have determined that the process around regulatory appointments was unwieldy and decided to rationalise the structure with clearer terms of reference. The changes are ones of operational efficiency and do not affect policy. In practical terms two committees are being merged into one with the terms of reference modified accordingly.
2. These changes were alerted to the LSB through the Performance Reporting system on 30 June 2021. However the LSB have determined that closer scrutiny is required. Accordingly this document and attachments represent an application to the LSB for them to direct that these alterations to ICAEW's regulation arrangements are exempt under Part 3 of Schedule 4 to the Legal Services Act 2007 (the Act)

II Background and rationale for change

3. Prior to the changes effected to meet the IGR requirements in July 2020, appointments to the ICAEW Regulatory Board and the quasi-judicial committees within ICAEW's regulatory body Professional Standards (PS) were made by the Nomination Committee of ICAEW, which had its decision endorsed by the ICAEW Council.
4. When the recommendations of Sir Christopher Kelly were implemented in 2016 changing the regulatory structure to become more independent, ICAEW Council preferred to retain their final say on regulatory appointments, but did allow for a sub-committee to be created – the Professional Standards Appointments Committee (ProSac) – which had a lay parity – and which would make recommendation to the Nomination Committee which in turn forwarded these to Council. No recommendations from ProSac were turned down by the NomCom or Council between 2016 and 2020, thus ensuring independence of the function.

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5. However the requirements of IGR 8 published in July 2019 required severance from Council control. Therefore as part of the steps to achieve full compliance with the IGRs a new nomination committee was set up reporting directly to the IRB and named the Regulatory Board Appointments Committee. (RBAC), with a newly appointed lay chair. This took over the functions of the NomCom in as far as they related to regulatory appointments, including the control and reporting line of ProSac. These arrangements were approved by the LSB on 23 July 2020.
6. Once the new chair, Sarah Nathan, had been appointed, the first couple of meetings progressed satisfactorily. However it quickly became apparent that there were overlaps and gaps between the two committees, and some better efficiency could be achieved by the RBAC assuming some of the IRB's oversight of the committees and their training.
7. At their meeting on 6 October 2020, with Sara Nathan in attendance, the IRB identified;
 - a. Assessments of members of committees and their chairs lay with the RBAC but the appointments and renewals laid with ProSac
 - b. Some members of ProSac were also members of RBAC with potential conflicts
 - c. The IRB were in favour of moving to a more structured assessment of all committees instead of reviewing every three years to five by rotation, but needed a vehicle to effect this
 - d. ProSac had been set up in 2016 to counter-balance the lack of independence within the NomCom. Now that the new RBAC was itself independent that safety mechanism was no longer required
8. Accordingly the IRB and Sarah Nathan agreed that the RBAC and ProSAC should be merged and asked the Executive Director to bring a paper to the IRB in December to include new terms of reference for the merged committee, with the intention that the new framework be put in place in early 2021.
9. During October and November discussions took place between PS staff, Sarah Nathan and members of ProSac and RBAC to effect a suitable working model which was then translated into revised terms of reference for RBAC which was to be renamed the Regulatory and Conduct Appointments Committee (RACAC). This was put to the IRB Board on 11 December 2020 and approved, and appointments under the new panel arrangements began in February 2021.

III Details of arrangements

10. The arrangements involve changes in the terms of reference of the following;
 - a. The termination of ProSac as a separate committee
 - b. The repositioning of the old RBAC committee terms of reference as a merged body
 - c. The amendment to the IRB terms of reference as to the method of delegation
 - d. A minor amendment to the terms of reference for the appointment of the chair of the RACAC.

