



**ICAEW RESPONSE TO  
CONSULTATION ON LSB  
GUIDANCE ON PROMOTING  
TECHNOLOGY AND INNOVATION  
TO IMPROVE ACCESS TO  
LEGAL SERVICES**

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## DRAFT GUIDANCE ON PROMOTING TECHNOLOGY AND INNOVATION TO IMPROVE ACCESS TO LEGAL SERVICES

### INTRODUCTION

1. ICAEW welcomes the opportunity to respond to the Legal Services Board's (LSB) consultation on promoting technology and innovation to improve access to legal services, a copy of which is available [here](#).
2. ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. ICAEW is an Approved Regulator and Licensing Authority for the administration of oaths and probate under the Legal Services Act 2007.
3. This response dated 02 October 2023, reflects the views of ICAEW as an Approved Regulator for the reserved legal service of probate. ICAEW accredits approximately 363 firms to undertake probate activities.
4. ICAEW's improvement regulator work is carried out by the Professional Standards Department (PSD). It supervises and monitors over 12,000 firms and 840 insolvency practitioners. On behalf of ICAEW, PSD undertakes the responsibilities of a regulator under statute in the areas of audit, insolvency, investment business, anti-money laundering and legal services. We also monitor compliance with the ICAEW Practice Assurance scheme. All work carried out by PSD is overseen by the ICAEW Regulatory Board.

### SUMMARY OF OUR POSITION

5. ICAEW is pro technology and innovation in all of its forms, and one of ICAEW's strategic objectives is to master technology and data. Through the experts in our Tech Faculty, we engage with policy makers and provide resources to support our members and firms in adopting technology in the services they provide. For example, we deliver various events and content to help our members innovate and use technology effectively. This includes content on the topics of AI, Blockchain, Cloud, Cyber Security and Data Analytics. We cover not only the technical content, but also subjects such as upskilling and governance to make sure that members have the right ecosystem to make use of technology. We also provide a dedicated '[Innovation](#)' webpage, and operate a technology accreditation scheme for the benefit of our wider accountancy sector membership.

6. The ICAEW Tech Faculty run events such as the mid-tier tech forum where members can interact with regulators including the FRC to discuss methodology and regulatory challenges on topics such as AI and they can also interact with technology vendors to discuss technology wish lists and challenges to help them harness vendor technology better. ICAEW also provides technology training and CPD courses, including a Data Analytics certificate to help members develop the skills and expertise to effectively harness technology.
7. ICAEW is a major investor in **Engine B**, a collaborative venture aiming to drive innovation across professional services through a standard access methodology to client data. Engine B believe that access to better quality data is the secret to unlocking the barriers to digitisation for firms everywhere. Engine B's technology provides data in a consistent, standardised format making risks easier to spot, improving efficiency and supporting overall decision-making. ICAEW is collaborating with Engine B on ways to implement their technology in our work as a regulator, including to monitor Continuing Professional Development.
8. As a legal services regulator, ICAEW's PSD adopts this mindset in our engagement with probate firms, and we encourage innovation in a range of contexts. For example, we provide a free online survey tool for all our probate firms to use to collect diversity data on their staff, that is later reported across our regulated population.
9. We strongly support the aims of the LSB's proposed guidance which aligns with our own view that technology and innovation are key to the future of the profession. We believe that ICAEW already fosters a regulatory environment that encourages technological and innovative solutions.
10. As a regulator, our purpose is to ensure high technical and ethical standards in all the work performed by our regulated population. We act in the public interest to ensure that the work of our members and firms can be trusted by society at large, and that consumer interests are protected. For this reason, we consider that Outcome 2 of the draft guidance is the one that is core to our regulatory function: *Setting a regulatory framework that balances the benefits and risks, and the opportunities and costs, of technology and innovation in the interests of the public and consumers.* We agree it is important that firms embrace technology and innovation where appropriate; but it is also critical that the associated risks of doing so are properly evaluated and mitigated and the technology is used in a responsible and professional manner. We can as a regulator promote the use of technology where it could be of benefit to our firms and consumers, as long as we also ensure that the use of technology does not harm the consumer, either due to issues with the quality of the work produced, or ethical risks such as data bias, or breaches of confidentiality in use of AI systems.
11. We strongly agree that our regulatory framework should not be a barrier to the adoption of technology by firms, or its development by providers. Clarifying this position to our regulated population, and where applicable, the wider market, is something we will be committed to doing.
12. While we are strongly in support of the aims and outcomes of the draft guidance, there are certain aspects of the underlying detail where we have concerns. The draft guidance includes suggestions for regulators to consider that include:

