Call for evidence: Investigation into will-writing, estate administration and probate activities

Comments from ACCA
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Introduction

1. We acknowledge that the services of will-writing and estate management are complicated, and concern issues with which the consumer is usually unfamiliar. The process of estate management takes place during a time of distress for those who may be dealing with the professional. For the purpose of this work, the consumer may be the deceased, a beneficiary or an executor (or administrator) other than the professional concerned.

2. Our response to the call for evidence is based on ACCA's role as a regulator of accountants, both as a statutory regulator in the UK – in respect of audit, insolvency and financial services – and as a regulator of members' professional standards globally. We are not aware of many accountants who currently provide either will-writing or estate administration services, although our members play important roles in these areas in that they provide inheritance tax advice and compliance services – usually in conjunction with a solicitor.

3. The report of the Legal Services Consumer Panel ('the Panel') has identified various failings in will-writing services. Some people have suggested that will-writing and estate administration services are so closely linked that if one is to be a reserved activity then so should the other. We disagree with this premise, and would remind the Legal Services Board (LSB) that in many cases of estate administration, there is no will.

4. Where the deceased has written a will, it is for the administrator of the estate to work with the 'tools' that he or she has, including the will as drafted. Errors will, inevitably, occur in the writing of wills, and it is difficult to conceive a form of redress in any such cases.

5. There are alternative means of improving standards and protecting the public. As an initial step, we recommend focus on improving the quality of legal services regulation, so that the Panel's finding of deficiencies among solicitors, who are already regulated, may be addressed. At the same time, the LSB should assist the professional bodies to educate consumers in the advantages of using a professional who is regulated effectively.

Will-writing

6. As the majority of errors in will-writing will be discovered after death, the primary consumer of the will-writing service will not be able to seek redress. In addition, any complaints mechanism available to the beneficiaries or the estate administrator may be deemed of little value during the stressful period of bereavement and estate administration. Therefore, due to the high level of trust placed upon will-writers, there is a need to focus on quality of service at the time of drafting the will: hence there exists a strong argument for making will-writing a reserved legal activity.

7. While the Panel's report suggests that solicitors tend to charge fees for will-writing that are double those of will-writing companies, in absolute terms, fees charged are not large in comparison with other legal services. In addition, it might be posited that solicitors are approached by consumers requiring more complicated wills. However, of more importance is the increased protection and redress that should be available to consumers who choose to use a solicitor. In due course, to include will-writing as a reserved legal activity would have minimal impact on competition (assuming that will-writers did not choose to leave the market); there would be enhanced consumer protection (assuming that regulation was effective; and minimal increases in costs to the consumer.

Estate management

8. We note that the Panel's report does not include an assessment of estate administration services. However, it states 'the sale of wills is closely linked to probate fraud – in particular, where providers seek to be appointed as executor in order to control the estate's assets'. The report then details the weaknesses in the law that give rise to the risk of probate fraud. We do not accept that this is a persuasive argument for reserving estate administration services. While the law continues to include such weaknesses, we propose that the regulators of will-writers regard clauses that provide unreasonable control in this way as unacceptable. Certainly, the perception by a third party of a conflict of interest should be sufficient to effectively prohibit such activities.

9. Service delivery problems may occur at any time in the processes of will-writing and estate management. However, problems in respect of quality will only be discovered after death – when the robustness of the will is tested, or when the valuation of estate assets or the application for probate is performed incompetently. In addition, cases of fraud may never be discovered (whether the delivery of estate administration services is regulated or not). Regardless of the quality of the will-writing (which should incorporate controls to minimise the risk of estate administration fraud), the process of administering the estate should be considered separately, and there should be no conflicts of interest whereby errors in the will-writing may be concealed.

10. Empirical evidence shows that a significant number of applications for grant of probate are rejected by the Probate Service. Reasons for this may include the following:

    - From a lawyer's perspective, applying for a grant of probate is low value work.

    - Applying for a grant of probate in isolation from the rest of the estate administration may be perceived as a mechanical process, especially when another professional has performed the associated tax compliance and other work.

    We believe that there is often a disruption of service, caused by the need for an estate administrator to approach a lawyer to file the documentation for grant of probate. An effective solution to this problem would be for the probate work to be unreserved. This might give rise to professionals promoting their ability to provide a complete estate management service, and so the public may be more inclined to use the services of a professional (eg an accountant or a self-regulated estate administrator).

11. Inevitably, there will also be an increase in unregulated practitioners offering the complete range of estate administration services. Therefore, it is important that the regulators promote their 'brand', in order to provide consumers with informed choice. Assessed accreditation schemes and quality marks would be an effective way of achieving this.

12. Currently, the system whereby probate work is a reserved activity does not protect the consumer, but it stifles competition and increases costs

unnecessarily. We believe that to include estate administration as a reserved activity would exacerbate this, and would be contrary to the regulatory objectives.

Conclusion

13. There is a need to enhance the quality of service provided at the time of drafting a will, and ACCA is in favour of statutory regulation of will-writing services. This would bring about enhanced consumer protection while, we believe, having minimal impact on competition or costs to consumers. However, in the case of estate administration activities (including applying for grant of probate), we are not in favour of these activities being reserved, for the reasons explained in this response.

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