



Will Writing Workshop hosted by the Legal Services Board - 26 July 2010

Attendees:

Chair: Crispin Passmore (*Legal Services Board*)

Speakers: Steve Brooker (*Legal Services Consumer Panel*) Mark Pratt (*Office of Fair Trading*)

Delegates: Simon Blandy (*Council for Licensed Conveyancers*) Rita Leat, Gareth Richards (*Fellowship of Professional Willwriters and Probate Practitioners*) Ian Grant (*Fellowship Professional Standards Board*) Paul Sharpe (*Institute of Professional Willwriters*) Thomas Coles (*LawPack Publishing*) Mark Stobbs, Amy McCann (*Law Society*) Chris Handford, Alex Roy (*Legal Services Board*) Jeff Bell, Alanna Linn (*Legal Services Consumer Panel*) Russell Bramley (*Ministry of Justice*) David Stallibrass (*Office of Fair Trading*) Scott Devine (*Society of Trust and Estate Practitioners*) Brian MacMillan (*Society of Will Writers*) Cathy Neal (*Which?*)

Purpose: To bring together a range of organisations with different interests and experiences of the will writing industry to share knowledge and scope the Legal Services Board examination of the failings that may harm consumers and different options for protecting against them.

Outputs and next steps: A complex picture of different ways in which a consumer could potentially be harmed was presented by the attendees. Concerns raised confirmed that the regulation of will writing is an area that the Legal Services Board should be investigating in the near term. However, there is not a clear and accepted picture of the extent and impacts of the different types of problems that exist. Therefore, it is not possible to conclude at this stage what the protections should be or that one approach will solve all of the problems.

The value of building up a cohesive evidential base, which does not currently exist, was agreed. Information provided by the group will be used by the Legal Services Board to produce a suitable research specification to start this process. Resources to fund research will continue to be sought. The Legal Services Consumer Panel has agreed to conduct a formal investigation into the issue of whether a different regulatory approach to will writing is needed. The information provided by attendees will help to identify the parameters of what the investigation should cover – shaping the formal commissioning for the Consumer Panel. These two outputs, the research and the Consumer Panel advice, will drive the longer timetable.

All attendees agreed that they would like to be engaged through the process and will offer (mainly non-financial) support.

Background:

The LSB oversees the regulation, by Approved Regulators such as the Law Society and the Bar Council, of people authorised to undertake reserved legal activities. Reserved legal activities are defined by the Legal Services Act 2007 and include, for example: exercising rights of audience before the court, conducting litigation, conveyancing and preparing probate papers. Most legal advice falls outside of this

definition for example will -writing, employment disputes, mergers and acquisitions, and the administration of estates. With a couple of exceptions if an activity is not a reserved legal activity it can be delivered by advisers who are not subject to regulation.

However most, but not all, of the Approved Regulators have rules that mean that an authorised person (such as a Solicitor or Barrister) is regulated even when carrying out legal activities that are not reserved to authorised persons. This means that a solicitor is regulated when carrying out will-writing activity but other types of advisor may not be.

There have been calls for mandatory regulation to be introduced in this sector. Therefore, in our Business Plan 2009/10, the LSB undertook to explore “the consumer impact of apparent “gaps” in the regulatory system, for example in relation to will writing, where there may be fine judgements to be made between the desirability of extra consumer protection and the adverse impact of possibly higher cost.”

The LSB will begin in the Autumn to review the extent of reserved legal activities generally and our approach for deciding whether a legal activity should be reserved - or indeed regulated at all. The present arrangements, which have grown up in a haphazard way over several centuries, do not reflect the realities of consumer protection in a diverse legal market. Because of concerns expressed about will-writing, the LSB is looking at the case for regulation in this area on a more rapid timetable.

Structure of workshop:

- **Presentation 1:** Steve Brooker, Legal Services Consumer Panel, A whistle-stop tour of the market (**Annex 1**)
- **Presentation 2:** Mark Pratt, Office of Fair Trading, Should will writing be a reserved legal activity? (**Annex 2**)
- **Discussion topic 1:** What Outcomes do we want to achieve for consumers?
- **Discussion topic 2:** What are the potential areas of consumer detriment?
- **Discussion topic 3:** Where should we look for new evidence?
- **Discussion topic 4:** How would stakeholders like to be engaged going forward?

What Outcomes do we want to achieve for consumers?

Views put forward included:

- Transparency of what the consumer is getting when they seek will writing services including what other products are being sold to them.
- Good quality and valid wills.
- Will that does what the consumer wants.
- Will that does not leave beneficiaries with problems.
- Price that is transparent and competitive.
- Beneficiaries understand what they need to do.
- Protection against fraudulent estate administration.
- Simplicity of language to aid consumer understanding.
- Wide choice of product and service delivery methods.

What are the potential areas of consumer detriment?

Views put forward included:

- Not having a will or not buying something that is needed.
- Buying products that are not required especially through unfair selling practices such as pressure selling in the home and cross selling of unnecessary products.
- Buying a wrong or poor product for example a will that inadequately capture what the consumer intended and poor technical quality leading to problems for beneficiaries.
- Paying too much for a product including for example because there is a lack of competition or because of unfair selling practice such as bait advertising, where the end price is much higher than the advertised price.
- Not understanding the services being bought e.g. committing to expensive estate administration services at the time of will without meaning to do so.
- Problems with storing and finding wills.
- Fraudulent wills.
- Fraud by provider of estate administration services.

What evidence is already available?

Attendees suggested many places where relevant information may highlight problem areas and examples of problems occurring in practice. Some attendees offered to provide information that they hold to the LSB. It was suggested that the following organisations may hold relevant evidence of consumer harm were made:

- Trade Organisations
- Charity Sector and Trade Unions
- Which mystery shopping research
- Television journalists (Panorama, Rogue Traders, Watchdog etc.)
- Consumer Direct complaints data
- Legal Complaints Service complaints data
- Research in other jurisdictions inc. reasons why Scotland decided to regulate
- Trading Standards / Scambusters
- Citizen Advice
- Probate Registry
- Institute of Legacy Management
- Scottish Executive (what prompted them to make will writing a reserved legal activity)

However, it was agreed that there is no cohesive evidence base of what is happening in practice, why it happens and the impacts. It was suggested that obtaining this complete picture is important to finding the right solutions and therefore new research would be of great value. Suggestions included:

- Shadow or mystery shopping (Which? has undertaken some limited mystery shopping and may extend)
- Structured consumer interviews including whether they understand different products, providers, language used and choices made
- Interviews with different types of provider
- Interviews with trade bodies and those that regulate already
- Researching training undertaken by different providers

How would stakeholders liked to be engaged:

All attendees said that they would like to remain involved as the LSB investigation progresses. Support was offered by many but this did not include financial support for research, although most saw this as a priority for consumers and their organisations.