

# Response of TenMinuteWill.co.uk to LSB Consultation Document

This is the response of Portology Ltd. of 14 Britannia Place, Bath Street, Jersey JE2 4SU – trading as TenMinuteWill.co.uk - to the LSB Consultation Document entitled “*Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities*” dated 23<sup>rd</sup> April 2012.

My response is restricted to those of the “Eleven Questions” which: -

- I believe will impact my company; or
- That I feel qualified to comment on.

## 1. Introduction

I believe that it is important to start with whom the proposed legislation will be designed to assist and protect: - the consumer.

When I presented to yourselves, we discussed the objectives of this project and agreed that they could be summarised as follows: -

1. Give the consumer a wide range of choice of quality-approved providers and – whichever provider chosen - the confidence that he/she is dealing with an organisation with the correct level of skill and knowledge because that organisation is regulated and has thus been (and is on a continuing basis) tested and audited
2. Improve the quality of what the consumer receives by implementing checks and balances to prevent wherever possible “something going wrong”
3. Give the consumer confidence that if – even in spite of the above – something does go wrong then he/she (and his/her beneficiaries) are protected

If there is no regulation whatsoever of the “Online self-completion” sector of the market then objective 1 above is severely compromised.

My main point, therefore, is that some form of regulation – even if only voluntary – is absolutely essential for the “Online self-completion” sector of the market.

This would give the consumer confidence in dealing with regulated providers in this sector of the market, which would in turn enable such providers to continue to exist, and it would also contribute significantly to an improvement in the quality of what the consumer received.

I will explain in detail my proposals regarding regulation in my response to Question 8.

## 2. Responses to the Eleven Questions

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

No.

### 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?

Not in my view.

### 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?

Yes I agree and No I do not think that any of the features are “not required” and No I cannot think of any additional necessary features – the list is pretty comprehensive.

**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?**

Yes absolutely. This is fundamental to consumer protection.

**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?**

I believe that wherever client money is held (as opposed to being taken as payment) it should be held in a way that it is completely ring-fenced and protected:- (a) the provider should only be able to touch it when applying it on the client's behalf and (b) it must be 100% protected from predators including bankruptcy courts.

**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?**

Absolutely. In practice, I believe that Authorised Providers should be split into categories relating to method of delivery and area of practice. E.g. You could have: "Authorised Provider – online delivery - Wills", "Authorised Provider – online delivery – Probate Administration", etc.

This would have the added benefit of being adaptable should future estate planning-related activities also become regulated – e.g. You could have: "Authorised Provider – online delivery - Trusts".

Every category of Authorised Provider can then be specified a tailored set of education and training requirements such that they undertake only training relevant to their delivery method.

**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?**

Yes and Yes – more and more consumers are now making a Will and setting up one or more Trusts in a single estate planning exercise (and from a single provider) and so it makes great sense to incorporate all activities under a single regulatory umbrella.

However, regarding the latter I believe that if you keep adding to the scope of this project then you will never complete it. I would propose that the current scope be kept and that a separate project be commenced when time permits to incorporate all remaining estate planning-related activities. Any activities that came under the scope of regulation as a result of that project could be implemented in a manner such as I have described in the second part of my answer to Question 6 – and thus brought under an "Estate Planning Regulation" umbrella.

**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?**

I do partially agree. Obviously there are jurisdiction issues but if all non-DIY delivery methods were regulated but DIY delivery methods had no regulation of any form then the consumer would be significantly less likely to choose the latter. This would lead to many DIY providers going out of business – which would narrow consumer choice and would be completely contrary to one of the main objectives of this project. Furthermore and importantly, any un-informed consumer would remain prey to the rogue traders in this sector.

Where my view differs slightly from the proposed approach is that I believe it would be better if there were regulation for all providers regardless of jurisdiction (\*) **wherever a two-way interaction between the consumer and the provider is included in the delivery.**

Thus most "DIY Packages" of the sort one can buy in the supermarket could be excluded, as would all self-help books. This would negate the onerous task of regulators having to trawl through supermarket and library shelves.

