

CALL FOR EVIDENCE: INVESTIGATION INTO WILL-WRITING, ESTATE ADMINISTRATION AND PROBATE ACTIVITIES

Investigation Background:

The Legal Services Board has recently started a formal investigation into how best to protect consumers of will-writing services and the associated probate and estate administration services.

This continues a process begun in September 2010 when the Board asked the Legal Services Consumer Panel to provide advice about the different problems and resulting harms experienced by consumers wishing to write a will. We also asked for the Panel's views on whether existing consumer protections are capable of addressing the harms or whether new solutions are needed and what they might be.

The Panel published its advice on 14 July¹. The report was underpinned by an evidence base that includes original research consisting of a mystery shopping exercise with 101 real consumers, a survey of 500 consumers who have recently had a will written and interviews with nearly 100 providers of will-writing services. This was commissioned in partnership with the Office of Fair Trading and the Solicitors Regulation Authority.

Other evidence collected includes the views of a wide range of stakeholders following the Panel's original call for evidence; nearly 400 case studies submitted by consumers, lawyers and others; and data derived from complaints patterns.

The report highlighted that consumers potentially face many problems. These include poor-quality wills, questionable sales practices and lost wills where companies disappear without trace. The mystery shopping demonstrated that too many wills, written by both solicitors and unregulated will-writers, failed to reflect what the client intended and made other basic errors. The Panel also highlighted that inherent features of will-writing services, such as consumers lack of knowledge to identify technical problems or assess whether additional services offered are necessary or represent good value for money, place consumers at risk of detriment.

The Panel recommended that will-writing should be made a reserved legal activity – meaning a service that can only be provided by persons authorised by approved regulators in the legal services market. At present anybody can enter the market and write wills without any specific checks or regulatory oversight.

The Board is now seeking feedback to help us determine whether we should make a recommendation to the Lord Chancellor that will-writing be reserved and if so what regulatory protections should be put in place. Solutions will need to be targeted at the actual

¹http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf

problems identified. The report indicates that quality problems are common to all providers including solicitors who are already regulated. Granting a monopoly to solicitors is unlikely to be the answer.

The Panel has suggested that regulation should include the following “core elements”:

- **Education** – given the evidence about the poor quality of wills, providers should have to pass formal exams or equivalent qualifications
- **Office holders** – given the risk of fraud, providers should be required to appoint a Head of Legal Practice and Head of Finance and Administration (defined roles under the alternative business structures regime)
- **Conduct rules** – given the evidence of poor sales practices and the incentives for providers to withhold information from consumers, providers should be required to follow a set of rules
- **Ensuring ongoing competence** – given concerns about quality and regular changes to laws and taxation, there should be on-going training requirements and periodic reaccreditation
- **Monitoring compliance** – given consumers’ lack of expertise, a mystery shopping programme should form part of approved regulators’ toolkits
- **Redress** – providers should be insured, contribute to a compensation fund (if estate administration falls within scope) and fall within the jurisdiction of the Legal Ombudsman
- **Discipline** – where providers are guilty of misconduct, they should be subject to a wide range of sanctions including expulsion.

The Panel’s report did not review estate administration and probate activities. However, it did highlight the close association with will-writing and examples of consumer detriment. Therefore, our investigations will cover all three areas. Currently estate administration is not a reserved activity with the exception of preparing certain papers for submission to the Probate Registry.

Initial work indicates that there are likely to be five main groups of problems related to probate and estate administration services:

- Fraudulent activity linked to administering an estate
- Errors in the will document leading to difficulties with probate and administering the estate
- Service issues such as unnecessary delays, failure to keep beneficiaries informed of progress and providing deficient costs information
- Overcharging and / or tying in an expensive estate administration package at the time that the will is written
- Errors in the process of handling of a person’s estate after death

Evidence required

Responses to this call for evidence will help us to determine how best to protect consumers. Some key questions on which we would welcome views and evidence are set out below.

Will-writing (*please note that the Panel has provided us with the evidence that has previously submitted to it and we do not wish for the same information to be resubmitted*).

- Do you agree with the Panel's assessment of the problems in the will-writing market and resulting consumer detriments? Are you aware of any key problems and detriments that have not been identified or evidence that any problems and detriments identified are not as significant suggested or are worse?
- Do you agree with the Panel's assessment that will-writing should be a reserved legal activity? Do you agree with Panel's assessment that alternatives to statutory regulation - such as consumer information, enforcement of existing legislation and voluntary self-regulatory schemes are unlikely to protect against the identified problems and detriments? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?
- What do good providers will-writing services currently do to protect against problems and ensure that consumers receive a quality service?
- If will-writing was to be a reserved activity what specific activities should be included within the scope of the reservation? The Panel has suggested that the scope of regulation should include the commission, sale and preparation of will-writing and related services for fee, gain or reward.
- What specific protections are needed for each problem and detriment that has been identified? Do you agree with the "core elements" (as set out above) that the Panel believe are needed? Do you think that any of the "core elements" are not required on a mandatory basis or that there are other protections that are also required?
- What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?

Probate and estate administration

- What are the key outcomes for consumers that we should aim to achieve?
- What are the existing problems experienced by consumers of probate and estate administration services (testators, executors and beneficiaries)? What are the causes? What are the consequences? What evidence is there of consumer harm?
- To what extent are avoidable problems with the process of probate and dealing with a person's estate after death a consequence of a poorly drafted will or there not being a will? To what extent are problems a direct result of actions taken while administering the estate?
- How and at what stages of the process are problems normally discovered? How and how easily can problems be put right and detriments reversed?
- What do good providers of probate and estate administration services currently do to protect against problems and ensure that consumers receive a quality service?

- Are self-regulation and general consumer and criminal law capable of addressing consumer harm? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?
- If providers of probate and estate administration services were regulated, what form of regulation should this take, and what are the core elements that should be included within the regulatory system? What specific harm would each core element protect against?
- What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?
- How effective is the regulation of the existing reserved activity of preparing papers on which to found or oppose a grant of probate or letters of administration? How does this regulation work in practice, what benefits does it bring for consumers and how does it impact on the way that providers organise themselves to deliver services?

We would welcome information about the size and characteristics of the market including the different types of organisations undertaking will-writing, probate and estate administration services, the mix of these services offered and common referral links between different types of organisations in relation to the different services.

How to provide input?

We would welcome input from members of the public, legal businesses, other businesses active in the will-writing, probate and estate and administration markets and other interested parties. The deadline for evidence is **5pm, Friday 4 November 2011**.

If you are providing a written submission, we would prefer to receive this electronically (in Microsoft Word format), but hard copy responses by post will also be accepted. Submissions or other comments should be sent to:

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Post: Michael Mackay
 Legal Services Board
 7th Floor, Victoria House
 Southampton Row
 London, WC1B 4AD

Phone: 020 7271 0074

The Board intends to publish responses to this call for evidence on its website. Please state if you would prefer your response to remain confidential, although bear in mind that the Board may be required to publish any response in full or part following a request under the Freedom of Information Act.