



Michael Izza
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Dear Michael

21 May 2019

DECISION NOTICE RE APPLICATION BY THE INSTITUTE OF CHARTERED ACCOUNTANTS IN ENGLAND AND WALES (ICAEW) TO BE DESIGNATED AS AN APPROVED REGULATOR AND LICENSING AUTHORITY UNDER THE LEGAL SERVICES ACT 2007

In a decision notice dated 21 September 2017, the then Lord Chancellor refused to make Orders designating the ICAEW as an approved regulator and licensing authority for the reserved legal activities of the exercise of a right of audience, the conduct of litigation, reserved instrument activities, notarial activities, and the administration of oaths, for the reasons set out in that notice. For reference, that decision notice can be found at -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/646508/decision-notice-lord-chancellor-to-mr-izza-21-sept-2017.PDF

In the judicial review proceedings challenging that decision – *The Institute of Chartered Accountants In England And Wales, R (On the Application Of) v The Lord Chancellor and Secretary of State For Justice [2019] EWHC 461 (Admin)* - the Administrative Court largely dismissed the ICAEW's challenge. However, it quashed the Lord Chancellor's decision "in so far (but only in so far) as it concerned the administration of oaths" and remitted it to me for reconsideration (paragraph 122 of the judgment).

As per the Court's decision, I have considered again the ICAEW's application to make Orders designating the ICAEW as an approved regulator and licensing authority only in so far as it concerns the administration of oaths. This decision is made specifically in relation to the administration of oaths and is without prejudice to my predecessor's decision of 21 September 2017.

I have decided to make an Order designating the ICAEW an approved regulator for the administration of oaths, and an Order designating the ICAEW as a licensing authority in respect of the same reserved legal activity. This, however, is subject to the relevant Parliamentary procedures.

In coming to this decision, I have carefully considered the eight statutory objectives detailed in the Legal Services Act 2007:

- a) Protecting and promoting the public interest;
- b) Supporting the constitutional principle of the rule of law;
- c) Improving access to justice;
- d) Protecting and promoting the interests of consumers;
- e) Promoting competition in the provision of legal services;
- f) Encouraging an independent, strong, diverse and effective legal profession;
- g) Increasing public understanding of the citizen's legal rights and duties; and

- h) Promoting and maintaining adherence to the professional principles (i.e. that lawyers should act with independence and integrity and in the best interests of their clients, maintain proper standards of work, comply with their duty to the court, and keep the affairs of their clients confidential).

I have also taken account of the observations of the Legal Services Board, Lord Chief Justice, Legal Services Consumer Panel and Competition & Markets Authority, as far as they relate to the reserved legal activity of the administration of oaths.

There are two elements of my consideration that I would like to specifically highlight, namely:

- In making my decision I have considered the suitability of the proposed governance arrangements with respect to the administration of oaths, including the nature and complexity of the particular reserved legal activity under consideration (noting the Court's reference to it being "straightforward"), and whether any concerns about the proposed governance arrangements are such that it would be inappropriate for the ICAEW to be an approved regulator and licensing authority for the reserved legal activity of the administration of oaths.
- In considering whether to designate the ICAEW an approved regulator and licensing authority for the reserved legal activity of administration of oaths, I have considered whether such a designation has the potential to widen access to justice, enhance competition and advance the interests of the consumer. And on balance have concluded it would, albeit slightly.

Considering all the above points, I have decided to put Orders before Parliament designating the ICAEW as an approved regulator and licensing authority in relation to the reserved legal activity of the administration of oaths. The Orders will be put before Parliament when Parliamentary time allows, and my officials will keep you updated on progress.

I am copying this letter to Dr Helen Phillips, Chair of the Legal Services Board.

Yours ever


RT HON DAVID GAUKE MP