



**A RESPONSE BY
THE CHARTERED INSTITUTE OF LEGAL
EXECUTIVES
AND
ILEX PROFESSIONAL STANDARDS LIMITED**

**ENHANCING CONSUMER PROTECTION,
REDUCING REGULATORY RESTRICTIONS:
WILL-WRITING, PROBATE AND ESTATE
ADMINISTRATION ACTIVITIES**

**A CONSULTATION DOCUMENT ABOUT THE LSB'S
PROVISIONAL RECOMMENDATIONS ON THE
REGULATORY APPROACH TO WILL-WRITING,
PROBATE AND ESTATE ADMINISTRATION
ACTIVITIES AS PART OF STATUTORY SECTIONS
24 AND 26 INVESTIGATIONS**

DATE: 11 JULY 2012

Introduction

This response represents the joint views of The Chartered Institute of Legal Executives (CILEx) an Approved Regulator under the *Legal Services Act 2007 (the 2007 Act)*, and ILEX Professional Standards Limited (IPS), the regulatory body for 22,000 members of CILEx. The consultation was separately considered, in the case of CILEx by a committee comprising of the President and the Vice President together with a number of Council members; and in the case of IPS its Board. The outcomes of those respective considerations were exchanged and with no significant difference of opinion between the two organisations, a joint response is tendered. For the purposes of this discussion document, 'we' is used to mean both CILEx and IPS unless the context suggests otherwise.

CILEx and IPS promote proper standards of conduct and behaviour among Chartered Legal Executives and other members of CILEx. We aim to ensure CILEx members are competent and trusted legal practitioners and are fully aware of their obligations to clients, colleagues, the courts and the public. We aim to help good practitioners stay good and improve throughout their careers and to ensure the public know the quality of work Chartered Legal Executives can provide.

We welcome the opportunity to comment on proposals put forward by the Legal Services Board (LSB) on the regulatory approach to will-writing, probate and estate administration. The consultation paper is wide ranging and we hope the responses to questions below may be of value to the LSB and help to inform its approach.

Question 1: Are you aware of any further evidence that we should review?

IPS is not aware of any further evidence the LSB should review other than responses to a recent survey of CILEx members seeking feedback on whether will writing and estate administration should become a reserved legal activity. We are happy to share the responses with the LSB and will forward them separately.

Question 2: Could general consumer protections and/or other alternatives to mandatory legal services regulation play a more significant role in protecting consumers against the identified detriments? If so, how?

Based on the evidence provided in the consultation, it would be difficult for general consumer protections and/or other alternatives to mandatory legal services regulation to play a more significant role in protecting consumers against the identified detriments. Current general consumer protections do not fill the gaps in existing regulation and we agree that competition alone cannot provide the solution to all identified problems.

There needs to be a fundamental change in existing regulation to ensure that unscrupulous or poor quality providers do not avoid regulation. There is an inherent inequality of bargaining power between the provider of will writing services and the consumer. The law therefore seeks to protect the consumer and to balance the

inequality of bargaining power between consumer and supplier of services. From the evidence provided, it is clear that general protections are failing in this area.

As a regulator, if IPS received a complaint in relation to will writing or estate administration, action would be taken. In our application for probate rights we will be proposing a risk based regulatory regime. Furthermore IPS is well equipped to setting clear outcomes to which each provider of will-writing and estate administration services will be accountable for delivering to their clients.

Question 3: Do you agree with the list of core regulatory features we believe are needed to protect consumers of will-writing, probate and estate administration services? Do you think that any of the features are not required on a mandatory basis or that additional features are necessary?

The list of core regulatory features is comprehensive. We agree with all the proposed regulatory features, in particular that a strategy is needed for providing consumers with information. This regulatory feature corresponds with the proposal for a mandatory register of authorised providers. A register of authorised providers will provide consumers with information on whether a provider is authorised to carry out the work offered.

The challenge will be to increase consumer awareness of the need to check such a register to ensure that a provider is authorised. The legal services market could learn from other markets, for example, there has been increased consumer awareness of the need to check whether gas engineers are 'Gas Safe' registered. Consumer would greatly benefit from a register of authorised providers for will writing and estate administration. Marketing campaigns to make consumers aware of the register would also be needed.

There needs to be consideration of the practicalities of a mandatory register of authorised providers and a shared list of providers who have been 'struck off' for bad practice in relation to maintenance, information, and where/by whom the register is held. IPS would be committed to supplying information for such registers.

Relatedly, we are keen supporters of increased competition and choice for consumers, and believe that consumers should have the necessary information available to them to make an informed choice as to whether they should make a will and the means by which they do so. Due to the complexities of the law, the complicated personal and family circumstances which people may have, and the serious consequences experienced by their family should things go wrong, we believe that competition is an important factor in the provision of regulated services.

