

Mr. Michael Mackay
Legal Services Board
7th Floor, Victoria House
Southampton Row
London, WC1B 4AD

SENT VIA E-MAIL:
consultations@legalservicesboard.org.uk

18 November 2011

Dear Michael,

Re: Call for Evidence: investigation in to will-writing, estate administration and probate services

The BBA is the leading trade association for the UK banking and financial services sector. We represent over 200 banking members, which are headquartered in 50 countries and have operations in 180 countries worldwide. These member banks collectively provide the full range of banking and financial services and make up the world's largest international banking centre, operating some 150 million accounts and contributing £50 billion annually to UK economic growth.

We welcome the opportunity to respond to this Legal Services Board (LSB) consultation on its investigation in to will-writing, estate administration and probate services. Our response has been drafted in consultation with our membership. We provide some general comments below, before addressing the specific questions raised in the consultation paper.

1. There is no substantial evidence of consumer detriment in the will-writing, estate administration and probate services market where these services are provided by banks;
2. BBA members offer will-writing, estate administration and probate services through an in-house unit or through a firm of solicitors. Whilst on average, banks write thousands of wills a year, this is still only a small proportion of the market in these services (approximately 5%);
3. In so far as the provisions for these services are provided by financial institutions, they are already regulated via existing investment advice regulations and via Financial Services Authority (the "FSA") principles on *Treating Customers Fairly*. Additional regulations, above and beyond existing regulations, are therefore, not required;
4. In the instance of consumer detriment, customers have recourse to a formalised complaints-handling process, with all FSA regulated firms and to the Financial Ombudsman Service (the "FOS"), with the potential for financial compensation;
5. The scale and longevity of banks mean that we have the capital adequacy to put right any errors, if required, without recourse to PI insurance and are less likely to go out of business than solicitors;

British Bankers' Association

Pinners Hall
105-108 Old Broad Street
London
EC2N 1EX

T +44 (0)20 7216 8800
F +44 (0)20 7216 8811
E info@bba.org.uk
www.bba.org.uk

6. Financial institutions providing these services already use STEP qualified staff and have in place Training and Competency schemes and therefore, do not think a restriction of a market to legal professionals in this area will improve competency; and
7. Importantly, as the LSB has recognised within the consultation, restriction of this market to legal professionals does not equate to a reduction or removal of malpractice within this area.

We hope that you will find our views helpful. Should you need any further information from us regarding any of the issues raised in this submission, please contact Arjun Singh-Muchelle, Policy Advisor, on 020 7216 8860 or Arjun.Singh-Muchelle@bba.org.uk in the first instance.

Yours sincerely,



Arjun Singh-Muchelle
Policy Advisor

T +44 (0)20 7216 8860
E Arjun.Singh-Muchelle@bba.org.uk

BBA response to specific questions arising in the consultation:

Will-writing services

- 1. Do you agree with the Panel's assessment of the problems in the will-writing market and resulting consumer detriment? Are you aware of any key problems and detriments that have not been identified or evidence that any problems and detriments identified are not as significant as suggested or are worse?**

There is no substantial evidence of consumer detriment resulting from the will-writing service that banks offer. Even for those firms that use their own in-house will-writing units, there is little evidence to suggest that they offer a lesser service than a solicitor or a regulated unit.

There are clear advantages to appointing a bank or corporate organisation as an executor. Nominating a close relative or spouse could cause problems if there are future disagreements or the nominated party predeceases, even with small will-writing firms problems may occur if the professional moves on and closes office.

In the market generally, where consumer detriment does arise, it tends to be where customers do not understand what they have agreed. The fees may be higher than they expect and they may not understand why some provisions of their will were included. The typical type of problems bereaved families encounter with will-writing firms is when they do not always retain copies of wills prepared and are therefore unable to ascertain where the will may be located, what it contained or why particular clauses were included. In some cases there is a reluctance amongst the will-writing firms to provide follow-up advice if circumstances change or prepare codicils when required. Standard will-writing is done reasonably well but supplementary advice about joint assets, setting up trusts to preserve benefits and information on lasting powers of attorney can be much more problematic.

With that said however, banks are subject to investment related regulation and are also part of a regulated complaints process that includes referral to the Financial Ombudsman Service (the "FOS"), which customers of the wills and executorship service are able to use. Resultantly, banks must not be placed in the same category as unregulated third party will writers.

