

**RESPONSE OF THE CITY OF WESTMINSTER & HOLBORN LAW SOCIETY
TO THE CALL FOR EVIDENCE BY THE LEGAL SERVICES BOARD
INTO THEIR INVESTIGATION INTO WILL-WRITING,
ESTATE ADMINISTRATION
AND PROBATE ACTIVITIES**

1. The City of Westminster and Holborn Law Society (“CWHLS”) enjoys perhaps the most diverse membership amongst local Law Societies, encompassing as it does, a membership ranging from larger firms, including those which have been called in recent years “the silver circle” down to small high street practices and individual in-house solicitors, including those working for public bodies and government. Our membership includes those who practice at all levels of the profession, including those who regularly represent solicitors in SRA investigations and members of the Solicitors Disciplinary Tribunal, and those who have practised extensively in the field of solicitors’ negligence and professional indemnity insurance.

Membership is voluntary and CWHLS is run by a committee comprising 33 solicitors representing a very wide range of specialisms. Its work is carried out by 11 specialist sub-committees, one of which, the Professional Matters Sub-Committee, concentrates on matters such as regulation of solicitors, and matters affecting their practice, including matters relating to professional indemnity etc.

2. **Will-writing**

The summary of the report from the Panel omits any reference to the need, when taking instructions for and drafting a will, to consider and advise upon the tax considerations and implications. It is accepted that certain wills are unlikely to have any tax implications but no person should be entitled to draft a will unless he is suitably qualified to advise where required on all relevant considerations including inheritance tax, capital gains tax, and other possible taxes which might be relevant in the drafting or administration of the will. It is not practical to split will-writing between those with outright bequests and those where trusts are involved. The person drafting the will must be able to advise as to the alternatives and their implications, taking tax into account.

We agree that will-writing should be a reserved legal activity. We agree the Panel’s assessment that possible alternatives to statutory regulations are unlikely to protect the client adequately. We do not suggest that only solicitors should be entitled to provide this regulated legal service.

We agree with most of the ‘core elements’ which the Panel believes are needed. However we do not consider that ‘periodic re-accreditation’ is either necessary or desirable. Accreditation schemes lead merely to exclusivity, rather than any benefit to the consumer.

We agree the scope of regulation proposed by the Panel. However proforma wills are available in stationers and clearly they lead to risk for the consumer.

If will-writing is to be a reserved legal activity, then there should be statutory warnings upon forms of draft wills available to the public.

In our opinion the benefit to the consumer of having will-writing as a regulated legal activity is far greater than any effect on competition, access to services, cost of services or the administration of justice.

3. Probate and estate administration

We do not consider that the existing reserved activity of preparing papers on which to found or oppose a grant of probate or letters of administration can be justified.

In our opinion a major problem arising from probate and estate administration is the risk of incompetent or fraudulent activity.

'Good providers' of probate and estate administration services give the protection of the 'core elements'. These are currently provided by, for example, solicitors or chartered accountants. In our opinion it will be unfortunate if the Legal Services Board fails to grasp the current opportunity to include probate and estate administration services within regulated legal services. However we are not suggesting that only solicitors or chartered accountants should be entitled to provide those regulated legal services.

We do not agree that quality marks, such as Lexcel, benefit consumers in relation to quality of service. They merely provide a process rather than quality of advice. We do not agree with the concept of accreditation since this leads merely to exclusivity.