

Response to consultation paper

Save the Children has trust corporation status and is the executor/administrator of a number of estates. In one we are conducting all of the probate and estate administration services in-house. We think that charities can offer the market a novel choice of provider. This is an area that we are interested in scaling-up so these proposals will have a real impact on our future plans. Overall we consider that the proposals are in the best interest of consumers and beneficiaries and support their implementation in principle. We are responding to the consultation as both a provider and as a beneficiary.

Save the Children as a provider of estate administration services

The paper seems to imply that those already in an existing membership body or current regulator will most likely be regulated by them in respect of the new reserved activities. Does the report envisage that the Charity Commission will regulate charities operating in this area or will they have to join one of the other regulators? How much freedom will providers be given? It would seem inevitable that some providers would shop around to find the least onerous body given the choice. The potential to have a number of designated regulatory bodies, as opposed to one single regulator, might weaken the regulatory system. The number of designated regulators, each with their own style of regulation, will fragment the regulatory market and could be potentially confusing to consumers.

Charities acting as providers are quite an anomaly (I understand only Age UK operate substantially) and I wonder how or if regulation for them will be different. In one sense charities fall into the high risk category in that they are the clients and the executors, however they are also subject to regulation by the Charity Commission and yearly financial audits, mitigating the risk. Charities as providers will not be cross selling other products to consumers so the 'sales' tactics discussed in the paper are not applicable to charity providers but there will be an element of legacy marketing – will the regulator's ambit cover that sort of activity?

The cost of regulation is not covered in the report. Presumably the regulators will be self-funded by their members, like the SRA. Will the cost of regulation be uniform across all the different regulators or will the regulators set their own costs? Save the Children is starting to investigate whether providing estate administration services is something that our supporters would like us to do. However, it is the potential cost of regulation that could prevent Save the Children from scaling up its presence so mitigating cost is something that would be important to us.

Save the Children as beneficiary

One of our main areas of complaint against current providers, mostly solicitors, relates to estate administration costs. We would suggest that the new regulation pays particular emphasis to and provides clarity about costs in probate matters. The current guidance from the Law Society is vague and it is not clear how the value element and hourly rate (which may or may not include a profit element) sit side by side. This issue is particularly acute for large charities that do not qualify to make a complaint to the Legal Ombudsman (having income in excess of £1m) and are left with no avenue of redress. Access to the Legal Ombudsman is a particular problem for large charities and making estate administration activities reserved in its self will not help large charity beneficiaries. We are pleased that the third party complaints is something highlighted at paragraph 163 – but again the reference to a second tier is not helpful for large charities.

Answers to specific questions

Q4: 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? – A fit and proper person’s test for an individual named as an executor is a sensible precaution to have in place. Does this cover the situation where the regulated provider itself is named as executor (for example, Save the Children) but delegated authority gives power to an individual to carry out all of the activities on behalf of the provider? This, in our view, would present the same risk so we consider the test should be extended to all of those that have the delegated power to act.

Q6: 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 this could work in practice? – We agree that there should be no single educational/training standard but it might be difficult determining/ascertaining which educational marks/courses will count towards these training requirements. How much emphasis will be put on experience – this is harder to quantify. In practice, the onus could be levied on the provider to show the regulator how, through education and training, it meets the minimal level required. This could take into account the number of years practice in the relevant department, the number of reserved activities undertaken every year, the relevant courses and qualifications attended and details of complaints received.