

Summary of problems and analysis – Will-writing

Quality:			
Evidence rating: High for problems & frequency - underpinned by shadow shopping and various survey data.			
Outcome:	Frequency	Impact:	Additional information:
Invalid wills:	Low: <ul style="list-style-type: none"> • 8 out of 101 shadow shops • Few fail probate 	Questionable: <ul style="list-style-type: none"> • Intestacy or reverting to earlier wills • Probate service report most issues put right with further work 	
Poor quality wills: <ul style="list-style-type: none"> • Inadequate requirements not met • Technical deficiencies • Contradiction • Lack detail • Presentation 	High: <ul style="list-style-type: none"> • 1 in 4 wills failed shadow shopping <ul style="list-style-type: none"> ◦ 1 in 5 solicitors & will writers • 3 in 10 self-completion (4 in 10 on-line) • High ratio of errors reported by STEP members • 53% of charities surveyed experienced an error • LeO: 55 complaints in 6mths about failure to follow instructions • Over 250 case studies with technical errors & unnecessary features prominent • Analysis of survey data by Sneddon's law firm – 50,000 contested wills per annum (although only 555 	Variable depending on issue: <ul style="list-style-type: none"> • Two main outcomes are: <ol style="list-style-type: none"> a) that will fails to deliver what the testator wanted b) that unclear clauses lead to difficulties administering the estate. • Significant financial detriment may result • Intended beneficiaries lose out with money going to unintended people or too much tax being paid • Significant costs and delay in receiving entitlements result • Delays can cause hardship for dependents • Emotional detriment a key feature as outcomes can have life-changing results e.g. family home, custody of children, access to large sums of money • Family disputes / breakdown is a regular feature where uncertainty 	<ul style="list-style-type: none"> • Provider satisfaction high in shadow shops despite many wills failing - highlights asymmetry • Reported that problems may never be spotted as intended beneficiaries unsighted as to what was intended • Alleged that there is increasing complexity so a greater need for tailored advice • Solicitors were more likely to fail where simple circumstances, will-writers where complex • Cutting and pasting of inappropriate template precedents, unnecessary complexity; and use of outdated

	<p>wills, trusts & probate high court challenges in 2010 & could be for variety of reasons)</p> <ul style="list-style-type: none"> • 14% of consumers don't understand will vs. 5% on-line 	<ul style="list-style-type: none"> • Testator usually isn't around to sort out problems • Legal costs incurred to interpret/compile will • There are limited grounds to challenge & must be through courts if no agreement between affected parties. Legal costs can be high. STEP estimates that on average disputes take 12 months to resolve but yield a payoff of under £250 per person. May require pursuing negligence claim against provider. • Impact on charities as well as individuals • Charities reliant on legacies - £1.9billion a year. Many reliant on legacies e.g. 50% RSPCA income • Remember a charity survey – 33% experienced detriment from poorly drafted will (loss of legacy 11%, reduced legacy 33%, delay 48%, legal costs 53%) • Cost of correction if spotted pre-death 	<p>terminology key features</p> <ul style="list-style-type: none"> • Stakeholders have raised concerns that dabblers, both regulated and unregulated, doing very low volumes of work pose particular risk as lack of familiarity leads to errors. This was a particular theme at the LSB workshop. Concerns were raised about relying on templates and software without sufficient underpinning knowledge. This may cause problems with complex wills. • Concerns have been raised around inexperienced will-writers entering the market without having first learnt their craft under supervision within a firm (regulated or unregulated).
<p>Unnecessary features:</p>	<p>Moderate:</p> <ul style="list-style-type: none"> • Featured highly in case studies • Consumer survey 43% asked about care home trusts – no tailoring by circumstance 	<ul style="list-style-type: none"> • Cost to consumer – can run into thousands of pounds 	<ul style="list-style-type: none"> • Maximising fees or gold-plating - vary by provider?

	<ul style="list-style-type: none"> Shadow shopping assessment panel raised concerns 		
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Sales, products and services:

Evidence rating: Medium – underpinned by survey and case study evidence. Difficult to capture lower level pressure selling as individuals reluctant to admit that they have been weak or naive unless detriment very high.