Question 4: Do you believe that a fit and proper person test should be required for individuals within an authorised provider that is named as executor or attorney on behalf of an organisation administering an estate?

IPS agrees that a fit and proper person test should be required for individuals within an authorised provider that are named as executor or attorney on behalf of an organisation administering an estate. Will-writers may offer executor or estate administration services which tend to be more lucrative than writing a will. However, being an executor of a will or an attorney is an important role which carries a lot of risk. Estate administration is an area that requires financial protections against fraud especially as there are no requirements for providers to maintain separate accounts for estate funds where the provider is not regulated.

Question 5: What combination of financial protection tools do you believe would proportionately protect consumers in these markets and why? Do you think that mechanisms for holding client money away from individual firms could be developed and if so how?

The holding of client money facilitates payments and transactions in legal proceedings, but at the same time there is a risk that the money will be used dishonestly or handled inappropriately, to the detriment of the client. The client protection tools necessary to address such risks need to target the management of client money as well as the holding of client money. We can see the benefits of removing the responsibility for the holding and management of client money from individuals and firms and transferring responsibility to a third party. IPS is currently looking at different options for protecting client money including mechanisms for holding money away from firms and individuals.

Question 6: Do you agree that education and training requirements should be tailored to the work undertaken and risks presented by different providers and if so how do you think that could this work in practice?

IPS agrees that education and training should be tailored to the work undertaken in order to address risks in particular areas of law. The education and training requirements should support the authorisation regime for the particular area of law. Providers should be authorised to carry out work specific to their qualifications and competence levels.

This question lends to the debate of regulation by title versus activity based authorisation; that is whether professional titles are still the most appropriate way to define authorisation. Activity based authorisation involves regulators focusing on the knowledge, skills and experience an individual would need to undertake a particular activity.

Tailoring can include creating grades within activity based authorisation. Lawyers could be given a choice of carrying out work of differing complexity within a single area of law, akin to the tiered approach used by the Office of the Immigration Services Commissioner.

Specialisation is a feature of current legal education and training. However, there remains a need for lawyers to obtain general legal qualifications. Lawyers should have knowledge of core legal subjects and skills so that they can provide a rounded service. Chartered Legal Executives undertake foundation law qualifications before specialising in a single area of law.

Question 7: Do you agree with the activities that we propose should be reserved legal activities? Do you think that separate reviews of the regulation of legal activities relating to powers of attorney and/ or trusts?

IPS believes that there should be adequate protection to consumers in the area of powers of attorney and trusts. Trusts can be a complex area. IPS is producing suitable competence criteria as part of its application for Probate rights which will cover trusts.

Question 8: Do you agree with our proposed approach for regulation in relation to –do -it –yourself tools and tools used by providers to deliver their services? If not, what approach do you think should be taken and why?

IPS agrees with the proposed approach whereby providers who have used software will not be able to delegate indemnity responsibility to the software provider. The proposed approach is no different to the way in which a precedent or computer program used by a lawyer would be viewed.

Question 9: Do you envisage any specific issues relating to regulatory overlap and/or regulatory conflict if will-writing and estate administration were made reserved activities? What suggestions do you have to overcome these issues?

IPS does not envisage any regulatory conflict.

Question 10: Do you agree that the s190 provision should be extended to explicitly cover authorised persons in relation to will-writing activities as well as probate activities following any extension to the list of reserved legal activities to the wider administration of the estate? What do you think that the benefits and risks would be?

IPS agrees that for the purposes of consistency, the s190 provision should be extended following any extension to the list of reserved legal activities to will writing and administration of the estate.

Question 11: Do you have any comments on our draft impact assessment, published alongside this document, and in particular the likely impact on affected providers?

The benefits of reservation are as expected, whereby a level regulatory playing field will be created. Reservation will help to address the inequality of bargaining power that currently exists between a provider of will writing services and the consumer. A major benefit of extending reservation will be that redress through LeO will be available to all consumers irrespective of who provides the will writing or estate administration service. There will be a basic level of protection in place, benefiting consumers of those providers who currently operate outside regulation and have no routes for redress. It is pleasing the impact assessment revealed that reservation should positively affect vulnerable clients and clients on lower incomes.

It is important that a new scheme to regulate providers has in place effective transitional arrangements allowing competent providers to continue to provide services once they have demonstrated their abilities and competence. Transitional arrangements will protect consumers, providing them with continuity of service. New approved regulators must be judged by the same standards as existing approved regulators seeking to extend their designation. It is essential that they understand all that is involved in the regulatory process and demonstrate capacity and capability to fulfil the role. Fulfilment of the Internal Governance Rules is also essential before any new approved regulator is created.

CILEx/IPS