- providing information to the public to explain the benefits of using technology in legal services;
  - ensuring consumers are aware of redress mechanisms for legal services provided by technology and innovation; and
  - monitoring the impact of the use of technology and innovation on consumers and their ability to access legal services.
13. We would agree that in principle these are all desirable, but the realistic reach of ICAEW as a probate regulator is to our population of accredited firms and individuals who provide probate services. This is only a subset of the wider probate market, and in this context, it is more challenging for us to reach the wider general public.
14. We note that the draft guidance refers to proactively engaging with new and existing technology providers and innovators and providing them with access to relevant data where appropriate. It would be helpful if the LSB could clarify expectations around such partnerships with commercial providers, in particular, the examples that relate to directly facilitating the development of products or the sharing of data. There are potential threats to the independence and objectivity of a regulator in this situation, for example that ICAEW's PSD is perceived to be promoting or endorsing particular commercial products, or the risk to reputational damage if the promoted product is of poor quality or provides inaccurate output. There is also a risk that ICAEW could receive a complaint from a client about some work a probate firm did using the poor quality product, which ICAEW has in some way endorsed or promoted.
15. ICAEW currently recognises this potential conflict, and our technology accreditation scheme for providers that promotes the services of commercial entities, sits within the commercial department of the representative arm of the organisation, rather than within ICAEW's regulatory functions.
16. In addition to being pro-technology and innovation, ICAEW agrees with the aspiration for a legal services market where there is very little unmet consumer need for legal services. However, the crucial questions are firstly, what is the extent of unmet legal need in the market for probate services; and secondly, whether greater adoption of technology would achieve the desired result of reducing that unmet need. We note that research from the 2019/20 joint Law Society and LSB report (referenced in the consultation document) indicates that consumers who experienced a probate issue were the least likely to have low legal confidence and second most likely to receive help successfully. There is, conversely, a risk that a move to greater technological delivery of legal services could price some consumers out of using a professional for legal services, if the firms' investment in technology leads to higher fees. There is also the risk of worsening digital exclusion for consumers who are unable or unwilling to use technology.
17. Additionally, the extent of unmet consumer need for probate services is likely to be lower than for other legal services as consumers can apply for a grant of probate themselves, should they wish to do so (for example, where an estate is straightforward). It may be that greater use of technology by probate firms would have a limited impact on any unmet legal need for probate services.

18. Further, from discussions with our probate firms, we understand that most probate clients are either existing clients of other services the firm provides or are referred by an existing or previous client. This is due to the desire for a personal and trusted service at a time of bereavement. It is unclear whether these clients would choose an online alternative to an in-person service, even where such online alternative was pitched at a lower cost. This finding was corroborated by the LSCP in their report into how consumers are using legal services, which found a large proportion of consumers using an online service would have preferred to talk directly to a legal professional more than they did. It is likely that many users of probate services would fall into an elderly demographic, which increases the likelihood that they would prefer contact with an adviser rather than using an online service. The risk of digital exclusion could therefore also be more pronounced for users of probate services .
19. For this reason, it may be that technology and innovation in its broadest sense should be the area of focus for providers of probate services – developing service innovations that could benefit consumers through efficiencies behind the scenes, while retaining the personal touch that is in central to provision of such a sensitive service.
20. In conclusion, we welcome the proposed outcomes in the draft guidance; a clear, and consistent regulatory approach across the sector will support business confidence and improve access to a diverse range of legal services. We agree that there should be flexibility in how these outcomes are delivered to enable regulators to adapt their regulatory activity to suit their individual supervised populations. However, we are concerned about the applicability of all the proposals to the reserved legal service of probate, and whether this could have an unintended consequence of firms leaving the market if the requirements are unduly prescriptive and costly.