Outcome:	Frequency:	Impact:	Additional information:
<p>Being sold costly and unnecessary services: paying large sums for services that are not needed, won't work, cannot be afforded or available cheaper elsewhere</p> <p>Undercurrent of sales pressure that plays on people's fears and lack of transparency about what committing to and cost:</p> <ul style="list-style-type: none"> Probate /estate administration Complicated tax planning features such as care home trusts Will storage and on-going advice packages 	<p>Inconclusive:</p> <ul style="list-style-type: none"> Will-writing companies are particularly reliant on income from cross-selling (business interviews 44% make up at least one-third of income vs. solicitors less than 10%). 25% with staff with sales targets & commission structure Some shadow shoppers report greater interest in selling than tailoring services, playing on conscience & playing up consequences of not purchasing additional services. One shadow shopper told services normal and sign form of non-liability if did not buy. Consumer survey – 18% naming executor felt some pressure to do so. 36% couldn't recall costs being explained to them. Take up lower than anticipated. 12% appoint will-writer executor (19% solicitors & 7% will-writing companies). OFT – 43% name a professional executor. Pre-paid probate packages offered to 25% but only 6% bought (may indicates issues around understanding definitions) Consumer survey - 1 in 3 purchased additional 	<p>High:</p> <ul style="list-style-type: none"> Significant financial detriment to consumers and their beneficiaries Fees for total package amount to a large proportion of the estate Probate and estate administration services being sold when probate is not needed OFT failure to shop around for executor services costing £40m p.a. One case study included an example of 10% of gross estate for estate administration but with no explanation up front Pre-paid probate / on-going costs packages poor value 	<ul style="list-style-type: none"> Home based sales environment, asymmetries of information and emotional nature of products leaves consumers particularly vulnerable. High age profile of consumers Consumers often do not have private right of action under Consumer Protection Regulations – reliance on public

<p>Being sold inflexible or compulsory products and services – such as compulsory executor services, hard to revoke executor services or not honouring cooling off periods</p>	<p>services other than executor services. Of these, 1 in 4 had felt under pressure to do so (36% buying from will-writing companies and 17% from solicitors)</p> <ul style="list-style-type: none"> • 25% not satisfied with transparency 40% with clarity when explaining options. Some shadow shoppers were not told upfront about cost or payment structure • Consumer survey – 20% overall (and 30% using will-writing companies) said wills cost more than expected • 66% STEP members report hidden fees • OFT took action with banks to improve terms and clarity of executor services being sold without understanding of costs or alternative options • Case studies & shadow shops show overcomplicated wills for circumstances – 43% of consumers asked about care home fees irrespective of circumstances • Consumer survey – clients of will-writing companies significantly more likely to pay on-going fees than solicitors (12% -1%). • There is some case study evidence of providers failing to honour cooling off rights or pressuring consumers not to exercise them • Of 275 case studies , 35 about bait advertising/ cross-selling, 44 about on-going fees, 60 about overcharging less frequent pressure selling, pre-paid probate, misleading claims, failure to honour cooling-off rights, inadequate redress 	<p>with on-going cost over long period with total costs far higher than if bought post-death. Examples of firms closing before death with no succession plans and no insurance so money lost. Examples of service purchased not being delivered or being far less than anticipated.</p> <ul style="list-style-type: none"> • Examples of unnecessary trusts sold as standard costing hundreds of pounds each • Wasted time, emotional stress and annoyance is common of pressure sales victims especially given emotional nature of services 	<p>authorities.</p> <ul style="list-style-type: none"> • Examples of successful action taken by trading standards. Recent examples of 3 examples of insolvency service success. But no indication that redress was secured for affected consumers. • Examples of many “rogues” subject to convictions or other legal outcomes having been in trouble before • Trading standards unlikely to have resource to target area on on-going basis and there will be
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	<ul style="list-style-type: none"> • High sale pressure tactics sales tactics and costs of executor services feature highly in media coverage and some successful legal interventions • Some case study evidence inc. of targeting the elderly. Very limited in relation to executor services (although definitions may vary).Shadow shops did not show aggressive pressure selling. • OFT analysis of Consumer Direct data suggests that one-third of complaints could be classified as potential criminal breaches. A large proportion of complaints relate to a small number of companies some of whom may operate nationally. • LeO – 102 complaints about excessive costs & 84 about costs info being deficient from October 2010 to August 11. 		<p>geographical inconsistencies.</p>
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Missing wills:

Evidence rating: Medium / low. Area of concern and evidence that it is happening in practice to some degree but cannot accurately quantify size of problem

