

<b>To:</b>	Board	
<b>Date of Meeting:</b>	13 July 2011	<b>Item:</b> Paper (11) 48

<b>Title:</b>	Will-writing – advice from the Legal Services Consumer Panel
<b>Workstream(s):</b>	Workstream 3E: Improving access to justice – rationalising the scope of regulation
<b>Introduced by:</b>	Dr Dianne Hayter, Chair of Legal Services Consumer Panel crispin.passmore@legalservicesboard.org.uk / 020 7271 0086
<b>Author:</b>	Steve Brooker, Consumer Panel Manager steve.brooker@legalservicesconsumerpanel.org.uk / 020 7271 0077
<b>Status:</b>	Protect

<b>Summary:</b>
This paper provides the Consumer Panel's <b>draft</b> advice on regulating will-writing services, which it is hoped will aid the Board's discussion of <b>Paper 11 (49) – Rationalising the scope of regulation</b> .

<b>Risks and mitigations</b>	
<b>Financial:</b>	Low
<b>FoIA:</b>	Initial assessment: s36(2) – whole paper.
<b>Legal:</b>	Low
<b>Reputational:</b>	High
<b>Resource:</b>	Low

Consultation	Yes	No	Who / why?
<b>Board Members:</b>		✓	
<b>Consumer Panel:</b>	✓		The Panel endorsed the draft advice at its meeting on 20 June 2011

<b>Recommendation(s):</b>
The Board is invited to note and to comment on the Consumer Panel's draft advice on will-writing.

## LEGAL SERVICES BOARD

<b>To:</b>	Board		
<b>Date of Meeting:</b>	13 July	<b>Item:</b>	Paper (11) 48

### **Will-writing – advice from the Legal Services Consumer Panel**

#### **Recommendation**

The Board is invited to note and to comment on the Consumer Panel's draft advice on will-writing.

#### **Summary**

1. This paper provides the Consumer Panel's **draft** advice on regulating will-writing services, which it is hoped will aid the Board's discussion of **Paper 11 (49) – Rationalising the scope of regulation**.
2. The Board commissioned advice from the Panel in September 2010. In summary, advice was sought on the current and potential problems that consumers face, the impact on testators and beneficiaries and whether new solutions are needed, including the advantages and disadvantages of various ways of regulating will-writing. The full commissioning letter is provided in Annex 1 of the draft report.
3. When Parliament debated the issue during the passage of the Legal Services Act 2007, the lack of evidence of consumer detriment beyond anecdote was the main reason why regulation was rejected. Therefore, the Panel has invested time in building a solid evidence base to determine whether regulation is necessary to protect consumers and would be in their interests. This evidence includes a 'mystery shopping' exercise, a survey of recent purchasers of wills, a call for evidence, complaints data, interviews with solicitors and will-writing businesses and nearly 400 case studies sent in by members of the public, lawyers and others.
4. The advice is in draft form because the data from the 'mystery shopping' exercise tabulated on page 22 of the report is incomplete. Nevertheless, based on the data received so far and the other arguments and evidence presented in the report, the report's recommendations will not change.
5. For ease of reference, the report's recommendations are reproduced overleaf.

## **Recommendations**

The Panel's advice to the Legal Services Board is as follows:

- Will-writing services should be made a reserved activity;
- The scope of regulation should include the commission, sale and preparation of will-writing and related services for fee, gain or reward.
- The core elements of the regulatory scheme should include:
  - Education – a requirement to pass an entrance exam or other means of demonstrating competence.
  - A requirement to appoint a Head of Legal Practice and Head of Finance and Administration;
  - Conduct rules, using the IPW code of practice as a starting point;
  - Ongoing compliance: annual CPD requirements and periodic reaccreditation;
  - Monitoring compliance – to include mystery shopping as part of the toolkit;
  - Redress – indemnity insurance, contributions to a compensation fund and bringing will-writing within the jurisdiction of the Legal Ombudsman; and
  - Discipline – a range of sanctions
- The OFT should coordinate enforcement action targeted at the rogue element of the will-writing industry, working in partnership with local trading standards services;
- The SRA should consider whether the mandatory aspects of the will-writing part of the Legal Practice Course should be strengthened; and
- The Joint Regulators' Education and Training Review should consider the lessons of will-writing, particularly on the issues of specialisation and ensuring the ongoing competence of lawyers.