

From: David Lunn [mailto:DavidLunn@gowenandstevens.com]

Sent: 02 November 2011 17:03

To: Consultations

Subject: CALL FOR EVIDENCE: INVESTIGATION INTO WILL-WRITING, ESTATE ADMINISTRATION AND PROBATE ACTIVITIES

Dear Sirs

Thank you for your recent call for evidence in the above matter. I regret that, owing to pressures of work, I simply do not have time to read the report and to respond to each of the questions that you have raised. I would, however, like to share a few thoughts and experiences on the subject generally, in the hope that this will be of some use to you.

Will drafting

Whereas I accept that some solicitors do draft poor Wills, we are regulated by a body (the SRA) with real teeth. In addition, the Legal Ombudsman Service also has real teeth when complaints are not taken seriously. You are never going to make any sector perfect but the next best thing is to reserve such an important activity to those who by initial training and subsequent ongoing continuing professional training *ought* to have the expertise to do a good job and who are subject to a stringent complaints and regulatory system to put right what can sometimes go wrong in an imperfect world. In addition, all solicitors without exception are insured and the same cannot be said for our non-solicitor competitors. The public, by and large, do not understand much of this.

When it goes wrong

I am currently dealing with an estate administration where the Will was prepared by an unregulated Will drafting company. Quite a lot of interesting points come out of this one file.

Firstly, since I know the family socially, I was able to ask the widower a little more frankly than one might otherwise what possessed him and his wife to use an unregulated Will writer. His response was very interesting – he said that at no point did he ever realise he was *not* dealing with a solicitor.

Secondly, this Will was a fairly awfully put together nil-rate band discretionary trust effort which, among other things, completely cut out two lines of the family from benefiting under the trust. We are now in the early stages of a High Court application to rectify the Will and the costs associated with that are running at about £9,000 so far and we have only just issued. We have requested a copy of the firm's file and there are no letters of advice or attendance notes showing what advice was given to the clients or what options were put to them – there is no evidence now available to suggest that the clients ever received any real advice at all.

Thirdly, the witness statement of the person who took the clients' instructions (whom they mistakenly believed to be a solicitor) speaks of his "two days of intensive training". This is so vastly different from the training received by a solicitor and, again, the public just does not know.

Fourthly, it is clear in this case why (apart from general inexperience and incompetence) this was bound to go wrong. The person sent to take instructions was not a Will drafter, he was a salesman. Armed with a checklist of questions, he saw the clients and filled in a pro-forma at their house. This is a recipe for disaster because although a checklist is a good idea for the competent but inexperienced practitioner, it is no substitute for actually knowing what you are doing so that you can think on your feet in non-standard situations. In this case the pro-forma was fatally flawed, it was poorly drafted and the man asking the questions had neither the experience nor the training to recognise that and amend the form. Likewise, any nuances not captured on the form would be lost as the person drafting the Wills had never met the clients and had no way of knowing what they said or how they said it beyond what was captured on the form (and even allowing for the errors on the form, they still made drafting errors which now need to be corrected).

The only saving grace from the example given above is that the company did have insurance and I hope that there are no problems in collecting monies from the insurer at the end.

A conversation

I was walking through a shopping centre recently when a man trying to sell Will writing appointments asked me if I had ever made a Will. I told him that I am a solicitor and I asked him whether the people drafting Wills in his company are regulated, insured professionals. His reply was staggering in its honesty. "Nah mate – they're cowboys. They call themselves solicitors but they probably couldn't even spell it."

Generally

The problems caused by a poorly drafted Will can be very distressing for those left behind. It can add years to the time needed to administer an estate and it can cost thousands to put right. The worst examples usually stem from home made Wills but, of course, you cannot ban people from writing their own Wills if they want to. It is unfortunate that the average layman has no idea at the end of a Will transaction whether he has received good advice or a well drafted document. If his car will not start, he knows soon enough whether his mechanic made it run smoothly again but he does not know if his Will is any good as it will not be tested in his lifetime.

I firmly believe though that if the public truly understood what is involved, what are the risks and what the stakes can be they would say that Will writing for a fee should be reserved only to properly regulated, fully insured and highly trained professionals, who are either experienced practitioners or who are supervised by someone who is experienced while they are still at the beginning of their careers.

I hope that this is of help.

Yours faithfully

David W Lunn
(Solicitor)

www.gowenandstevens.com

NOTICE – Gowen & Stevens and Bell & Co are trading names of Gowen & Stevens LLP. Gowen & Stevens LLP is a limited liability partnership registered in England and Wales authorised and regulated by the Solicitors Regulation Authority. We are subject to the Solicitors' Code of Conduct 20011 which can be accessed at <http://www.sra.org.uk/solicitors/handbook/code/content.page>.

A list of members is open to inspection at our offices. Registered Number: OC321279. Registered Office: 5 Mulgrave Chambers 26-28 Mulgrave Road Sutton Surrey SM2 6LE.

This e-mail is confidential and is intended for the addressee alone. If you receive this transmission in error please call us on 020 8661 8611.

Please do not disclose the contents to a third party.

Please carry out any virus checks as you consider appropriate. Gowen & Stevens LLP accepts no responsibility in this regard.