Outcome:	Frequency	Impact:	Additional information:
<p>Wills can't be found:</p> <ul style="list-style-type: none"> • Insecure storage practice: Wills disappear as a result of • Insolvency & lack of succession planning • Gaps in protections of unregulated & not trade body member • Enforcement difficult when membership ends 	<ul style="list-style-type: none"> • Consumer survey - 45% offered storage, services of which 32% purchase. Higher for will-writing companies (61% and 38%) • Increase in applications to Probate Service to prove copy wills • 36 case studies, most about lost wills post-insolvency – very few about poor storage practice • 64% STEP members have direct experience of will-writing companies going out of business and disappearing with wills • IPW membership data - within four years of a will-writing company starting there is a 60% chance of it going out of business. They estimate that this affects 4% of all consumers who make a will. Very long periods before making will 	<ul style="list-style-type: none"> • The estate will be distributed in line with intestacy rules or an older will. In many cases this will not reflect the testator's final wishes resulting in financial detriment to intended beneficiaries. • A missing will is likely to cause further costs and delay in the administration of the estate as the will is sought or attempts made to approve a copy will. • There may be uncertainty about who should administer the estate and personal actions such funeral arrangements. • If it is discovered that a will is missing when the testator is still alive costs will be incurred to write a new will. 	<p>SRA code requires -</p> <ul style="list-style-type: none"> • Entities to keep legal documents safe • Closure of a solicitor's practice to happen in a proper and orderly manner. This includes notifying clients and safe disposal of documents. Options include: continuing to hold them (e.g. in a secure storage facility); handing them back to the client; arranging for another firm to take over storage of the files; and storing documents electronically. Firms must inform the SRA of the address where the papers are stored and give contact details which can be passed on to clients wishing to access their papers. • If firms sell their practice as a going concern, they must inform all clients of the change in ownership in advance and take basic steps to safeguard the clients' interests. <p>IPW require:</p> <ul style="list-style-type: none"> • Members to keep wills safe • Members must advise IPW of location of documents along with access procedures.

	<p>& death</p> <ul style="list-style-type: none"> • Trade bodies regularly receive calls from consumers trying to find wills stored with closed will-writing firms • Trade bodies dispute that wills regularly go missing from unregulated sector and they sort out most instances when firms go under 		<ul style="list-style-type: none"> • When a membership ceases they are required to advise the IPW of suitable, ongoing arrangements for the storage of documents, or else hand to the IPW. <p>SWW require:</p> <ul style="list-style-type: none"> • Members to keep wills safe • Members offering lifetime storage services should offer alternative storage arrangements (at no further cost to the client) in the event of them ceasing to practise. <p>Central will-repository:</p> <ul style="list-style-type: none"> • Probate service store wills for cost of £15 but not widely publicised or used. Compulsory repository suggested.
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Fraud and theft:

Evidence rating: Moderate – incidence of fraud cannot be quantified. Official statistics don't breakdown to wills (or probate & EA) & it is asserted that much fraud will never be detected and reported as beneficiaries are unsighted and access to info controlled by the fraudster

Outcome:	Frequency	Impact:	Additional information:
<p>Life-time fraud :</p> <ul style="list-style-type: none"> • accessing a client's savings or credit • exerting undue influence to gain personal benefit within a will • forging or suppressing wills to gain personal benefit <p>Paying for work that is not delivered (either writing of wills or subsequent estate administration services).</p>	<p>Low:</p> <ul style="list-style-type: none"> • Limited case study evidence • Some examples of handing over credit card details and unexpected sums deducted • Allegations / suspicions only of undue influence, forgery & suppression of wills. Informal probate Service opinion that this is very rare. More likely to be relative/friend/carer. • Examples of payment being taken & work not delivered more common within case studies 	<ul style="list-style-type: none"> • Potential for high financial impact if controlling estate after death (alone or in collusion with beneficiaries) or access to lifetime accounts • Cost of work that is not delivered will vary but can be high • Emotional distress of being defrauded by persons in a position of trust around sensitive issues 	<ul style="list-style-type: none"> • Inherent risk that providers exploiting the personal nature of making a will and the knowledge of the testator's financial affairs and family circumstances gained by the will-writer for dishonest purposes.

Summary of problems and analysis – probate and estate administration (emerging picture only, evidence gathering and analysis on-going)

Fraud and theft & issues around handling client money:			
Outcome:	Frequency	Impact:	Additional information:
<p>Fraud and theft from the estate</p> <p>Financial detriment resulting from poor accounting practices</p>	<ul style="list-style-type: none"> • Wide concern anecdotally • Widely quoted cases resulting in conviction or other legal outcomes • Half STEP members in 2005 survey reported having encountered suspected fraud • SRA: performance report - 84 claims on the compensation fund in 12 mths. Risk strategy - theft and serious overcharging by solicitors acting in a representative capacity such as executor of an estate pose a high risk. <i>(awaiting further info from SRA).</i> • Institute of Legacy Management claim charities are regularly not 	<ul style="list-style-type: none"> • STEP 2005 report references RNIB estimate of fraud amounting to £100-150 million • Potential for high financial impact if controlling estate after death (alone or in collusion with beneficiaries) • Emotional distress of being defrauded by persons in a position trust around sensitive issues • Costs of pursuing legacies • Fraud criminal matter but where there is a conviction satisfactory redress for the victims is rare as often the money is irretrievable 	<ul style="list-style-type: none"> • Risks are considerable and wide concern across stakeholders • Financial protections a key aspect of regulation across sectors • Evidence that would allow for accurate quantification of problems occurring does not exist (e.g. crime stats do not break down that allows theft and fraud relating specifically to writing wills and administering estates to be identified) <i>(awaiting further info from CPS)</i> • Stakeholders report that low level fraud is often not reported as difficult for beneficiaries to detect & if it is provider may pass off as admin error • Example based evidence does not prove how common each