- 2. Do you agree with the Panel's assessment that will-writing should be a reserved legal activity? Do you agree with the Panel's assessment that alternatives to statutory regulation – such as consumer information, enforcement of existing legislation and voluntary self-regulatory schemes are unlikely to protect against the identified problems and detriments? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?**

It is not necessary to use a legally qualified professional to prepare a will. As we have mentioned previously, a bank's own in-house unit produces just as satisfactory a service as a firm of solicitors regulated by the Solicitors Regulation Authority.

There may be an argument that those with a relatively simple estate, who wish to leave everything to a small party or a small family group should be free to use a will form from a stationers, instead of paying a much higher price for a professional. However, even this could store up problems around taxation, illegible handwriting and possibly claims under Inheritance (Provision for family & Dependents) Act 1975 if some relatives are excluded.

In order to address any consumer harm in this area, will-writing staff, whether qualified or not, have to be adequately trained, experienced and supervised. Training could go some way to increasing this, for example by insisting on a level of qualification such as STEP. This could be required for those who are supervising and not for the entire staff, however it would increase the costs of providing this service that would be passed on to customers. At present the STEP will-writing course is nearly £1 000.

- 3. What do good providers of will-writing services currently do to protect against problems and ensure that consumers receive a quality service?**

All provisions of will-writing services, provided by banks, meet rigorous principles and rules, set out by the FSA under *Treating Customers Fairly* and, where these services are provided by external solicitors, by regulations set up by the Solicitors Regulation Authority (the "SRA").

In addition, all provisions of will-writing services, provided by banks, are currently regulated under investment-related advice by the FSA. All bank personnel, providing these services, adhere to these rules and regulations.

For purposes of clarification, the scope of will-writing services is always made clear and transparent in brochures and terms and conditions and the customer is made fully aware of the costs both for the will preparation and estate administration before any commitment is made.

- 4. If will-writing was to be a reserved activity what specific activities should be included within the scope of the reservation? The Panel has suggested that the scope of the regulation should include the commission, sale and preparation of will-writing and related services for fee, gain or reward.**

Please see our response to question 2.

- 5. What specific protections are needed for each problem and detriment that has been identified? Do you agree with the "core elements" (as set out above) that the Panel believe are needed? Do you think that any of the "core elements" are not required on a mandatory basis or that there are other protections that are also required?**

Existing protections, afforded by the FSA and the SRA, on these services provided by banks are sufficient to cover each problem and detriment that has been identified. In addition, recourse to the

FOS, including the provision of financial award in the case of a successful complaint at FOS, are sufficient safeguards and protections.

6. What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?

Consumer protection

There will be no added consumer protection with the proposed regulation of these services, as service provisions, provided by banks, show no evidence of consumer detriment in this area. In addition, current regulations, by the FSA and the SRA, including recourse to the FOS, are sufficient protections in the case of consumer detriment. Additional regulation will not improve consumer protection.

Access to services

By introducing additional regulation in this area, which will inevitably increase the cost to provide these services, these costs will (as a matter of cost recovery) be moved to the customer, thus increasing the financial burden of the customer. This will make access to these vital services cost prohibitive and unequal, as it will limit access to these services to those who are able to pay for it. By exclusively reserving the provision of these services to legally qualified professionals, the LSB will be restricting the market for these services and, inevitably, competition for these services. Due to this market restriction in competition, there will be no incentive to innovate service provisions to ensure better and consistent outcomes for customers, undermining the consumer protection that the LSB argues will be afforded through the introduction of additional regulation.

Cost of services

By introducing additional regulation in this area, which will inevitably increase the cost to provide these services, these costs will (as a matter of cost recovery) be moved to the customer, thus increasing the financial burden of the customer. This will make the access to these vital services cost prohibitive and unequal, as it will limit access to these services to those who are able to pay for it.

Administration of justice

The introduction of additional regulation in this area will potentially increase the administration of justice and, subsequently, the cost. If the regulations were applied retrospectively, then all services rendered, prior to the implementation of the proposed regulation, will fall within its scope. This, coupled with the proposed reservation, will call in to question previously created and implemented wills, increasing the likelihood for contestation. Since banks write thousands of wills, annually, but only represent 5% of the market, this leaves a potential for several hundred thousands of wills that will be open for contestation, thus, increasing the administrative burden of the courts.

Probate & estate administration

7. What are the key outcomes for consumers that we should aim to achieve?

The key outcomes of consumers that the LSB should aim to achieve must be within the letter of the Legal Services Act 2007 (the "Act"), particularly reflecting its regulatory objectives under Part I, 1-4 of the Act.

