Blurred Lines – Accountants and Lawyers

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A brief history lesson

- The Professions are remarkably ill defined and understudied – Lord Benson’s 1992 definition
- 19th Century - Second Sons and Manure Merchants
- The growth of professional bodies to self regulate – Law Society 1831
- The start of conflict
- Taxes
- Insolvency
- An uneasy truce - Accountant Magazine 1874, ICAEW 1880.

Professions under attack

- 20th Century – huge socio-economic changes
- Decreasing deference generally
- Suspicion of self regulation – conspiracies against the laity
- Proliferation of professions
- Technology
Neo-Liberalism and deregulation

Lawyers and accountants under attack

- Administration of Justice Act 1985 – conveyancing monopoly ended
- Courts and Legal Services Act 1990 - probate and higher rights
- Accountants and law firms in the 1990’s
- Arthur Andersen
- 2001 OFT Report into the professions – remove all barriers unless clear benefit to consumers
- 2004 Clementi Report on legal profession
Legal Services Act 2007

- The legal big bang - all 400 pages of it
- Legal Services Board as oversight regulator
- Regulators can be Approved Regulators or Licensing Authority for Alternative Business Structures
- LDP’s in 2009 – 25% non-lawyers
- ABS’s in 2011 – 2 types envisaged – legal only and MDP’s
- Too complex and cumbersome, totally unfit for purpose
- Lawyers and accountants back into conflict over Probate work

2014 - ICAEW was the 11th approved regulator

- Law Society (SRA)
- Bar Council (Bar Standards Board)
- Chartered Institute of Legal Executives (CILEx Regulation)
- Council for Licensed Conveyancers
- Chartered Institute of Patent Attorneys (IPRB)
- Institute of Trade Mark Attorneys (IPRB)
- Association of Costs Lawyers (CLSB)
- Master of the Faculties
- Institute of Chartered Accountants of Scotland
- Association of Chartered Certified Accountants
- Institute of Chartered Accountants of England and Wales
Reserved and regulated activities

+ Reserved activities - The exercise of a right of audience, the conduct of litigation, reserved instrument activities, notarial activities, the administration of oaths, probate activities
+ But also regulated activities – because either the profession is regulated in all their activities or because statute otherwise regulates – insolvency work, immigration work and claims management

What is Probate work

+ Probare – to prove
+ Obtaining a grant of representation (grant of probate or letters of administration)
+ The process - Form PA1 and IHT 205 or IHT 400, swear an oath
+ Enables executor or administrator to deal with property
What it isn’t

- Will writing – Lord Chancellor refused to make it a reserved activity despite the recommendation of LSB
- Estate administration
- Tax advice and trust planning
- Accountants already do all of these and act as paid executors
- So why is it so important? Pole position.

Where professional help used
The Probate Market

- 500,000 people die each year – 300,000 need grant of representation
- Legal services market for probate work worth £1.8 billion per annum
- Lucrative - % of estates
- Average estate value £236,000 (HMRC figures 2008-9)
- Average estate administration fees decreased £385 to £1907 in 2012 (Sun Life Cost of Dying Survey)

The ICAEW application

- Lord Chancellor approved 6 March 2014
- Includes estate administration work as regulated activity
- Anyone who undertakes or controls probate activity needs to be an authorised individual
- 2 routes as per LSA
- Authorised firm if all principals are authorised individuals
- Otherwise licensed firm with additional requirements - HOFA and HOLP, who must be an authorised individual
Becoming an authorised individual

- Be an ICAEW member and have completed a training course and assessment – 50% pass mark
- Covers inter alia law of property, equity and trusts, types of grant, validity wills, intestacy, IHT, completing probate papers, oaths, administration of estates.
- 2 day course, can be done online.
- Alternatively – holds qualification from another regulator or otherwise qualified.

Issues for underwriters

- The new minimum LOI of £500,000 each and every claim - for "claims arising from authorised work as defined under the Probate Regulations"
- High risk work – 15% of claims against solicitors probate related
- LeO figures 2011-12 – 14% of complaints probate related (residential conveyancing 18%)
- Contested probate claims issued in London from 2006 to 2011 jumped from 310 to 663
- Claims can be hard to resolve
Issues for underwriters (2)

- Different rules – e.g. Client’s Money Regulations, document retention
- Lack of experience – 2011 ICAEW survey 1/3 of sole practitioners and 1/3 larger firms no experience of any related work. If they had experience of estate administration they only had 1 or 2 files
- ACCA 2012 survey – 10% had acted as executor in last 5 yrs, of those 84% only 1-4 times
- 1/3 definitely won’t employ solicitors, ½ were unsure
- What standard of care

Issues for underwriters (3)

Costs will reduce for consumers

LAWYERS R US

The dog isn’t qualified so we’ll be billing his hours at half the usual rate.
Issues for underwriters (4)

More firms will do will writing

"I can't believe she left everything to that stupid parakeet!"

Effect on market

- 2011 ICAEW survey - ¼ of 2,500 small firms interested
- Application states they expect 250 firms to apply, including 150 sole practitioners
- 92 firms so far – 31 authorised, 61 licensed
- Now announced – open to ACCA, AAT and CIOT members
- Perfect storm for small and mid sized law firms
- Litigation is next for ICAEW
Larger firms

- What have the Big 4 been doing?
- Biggest 2 have global revenues approaching $35 billion. Biggest 2 global law firms $2.5 billion
- Enormous threat to all firms – processes
- Solicitors practising still increasing – up to 130,382 from 127,676

SRA Latest Moves

- Pressure to level the playing field and the dash to deregulate
- Policy Statement May 2014
- PII changes – refused but cf BSB
- Solicitors Accounts Rules – exempting firms from Accountants Reports, stop delivery unless qualified, reduce testing
- Training – away from process to competency based but examining pathways
- Insolvency – only 124 out of 1677
- Raft of others – MDP’s, client accounts with third party providers
SRA Latest Moves (2)

- Separate Business Rule 12 – restricts solicitors owning separate unregulated businesses
- List of permitted and prohibited
- Proposal to amend to increase services within regulated practice – includes accounting services
- Can set up separate business to do non-reserved legal services

The future

- Much more turbulence ahead
- Increasingly fragmented market, with unregulated sector growing
- Accountants will take increasing share of work
- MDP’s? Cultural differences still.
- Not all doom for lawyers
The future (2)

- The LSA 2007 – government plans
- Regulatory competition and race to the bottom
- Consumers triumph but at what cost?
- Full circle

Questions?