	<p>notified of legacies</p> <ul style="list-style-type: none"> • Case study examples provided (a number allege rather than prove) • Anecdote about deliberate delay in completing the administration of the estate because of benefits for a business of holding on to client money for as long as possible. • Anecdote and examples of unregulated providers paying estate funds into business accounts (and sometimes using the funds interchangeably) 		<p>problem is</p> <ul style="list-style-type: none"> • Fraudsters coming from both the regulated and unregulated sectors • LeO data shows complaints of selling property below market rate to get a quick sale.
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Costs and sales:			
Outcome:	Frequency	Impact:	Additional information:
<ul style="list-style-type: none"> • Costs and sales: inconsistent pricing, lack of transparency over costs and the level of 	<ul style="list-style-type: none"> • Emerging consumer survey data of inconsistent pricing & considerable variation. Supported by OFT and recent Which! survey data. Single figure 	<ul style="list-style-type: none"> • Inherently high value area and corresponding high financial impact • Poor bargaining position of consumers 	<ul style="list-style-type: none"> • See will-writing table above for detail of sales issues re: probate & EA services inc. detriments and additional info (analogous). Not duplicated here

<p>service that has been purchased</p> <ul style="list-style-type: none"> Unclear referral arrangements to estate administration companies 	<p>proportions shop around.</p> <ul style="list-style-type: none"> Survey data plus case studies showing many consumers do not understand charges & do not feel properly explained. Final charges more than anticipated LeO -most complaints about probate & estate administration are about costs e.g. failure to give clear estimates, inaccurate estimates, costs being high given the size and complexity of estate, charging for work that lay executors had done Solicitors for the Elderly - members are reporting banks selling details of family deaths to estate administration companies who then quickly turn up at the relative's house and asking them to sign powers of attorney for probate and estate administration instructions. 		
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	Issue also raised by other stakeholders. Examples of relatives thinking that it is a free service provided by the bank. The frequency cannot be quantified.		
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Quality and service:

Outcome:	Frequency	Impact:	Additional information:
<ul style="list-style-type: none"> Errors with probate application 	<ul style="list-style-type: none"> MoJ 2004 survey showed one third of professionally made applications rejected by Probate Service because of errors or omissions 	<ul style="list-style-type: none"> Low impact as the Probate Service checks every application & returns those requiring corrections. Most made good without major detriment occurring 	<ul style="list-style-type: none"> Probate Service runs a pre-application checking service for £12 which many solicitors use – Probate Service report that this step is built into some case management systems Broad consensus that completing for probate is straightforward and risks minimal – one response argues that the other part of the reserved activity, preparing papers for opposing grant of probate Probate Service are due to shortly consult on changing non-contentious probate rule that could change the

			application activity (<i>awaiting further info</i>)
<ul style="list-style-type: none"> • Errors and service issues with process of handling administration of estate 	<ul style="list-style-type: none"> • Emerging figures from YouGov consumer survey indicates lower satisfaction rates than with will-writing services • LeO has closed over 1500 complaints relating to wills and probate. Consumer Panel analysed a sample of 150 LeO complaints – service issues frequently reported including delay, failure to progress, failure to follow instructions and failure to keep informed. • Anecdote about technical errors and incompetent handling of estates – evidence so far limited to reference to personal experience by providers and a small number of case studies 	<ul style="list-style-type: none"> • Financial detriment to multiple people with assets being distributed incorrectly ,assets being incorrectly valued, not fully investigated or value not being maximised • Reported that HMRC recouped £70m in underpaid inheritance tax resulting from incorrect valuations in 2010 • Financial detriment from not dealing with tax efficiently inc. late submission fines, incorrect tax and not claiming tax relief • Delay can have significant impact on dependents • LeO data shows reports of significant impact on emotional and physical well-being and on relationships. • LeO data shows reports of loss of confidence in legal profession 	<ul style="list-style-type: none"> • Broad consensus at LSB workshop, discussions with leading academic and other stakeholders that EA is administrative process not highly technical • LSB workshop – as administrative process claimed that familiarity is vital to competence so dabbling is dangerous • In communication with HMRC seeking information about tax issues and miscalculation of asset value • Argued that errors are likely to be reported because beneficiaries are unsighted on details of estate and intended distribution • Consumer and business surveys still in field