

NATIONAL CONSUMER FEDERATION

THE GRASSROOT CONSUMER ORGANISATION

The National Consumer Federation welcomes the opportunity to respond to this timely review of will writing. We have consistently been of the opinion that will writing and estate administration should be better regulated – indeed a reserved activity. We have been concerned at the level of consumer detriment suffered by, particularly elderly, consumers.

General comments:

Since the introduction of the Legal Services Act, the NCF has been in favour of the inclusion of will-writing as a reserved activity within the regulatory framework. It is our view that the need for regulation of will-writing within the uniform provisions of the Act has become more urgent in recent years, as estates have increased in value and family structures have become more complex. We have also been concerned about the increase in recent years of unregulated companies offering will-writing services, advertising on the internet and elsewhere and offering “teaser” prices. These prices are seldom what the consumer finally pays since the business model of many of these companies appears to be based on selling add on services.

Unlike many other areas of legal dispute, the injured party, the testator, whose wishes may not have been properly executed, is not around to challenge. A will cannot be corrected after the death. Serious family disputes can be caused by a poorly drafted will and the value of the estate diminished by the legal fees required to resolve disputes..

Will-writing requires a considerable degree of knowledge and expertise. Even a quite modest estate may require careful consideration, so far as inheritance tax is concerned, having regard, in particular, to the value of houses. The law in this area is quite complicated. The risk of ambiguity in the will is quite high, as is the risk of not getting the testator's wishes right. Will-writing is more than just setting down the apparent wishes of the testator. A real understanding of a testator's situation, intentions and obligations is required.

There are competent unregulated will-writers and incompetent regulated providers of will-writing services. There are rogue traders in all areas of the marketplace, particularly where the client cannot have sufficient expertise to protect their own interests- not only legal services. Regulation does not of itself guarantee a trouble-free service but a will-writing service within the authority of the Act would provide clarity in the market and set certain valuable safeguards: a unified code of good practice (the OFT has made a start on this with the Institute of Professional Will writers); training and monitoring requirements and the bedrock protection of the complaints and compensation provisions of the Legal Ombudsman.

Regulation should and can be designed to protect clients not only from misleading or incorrect advice and careless drafting but also from exploitation, for example naming the will-writer as executor at a 3% or more charge on the estate. It should include straightforward cost-free redress to clients, executors and beneficiaries should things go

wrong. Consumers and consumer groups should continue to be involved in the development of any new legal framework to cover these areas.

We wish to emphasise that we regard the following as essential requirements for a new regulatory regime:

- A fit and proper person test, properly enforced
- An effective compensation scheme
- A suitable legal qualification, to cover will-writing, inheritance tax work and estates administration, comparable to that required of a practising solicitor
- Documents relating to the client work to be filed, along with charges and available for inspection by the regulator, subject to appropriate protection to ensure client confidentiality.

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

We are not aware of any additional evidence which you should include in your review. This review appears to be very thorough.

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?

We do not believe that there is an alternative to proper regulation of these areas. Attempts have been made to address some of the worst abuses via OFT supervised codes of practice but in our opinion codes of practice, being voluntary, do not protect consumers against the fraudulent and unscrupulous.

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?

We agree with the list of core regulatory features.

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

We support the proposal of a fit and proper person test, both in relation to individuals who are providing the services, and also in respect of persons owning and/or controlling the organisation providing the service.

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?

It is essential that there are proper arrangements for the safeguarding of clients' money. We suggest that non solicitor firms which provide will-writing, probate and estate administration services should be required to have in place protection and compensation schemes which

are equivalent to SRA regulated firms. A bond supported compensation scheme might be adequate. However, it should be the responsibility of the regulator to ensure that no organisation can provide these services unless it has in place a compensation scheme which matches the SRA arrangements.

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 this could work in practice?

Not entirely. We also take issue with the following statements from the report that it is “unlikely to be proportionate to require every individual to be legally qualified or to be supervised by somebody who is so qualified to undertake estate administration tasks. Thousands of lay people perform these asks successfully every year.” Private individuals, as executors, may be administering estates successfully but that is entirely different from people who set themselves up to sell their services to the public.

These services cut across many different areas of law. There should be basic education and training, as required to be undertaken by solicitors and then we should also like to see the introduction of an additional competency test or qualification for any individual providing these services and engaging with clients.

Too often the policy objective of promoting competition and widening the provision of a service has led to a lowering of standards and rogue traders and “cowboy” service providers entering a “market”. We want to see standards being raised not lowered. We should like to see the introduction of a specialist qualification.

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 (sic)?

Yes, we agree that the activities listed should be reserved legal activities.

We also believe that powers of attorney should be subject to a review, with a view to legal regulation, as should trusts which in effect deliver the same services as those which are regulated.

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?

Yes.

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?

Our interest is in ensuring that consumers are better protected against poor service and fraudulent practices and that proper compensation arrangements are in place. It is highly likely that there will be some regulatory overlap. If, during the course of drafting these new provisions, areas of overlap are identified, then the higher standard or requirement should be

the benchmark. A two-tier system is not acceptable because providers complying with lower standards will be able to offer cheaper services – and this will distort the market.

Question 10: Do you agree that the s 190 provision should be extended to explicitly cover authorised persons in relation to estate administration activities as well as probate activities following any extension to the list of reserved legal activities to the wider administration of the estate? Do you think that will-writing should be included in the s. 190 provisions, should will-writing be reserved? What do you think that the benefits and risks would be?

We support the extension of the s.190 provision to cover authorised persons in relation to estate administration activities as well as probate activities.

We also believe that will-writing should be included in the s. 190 provisions, should will-writing be reserved..

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?

In your impact assessment there is reference to “taking a more risk focused and activity-based form of supervision ...”. Whilst we are not opposed to risk based approaches in principle, it is our opinion that all too often “the risks” are too narrowly defined by regulators, without the input of consumer and community organisations. We urge that if such an approach is taken, then the pool of parties invited to determine the risks be widened to include consumer organisations.

We are not in a position to comment on the cost implications for currently unregulated providers. However, we believe that the time for widening the scope of proper regulation is well overdue.

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About the National Consumer Federation

The National Consumer Federation is a registered charity and the UK's grassroots voluntary consumer organisation, representing local consumer groups nationally and campaigning to improve consumer rights for everybody.

Our aim is to help consumers at the grass roots help themselves and to educate and inform them to the wider public benefit, with reference to the key guiding principles of choice, information, representation, access to goods and services, quality, fairness, safety and redress.

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