## **ANSWERS TO CONSULTATION QUESTIONS:**

### ***Question 1:***

#### ***Do you agree with our approach of using the guidance to set outcomes for regulators?***

21. Yes, we welcome an approach focused on broad outcomes as it provides flexibility in how these outcomes are delivered. This enables regulators to adapt their regulatory activity to suit their individual supervised populations. The outcomes themselves are sufficiently high-level to enable regulators to adopt a proportionate, agile approach as they respond to changing technologies and any emerging risks in the market.
22. The guidance provides a useful framework for the three outcomes and some helpful examples of measures regulators could consider. However, we believe that it is important that any such examples do not become prescriptive requirements. It is also crucial that any expectations of activities are proportionate to the size and type of the supervised population and are realistic given the reach of regulators and their ability to effect change in the legal services market. It should be explicit in the examples that it is for individual regulators to determine how they will approach each outcome.

**Question 2:**

***Do you know of any case study examples it would be useful to share?***

23. No.

**Question 3:**

***Do you agree with the proposed outcome to ensure that technology and innovation are used to support improved access to legal services and to address unmet need?***

24. We agree that technology and innovation should be used where appropriate to support improved access to legal services and to address unmet need. In addition, we agree that regulators should adopt an approach to the promotion of technology and innovation that puts the public interest and interests of consumers first. As a regulator, our purpose is to ensure high technical and ethical standards in all the work performed by our regulated population. We act in the public interest to ensure that the work of our members and firms can be trusted by society at large, and that consumer interests are protected. A large part of this means that we must ensure the quality of services provided remains high and is not damaged by irresponsible or unethical use of technology. It is also important that our actions as a regulator do not place a disproportionate cost burden on our firms, which could lead them to increase their fees, or even exit the legal services market, thereby reducing consumer choice, and increasing unmet legal need due to consumers being priced out of the market or unable to find a legal services provider.
25. We believe that responsible and appropriate use of technology is in the best interests of consumers, and we will encourage our firms to adopt technology and innovation where it provides a benefit to a firm and its clients. As noted above, given the ability for consumers to apply for a grant of probate themselves, it may be that greater adoption of technology by probate firms may have limited impact on the extent of unmet legal need for probate consumers.
26. We note that the draft guidance contains a range of example actions for regulators, most of which include consulting the public or providing information to the public. We would agree that in principle this is desirable, but the realistic reach of ICAEW as a regulator is to our population of accredited firms and individuals who provide probate services. This is only a subset of the wider probate market. In this context, it is more challenging as a regulator of Chartered Accountants for us to reach the wider general public.
27. We would endeavour to publish public information about the benefits of using technology and innovation to access probate services. However, given ICAEW regulates only part of the probate market, a collaborative approach to providing public information may be more effective. This could include using a dedicated forum such as the Legal Choices website to host consumer-facing content. Thought would however need to be given as to how to reach digitally excluded consumers.