8. What are the existing problems experienced by consumers of probate and estate administration (testators, executors and beneficiaries)? What are the causes? What are the consequences? What evidence is there of consumer harm?

There is no substantial evidence of consumer detriment in the provision of probate and estate administration services provided by banks.

In so far as the provisions for these services are provided by financial institutions, they are already regulated via existing investment advice regulations and the FSA principles on *Treating Customers Fairly*.

Some attention has been given to banks writing wills and stipulating that they are named as executor. It is important to note that a bank will only be named as an executor if the customer wishes to take up this offer. Clients are welcome to choose elsewhere if the bank's appointment is an issue and there are many other providers in the market. The scope of the will-writing service is always made clear in brochures and terms and conditions and the consumer is made fully aware of the costs both for the will preparation and estate administration before any commitment is made. Furthermore, banks will renounce their appointment as Executor if requested by the beneficiary or if the service is not suited to the estate and renunciation is not detrimental to any of the beneficiaries' interests.

Where bank customers do face detriment, banks have established and formalised complaints-handling processes. Customers also have recourse to the FOS with the ability to be awarded financial compensation, up to £150 000, if FOS found in favour of the customer.

There are therefore, sufficient regulations, rules and principles in place to ensure that these services, when provided by banks, do not cause consumer detriment. In the unlikely event that substantiated consumer detriment does occur, customers have access to a well-established complaints process and the possibility of financial compensation through FOS.

9. To what extent are avoidable problems with the process of probate and dealing with a person's estate after death a consequence of a poorly drafted will or there not being a will? To what extent are problems a direct result of actions taken while administering the estate?

Please see our response to question 8.

10. How and at what stages of the process are problems normally discovered? How easily can problems be put right and detriments reversed?

Please see our response to question 8.

11. What do good providers of probate and estate administration services currently do to protect against problems and ensure that consumers receive a quality service?

All provisions of probate and estate administration services, provided by banks, meet rigorous principles and rules, set out by the FSA under *Treating Customers Fairly* and, where these services are provided by external solicitors, by regulations set up by the Solicitors Regulation Authority (the "SRA").

In addition, all provisions of these services, provided by banks, are currently regulated under investment-related advice by the FSA. All bank personnel, providing these services, adhere to these rules and regulations.

For purposes of clarification, these services are always made clear and transparent in brochures and terms and conditions and the customer is made fully aware of the costs both for the will preparation and estate administration before any commitment is made.

12. Are self-regulation and general consumer and criminal law capable of addressing consumer harm? Do you think assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?

As previously stated, the provision of these services, provided by banks, are regulated under investment-related advice by the FSA or, if outsourced to a solicitor agency, regulated by the SRA. In addition, the financial services industry has produced additional guidance that goes above and beyond currently existing regulations, rules and principles. The industry has, in addition, produced leaflets and brochures for customers along with establishing clear terms and conditions with which customers must agree prior to an agreement being put in place. In case a customer does not agree with the terms and conditions, they have the opportunity to either choose a competitor or to negotiate the terms and conditions, thus, ensuring consumer satisfaction.

We do not feel quality mark or accreditation schemes are appropriate for these services as these services are personalised to individual customer needs to ensure customer satisfaction and consistency in outcome for customers. Putting in place an accreditation or quality mark scheme will undermine the "individual" nature of the bank-customer relationship and instead turn the provision of these services into a factory, churning out standardised, rather than personalised, services. This will reduce customer satisfaction and dilute the bank-customer relationship.

13. If providers of probate and estate administration service were regulated, what form of regulation should this take, and what are the core elements that should be included within this regulatory system? What specific harm would each core element protect against?

Existing protections, afforded by the FSA and the SRA, on these services provided by banks are sufficient to cover each problem and detriment that has been identified. In addition, recourse to the FOS, including the provision of financial award in the case of a successful complaint at FOS, are sufficient safeguards are protections.

14. What impacts do you think regulation might have on consumer protection, competition, access to justice, the cost of services and the administration of justice?

Please see our response to question 6.

15. How effective is the regulation of the existing reserved activity of preparing papers on which to found or oppose a grant of probate or letters of administration? How does this regulation work in practice, what benefits does it bring for consumers and how does it impact on the way that providers organise themselves to deliver services?

As banks are prevented from applying for Grant directly, this results in additional third party costs to employ a solicitor to extract the Grant.

Ends