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A handwritten signature in dark ink, appearing to read 'Dear Minister', written in a cursive style.

Update on the Legal Services Board's will writing

I am writing to update you in regard to the progress made by the LSB since the decision by the Government not to extend regulation to will writing activities in May 2013.

The Lord Chancellor's decision notice proposed that non-regulatory alternative measures should be made more effective before resorting to reservation; for example, that there could be more targeted guidance for the legal profession combined with voluntary regulation schemes and codes of practice for non-authorised persons. He suggested that there could also be greater efforts made to educate consumers on the different types of provider.

As you know the LSB's responsibility under the Legal Services Act (2007) is for persons authorised to undertake reserved legal activities. We considered issuing targeted guidance to the front-line regulators of authorised persons providing will-writing services to strengthen regulation in this area. We decided not to do so as this would be akin to treating will-writing activities as reserved legal activities despite the Government having decided that they should not be so.

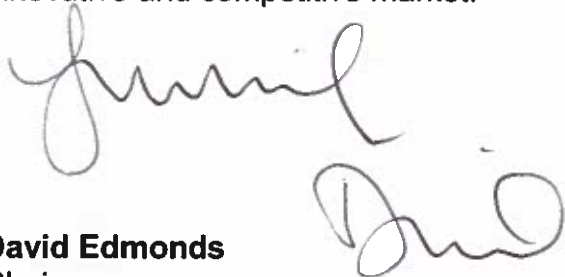
However we have written to approved regulators setting out that they have responsibility to regulate well for all authorised persons and that their regulation should identify areas and activities of high risk for consumers and target regulatory oversight on the riskiest firm and practices. We have asked approved regulators about how they are targeting regulatory oversight in view of our research findings that found a range of quality problems and general 'sloppiness' occurring in will writing. We expect that they will ensure that regulation is targeted, and when reviewing their supervisory arrangements they will take account of the research findings of the LSB, especially in relation to the quality of wills. We have received several responses back and are currently reviewing them. We will update you at a later stage if any significant issues are raised.

Given the Government's decision, we have no responsibility or power over the unregulated will writing market. However, my Board has taken an initial lead in encouraging industry to take steps to raise standards among unregulated will writing providers. On 22 January we convened a roundtable with industry stakeholders that explored ways to improve the coverage and effectiveness of voluntary schemes/codes. Two of the leading trade bodies agreed to look into ways to exclude incompetent and dishonest firms from operating in the market. Participants also discussed ways to encourage code recognition and accreditation such as working with the Consumer Codes Approval Scheme (CCAS). These matters are now with the industry to pursue.

One of the issues raised at the roundtable was whether amendments to the EU directive on electronic signatures would mean that the Probate Service's will registry would allow the submission of electronic wills. My officials have written to the Probate Service asking whether any changes to the will registry are planned that could make it easier for consumers to securely lodge and store wills. This is important because the will registry serves as an important depository for wills and is particularly useful for consumers who use unregulated providers. Unregulated providers are not required to safeguard the storage of wills through having succession plans in place in the event of a firm ceasing to trade. The roundtable also discussed ways to improve consumer information such as using the Legal Choices website¹ to better signpost consumers about the differences between regulated and unregulated will providers.

We have also taken the opportunity to write to parliamentarians who have been engaged in will writing issues to update them in the matter. We have advised them that while we have taken the initial lead in encouraging industry to pursue non-regulatory approaches to improve standards, it is now up to industry to pursue these initiatives themselves.

Taken together, I hope that these steps will enable some progress to be made, although it remains my Board's view that the Government's decision does represent a missed opportunity to both raise standards and to foster confidence in a more innovative and competitive market.

A handwritten signature in blue ink, appearing to read 'David Edmonds', is written over a faint, larger version of the same signature.

David Edmonds
Chairman

¹ <http://www.legalchoices.org.uk/>