#### **Question 4:**

***Do you agree with the proposed outcome for regulatory frameworks to balance benefits and risks, and the opportunities and costs, of the use of technology and innovation in the interests of the public and consumers?***

28. We strongly agree that regulatory frameworks should balance the benefits and risks, and opportunities and costs, of technology and innovation. We aim to create a regulatory environment that does just this, where responsible innovation can flourish safely with appropriate recognition and mitigation of risk to consumers.
29. It is important that regulatory frameworks do not act as a barrier to the adoption of technologies or innovative solutions. We note the draft guidance goes further than this and requires that regulatory frameworks 'facilitate' this adoption. It would be useful to have clarity on what is intended by 'facilitate'; - if this means for regulators to have an attitude to regulation that is open to the adoption of technology and innovation then we would support this requirement.
30. If the intention is that regulators should go further, and encourage firms to adopt technology, this would be more problematic, as ultimately it is for firms to make their own assessments and commercial decisions about whether service solutions meet business and consumer needs. If we put pressure on our firms to adopt costly technological solutions (most come either with a significant upfront purchase price and/or annual licence fees), there is a risk that firms will exit the market if they are unable to afford the capital investment or decide that the recouping of that investment through revenue will take too long. We believe that it is important to strike a balance between encouraging innovation to meet unmet legal needs and straying into commercial and operational considerations best placed with firms. There needs to be appropriate caution around the risks of a regulator being seen to promote or endorse particular products, and firms placing reliance on the perceived recommendation. It may be that referral commission would arise for regulators when working with commercial providers, which could create a real or perceived conflict of interest for the regulator.
31. We agree it is important that firms embrace technology and innovation where appropriate; but it is also critical that the associated risks of doing so are properly evaluated and mitigated and the technology is used in a responsible and professional manner. Our role as a regulator is to ensure that firms undertake sufficient due diligence to identify and address such risks.
32. We note the reference to using ongoing competence requirements to encourage legal professionals to stay abreast of requirements in technology. While we would not look to mandate knowledge or development of technology as a specific CPD requirement, we would of course clarify to members that this type of learning is as equally valid as more technical CPD, and signpost such learning resources to member where they exist.
33. As we have noted above, our relationship with consumers is not a direct one, which does mean it may be difficult to meaningfully evaluate the impact of technology and innovation on consumers. We anticipate that clients who have concerns with the use of technology products by ICAEW probate firms would make a complaint to the Conduct Department within Professional Standards. We note however that probate services generally generate only a

small number of complaints or disciplinary outcomes, so developing a sufficient evidence base may be limited.

34. We agree that the use of regulatory sandboxes to facilitate or trial new products would be beneficial to the legal services market. The LSB could play a useful role in leading regulatory sandbox initiatives to facilitate new products being developed or trialled. These sandboxes could bring together all legal service regulators involved in a particular legal service such as probate, which would be more effective than individual regulators with small populations running separate initiatives. As a legal services regulator with a relatively small supervised population within legal services, we anticipate this is how we can best support sectoral growth in innovation and improve access to services. Were the LSB to run such collaborative initiatives, ICAEW would be keen to participate in them.

**Question 5:**

***Do you agree with the proposed outcome on ensuring the legal sector is open to technology providers and innovators?***

35. We agree that it is a desirable outcome for the legal sector to be open to technology providers and innovators. Regulators forming partnerships and cross-sector collaboration may be an effective approach to achieve this outcome. However, there is a need to ensure that any threats to the real or perceived independence and objectivity of regulators are mitigated.
36. We note that the draft guidance refers to proactively engaging with new and existing technology providers and innovators and providing them with access to relevant data where appropriate. It would be helpful if the LSB could clarify expectations around such partnerships with commercial providers, in particular, the examples that relate to directly facilitating the development of products or the sharing of data with certain providers. Clearly, there are potential threats to the independence and objectivity of a regulator in this situation, and a risk that ICAEW PSD is perceived to be promoting or endorsing particular commercial products. The legal and ethical risks of providing data would need to be addressed such as GDPR, confidentiality and data security. There is also a risk that ICAEW could receive a complaint from a client about some work a probate firm did using the poor quality product, which ICAEW has in some way endorsed or promoted. The firm would likely argue in their defence that ICAEW as a regulator endorse the product, so we have no basis for bringing a complaint against them.
37. Given this potential conflict of interest as a regulator, ICAEW's technology accreditation scheme for providers that promotes the services of commercial entities, sits within the commercial department of the representative arm of the organisation.

