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## 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
- + 19<sup>th</sup> 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

- + 20<sup>th</sup> 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 11<sup>th</sup> 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

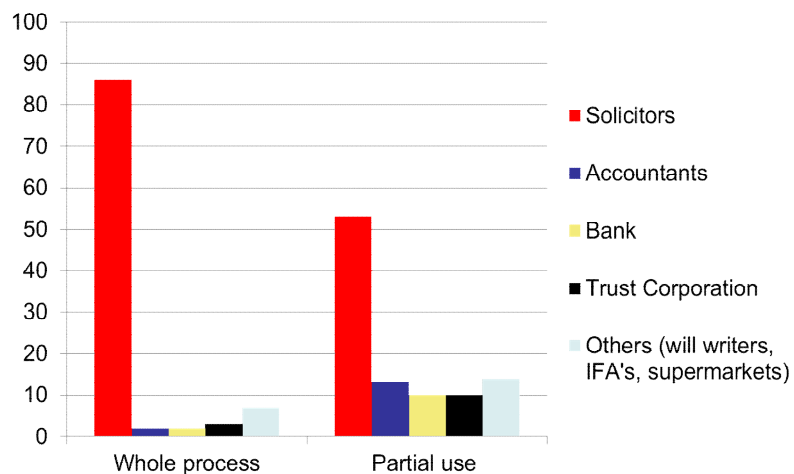
## What is Probate work

- + Probare – to prove
- + A reserved legal activity – since the Ecclesiastical Courts Act 1813 and Solicitors Acts 1932, 1957, 1974
- + 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

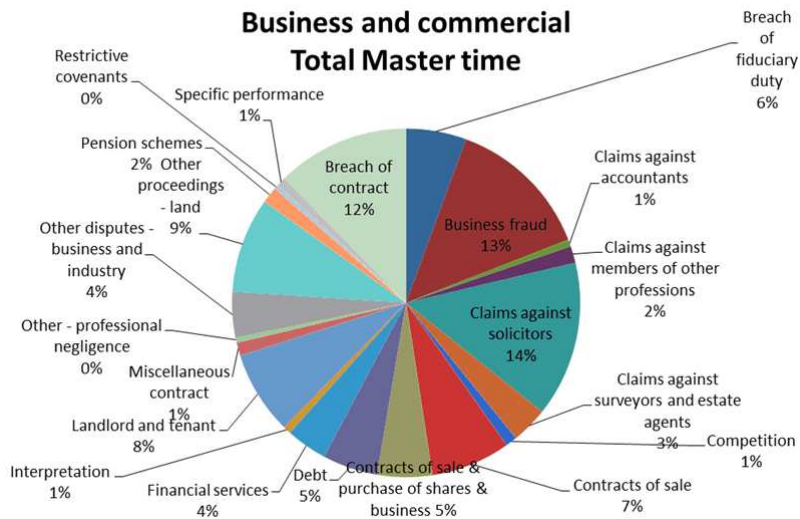
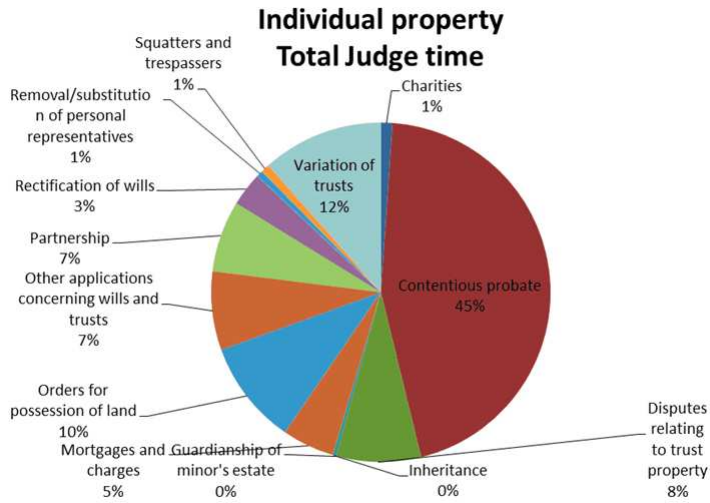
## Becoming an authorised individual

- + 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



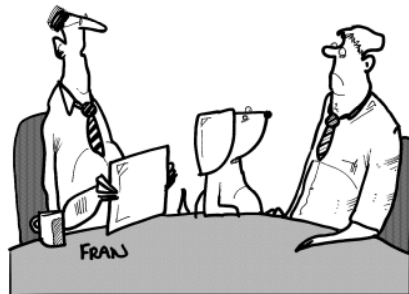


## Issues for underwriters (2)

- + Different rules – e.g. Client's Money Regulations, document retention
- + Lack of experience – 2011 ICAEW survey  $\frac{1}{3}$  of sole practitioners and  $\frac{1}{3}$  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
- +  $\frac{1}{3}$  definitely won't employ solicitors,  $\frac{1}{2}$  were unsure
- + What standard of care

## Issues for underwriters (3)

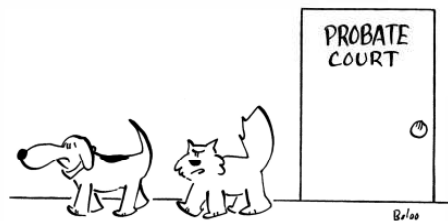
LAWYERS-R-US



The dog isn't qualified so we'll be billing his hours at half the usual rate.

- + Costs will reduce for consumers

## 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 \$2.5billion
- + Enormous threat to all firms – processes
- + Law firm numbers dropping - 9,542 in 2014, down from 9,807 in 2013.
- + 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 of 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

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**Questions?**