In the case where the above products included an “advice line” the provider should then be regulated: - the person or organisation providing the advice should have to be suitably qualified/educated.

(\*) Regarding jurisdiction, I believe that it is quite practical to enforce regulation on UK-based providers and offer a voluntary option for non-UK providers. Particularly in the Internet-delivery sector, the former (plus the “volunteer-regulated”) would easily be able to communicate the message regarding regulation to the consumer (who typically visits at least 2-3 websites before making a purchase choice) and those providers outside UK jurisdiction would have the simple choice: comply or lose significant revenue.

Another way of thinking about it is that if, say, 75% of internet providers either had regulation enforced on them (by being UK-based) or volunteered then the overwhelming proportion of consumers choosing this method would: -

- (1) Know that they were dealing with an organisation with the correct level of skill and knowledge because that organisation is regulated and has thus been (and continues to be) tested and audited.
- (2) Get a higher quality product as a result of regulatory checks and balances being implemented to prevent things going wrong
- (3) Be protected if despite (1) and (2) above something still went wrong.

So what to regulate? I shall deal exclusively with Online Providers and again I will start with the consumer, who should feel confident when using an Internet Provider that:-

- Information provided on the website is correct
- The Will created will do what the consumer has been told it will do (i.e. Will document = The “Plain English” summary prior to purchase)
- His/her responsibilities (e.g. execution of the legal document) are properly documented and clear and correct.
- Any advice or information received in a two-way “conversation” with the provider is correct.

All of the above can be easily regulated:- the first three are “static” and could be checked by a professional in a single day, and the fourth simply requires an appropriate training and CPD schedule not dissimilar to those of a normal face-to-face willwriter.

And how should the regulation be implemented? Well in my answer to Question 6 I mentioned “Authorised Provider – online delivery - Wills”. Regulators must have a suite of regulatory codes that specifically cover a multitude of delivery methods and not a “one size fits all” single regulatory code.

I think that one method which would work would be for the LSB (or the Lord Chancellor, or whoever writes the legislation) to publish a set of Approved Provider “sector titles” and then for regulators to submit their “codes of practice” (for want of a better term) for each “sector title”.

I think that the danger of having a long and confusing list of “sector titles” can easily be averted. I can think of only 4:-

- Face to face
- Telephone
- Internet/Electronic
- DIY Pack with helpline

Finally, there is the critical issue of communication. I believe that: -

- (1) Any announcement made should communicate clearly to the consumer which sectors are going to be regulated – in particular, it is vital that no consumer is left with the impression that “online or DIY Wills are no longer going to be legal” or the “wider consumer choice” cornerstone could be severely damaged
- (2) That the scope of regulation, the “sector titles”, the Approved Regulators, and the Authorised Providers (with sectors in which they are authorised) should be published online.

**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?**

As I deal only with the former of these two activities I do not feel qualified to give an informed response to this question.

**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?**

Yes. Regarding benefits and risks:- the benefits are that the consumer will get a higher quality product, have more confidence that he/she is getting a higher quality product (and thus more people would make Wills) and would be better protected. The potential risk is that the consumer could easily be left a little confused as to “what the rules are”.

However, with good communication and a well thought-out Official Website on the subject: what is regulated (and which delivery sectors) and who the Authorised Providers are this potential risk can easily be averted.

**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?**

Yes I have the following comments to make: -

1. I fully support the comment made in Point 9 on page 4:- “Maintaining the benefits of a plurality of supply”
2. I fully support Option 1 and believe that none of the other 3 options will provide the consumer with anything better than he is getting now.
3. I would be extremely concerned if the cost of subscribing to the “LeO coverage” were based on number of Wills written and would propose a “ceiling” maximum annual cost – particularly as anything else would be almost impossible to police.
4. I believe that the impact on the consumer will be positive: an area which is currently “grey” will become a lot more “black and white”.

Jon Leigh

Portology Ltd. t/a TenMinuteWill.co.uk

jon@portology.com

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