**Question 6:**

***Do you agree with our proposed plan for implementation?***

38. We agree that implementation via the annual LSB Regulatory Performance Assessment Framework would be appropriate. However, it would be helpful if the introduction of policy



statements into the Regulatory Performance Assessment Framework were phased to allow time for regulators to take action to implement the outcomes where necessary.

**Question 7:**

***Do you have any comments or concerns about the equality impacts of our proposed guidance? Do you have any evidence relating to the potential impact of our proposals on groups with protected characteristics and any associated mitigating measures you think we should consider? Are there any wider equality issues and interventions that we should take into account?***

39. While technology can level the playing field in terms of access to services for minority groups, there is also a danger that it could increase the impact on digitally excluded consumers. The LSB should be mindful of those who have limited digital access or accessibility requirements, to ensure the digital divide is not inadvertently widened.

**Question 8:**

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

40. We believe that there are significant potential benefits from the draft statement of policy, in that it will encourage a pro-technology and innovation attitude across the legal services market. Whether these benefits are outweighed by costs will depend on how prescriptive the detailed requirements become, and the extent to which the LSB expects regulators to require firms to adopt technology. In our view, regulators should create a regulatory environment that enables adoption of technology by legal service providers where they want to do so for commercial reasons. There is a risk that if firms are made to adopt technology for its own sake, that the costs of this would be passed on to consumers, reducing access to justice.

**Question 9:**

***Do you have any other comments about the proposed guidance?***

41. Please see the summary of our position above.

## Our role as an improvement regulator

Our mission is to strengthen trust in ICAEW Chartered Accountants and firms. We do this by enabling, evaluating and enforcing the highest standards in the profession.

ICAEW's regulatory and conduct roles are separated from ICAEW's other activities so that we can monitor, support or take steps to ensure change if standards are not met. These roles are carried out by the Professional Standards Department (PSD) and overseen by the ICAEW Regulatory Board (IRB).

Our role is to:

- **authorise** ICAEW firms, members and affiliates to undertake work regulated by law: audit, local audit, investment business, insolvency and probate;
- **support** the highest professional standards in general accountancy practice through our Practice Assurance scheme;
- **provide** robust anti-money laundering supervision and monitoring;
- **monitor** ICAEW firms and insolvency practitioners to ensure they operate correctly and to the highest standards;
- **investigate** complaints and hold ICAEW firms and members to account where they fall short of standards;
- **respond** and comment on proposed changes to the law and regulation; and
- **educate** through guidance and advice to help stakeholders comply with laws, regulations and professional standards.

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Chartered accountants are talented, ethical and committed professionals. ICAEW represents more than 198,500 members and students around the world. 99 of the top 100 global brands employ our ICAEW Chartered Accountants.\*

Founded in 1880, ICAEW has a long history of serving the public interest and we continue to work with governments, regulators and business leaders globally.

And, as a world-leading improvement regulator, we supervise and monitor around 12,000 firms, holding them, and all ICAEW members and students, to the highest standards of professional competency and conduct.

We promote inclusivity, diversity and fairness and we give talented professionals the skills and values they need to build resilient businesses, economies and societies, while ensuring our planet's resources are managed sustainably.

ICAEW is the first major professional body to be carbon neutral, demonstrating our commitment to tackle climate change and supporting UN Sustainable Development Goal 13.

ICAEW is a founding member of Chartered Accountants Worldwide (CAW), a global family that connects over 1.8m chartered accountants and students in more than 190 countries. Together, we support, develop and promote the role of chartered accountants as trusted business leaders, difference makers and advisers.

We believe that chartered accountancy can be a force for positive change. By sharing our insight, expertise and understanding we can help to create sustainable economies and a better future for all.

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\*includes parent companies. Source: ICAEW member data at 27 July 2022, Interbrand, Best Global Brands 2021



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