11. The documents for (b), (c) and (d) are duly attached in final form and with track changes.

12. The principal amendments we should bring to your attention are;

a. RACAC Terms of reference

- i. made responsible for all matters relating to the IRB, PS committees and other regulatory appointments
- ii. Panels deal with the appointment of the IRB chair, IRB members and PS committee chairs
- iii. PS committee member recruitment and performance assessment carried out by PS staff, confirmed by RACAC
- iv. responsible for performance assessment of IRB members and chair
- v. responsible for remuneration policy for IRB chair, IRB members, PS committee members and chairs

b. IRB Terms of reference

- i. The panel appointments process is removed as now contained in the RACAC terms (old paragraph 10)
- ii. Responsibility for all appointments, evaluations and remuneration specifically delegated to the RACAC (paragraph 19)
- iii. Annual appraisal responsibility devolved to RACAC (paragraph 27)

c. Appointment of the chair of the RACAC

- i. An amendment to the panel members to secure lay balance

IV Assessment of impact on regulatory objectives

13. In overview it was considered that there would be no impact on the regulatory objectives other than those set out in the IGR application in July 2020 as the changes were procedural. However at a detailed level the following can be observed;

Objective	Impact
Public Interest	The competence of the board and committees is assured by better quality control mechanisms
Rule of law	The competence means that better directed decisions will be made both for the practitioner and the complainant.
Access to justice	The quality assurance mechanisms will ensure complaints are dealt with effectively, whilst the improved calibre of the Probate Committee and IRB will help develop access to justice.

Consumer interest	The clearer lines of responsibility and determination of skill sets will ensure that the committees with legal services responsibilities have consumer interest as part of their brief.
Competition	The improved supervision and clarity brought with a transparent governance structure will encourage more firms to have confidence to apply to offer regulated legal services
Diversity	The revised structure allows for clearer principles in the recruitment of committee members with an eye to diversity as well as provide better empathy for complainants and errant practitioners.
Citizen's rights and understanding	These regulatory arrangements provide clarity and transparency about rights and responsibilities which helps to reduce complaints and conflict, and therefore increases confidence and empowers consumers
Professional Principles	The improved quality of committee members assured by the new arrangements will underpin the professional principles.

V Timetable

14. The change in structure was approved by the IRB on 20 December 2020. The final meeting of the RBAC took place on 3 December 2020 when it interviewed and selected 3 IRB Board members. The final meeting of ProSac took place in March 2021, closing off matters it had considered in November 2020. The first meeting of the new RACAC took place on 8 February 2021 and a further meeting was held on 19 May 2021.
15. The changes to the two committees were not thought to fall within the remit of “changes to regulatory arrangements” for the purposes of the Legal Services Board approvals as they merely involved the shuffling of terms of reference. Prior notification of the proposed changes were set out in the Performance Assessment Action Plan report sent to the LSB in November 2020, progress advised to the LSB for information at a meeting on 18 May 2021 and formally reported as part of the performance reports in Jun 2021. Subsequently the LSB have asked that they be presented as part of an application for exemption to allow closer scrutiny.

VI Consultation

16. The rationalisation of the appointments process is a natural evolution of the IGR changes which were put to the LSB in April 2020. Those changes were made in consultation with the member bodies of ICAEW including Board and Council. No external consultation was made as this was not considered to directly affect either practitioner or consumer adversely, and any such general exercise would be ill-targeted and disproportionate contrary to the better regulation principles. A similar consultation step has been applied in respect of these changes with both ICAEW Board and Council, as well as with the IRB and the chair of the RBAC prior to its change. However as the appointments process was fully devolved to the IRB in April 2020 to meet IGR rule 8 there is no longer direct involvement of Council or the ICAEW Board in the process.

VII Impact assessment

17. The key areas for impact are as follows;

- a. Diversity – the revised structure will enable a more direct consideration of diversity in the advertising, recruitment, appointment and training processes for those being members of the quasi-judicial functions including the IRB itself to ensure the regulatory appointments mirror the society which the institute and its members serve.
- b. Consumers – the clearer accountability, standards and competence levels reinforced through the new processes will ensure that the consumer interests are properly protected and promoted. In particular the members that sit on the compensation fund committees and the PII committees will be trained to be alive to the needs of the consumer.

VIII Evaluation and Monitoring

18. The effectiveness of the RACAC is to be reviewed annually by the IRB. Statistical data is being collated on the diversity of the regulatory committees and this will be examined as part of such reviews. The attendance rates at meetings will also be monitored to ensure a greater degree of engagement that should arise from better targeted recruitment and training.

Yours sincerely

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