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Dear Michael

### **INVESTIGATION INTO WILL - WRITING, ESTATE ADMINISTRATION AND PROBATE ACTIVITIES**

I am writing on behalf of Epoq Legal Ltd in response to the call for evidence issued by the Legal Services Board on 5 September 2011 with respect to the above investigation.

References in this letter to the Panel are to the Legal Services Consumer Panel, and references to the Report are to the Panel's report dated 14 July 2011.

#### **Our background**

Epoq's aim is to provide affordable online legal services to both businesses and consumers by harnessing the latest internet technology to make the process more flexible and accessible.

We have become the UK's leading provider of self-help and assisted legal services.

Epoq delivers legal document solutions using Rapidocs®, our proprietary document and form automation technology, developed in-house exclusively for this purpose.

Rapidocs (first developed in 1996) has now reached version 4.

Rapidocs v.4 guides users through 'intelligent' question-and-answer sessions, transforming their answers into tailor-made legal documents ready for immediate use, or for routing to a lawyer for review and approval.

Information is provided throughout the interview process so that the vast majority of queries that a user may have are dealt with immediately without recourse to an expert.

With Rapidocs users get the rare benefits of a highly innovative solution together with the stability of a tried and tested application. It is used by thousands of customers every month and over a million people since it was first launched, with an unequalled track record in the self-help legal document market.



As part of our portfolio, we have also developed sophisticated content and workflow management, contact centre systems and customer relationship applications to complement our Rapidocs® technology. Together, these systems provide us with an unparalleled platform through which we can deliver a range of legal services over a number of channels.

Due to its ease of use, security and versatility, Rapidocs® is fast becoming an industry standard, having been adopted by major law firms, corporate legal departments, leading financial institutions and international legal publishers.

We continue to develop our technology and content to meet the needs of a rapidly changing market to ensure that we maintain the most advanced legal platform on the market, and our technology remains the best way of delivering digital legal services available.

Epoq has been a trusted provider of:

- Online legal services to the banking, insurance and financial services industry since 2001; and
- ‘Software as a Service’ delivered online legal services platforms for law firms in the UK and the USA since 2009.

#### **Probate and estate administration activities**

We cannot usefully comment on the issues affecting probate and estate administration activities, as these fall outside our sphere of operations. We would, though, offer two short observations. The first is that a number of the potential issues identified in your call for evidence relate back to the point of sale of the underlying Will, so would appear not to require separate consideration. The second observation is that, from my personal experience as a former regulatory and disciplinary lawyer, the complaints against solicitors most frequently encountered were of excessive and unreasonable delay, and of overcharging, with the latter being a particular concern where the solicitor was also the sole executor.

#### **Will writing activities**

So far as Will writing activities are concerned, we would respond to your enquiries as follows:

*Do you agree with the Panel’s assessment of the problems in the will-writing market and resulting consumer detriments? 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 suggested or are worse?*

We believe the Report provides a fair assessment of the problems in the will writing market. It is apparent, however, from the Report that the principal concern and the most compelling evidence of consumer detriment is centred on quality issues. Certainly, having had the privilege of serving on the expert panel that reviewed the Wills produced as a result of the shadow shopping exercise referred to in paragraph 2.16 of the Report, and having personally reviewed (whether as primary or secondary reviewer) 25 of the 101 Wills produced, I can attest to my profound disappointment at the overall quality of the Wills that I considered.

In these circumstances, we believe that a key focus of any regulatory initiative should be to raise quality standards in the Will writing market.



The Report does, of course, identify other concerns, and, clearly, these need to be considered, but we are not convinced that, save as indicated below, the case for regulation has been wholly made out so far as concerns these other issues.

We are not aware of any key problems or detriments that have not been identified in the Report.

*Do you agree with the Panel's assessment that will-writing should be a reserved legal activity? Do you agree with 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?*

AND

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

We agree that, in part, a case for statutory regulation has been established. We shall consider the form of regulation further below, but our overarching approach is that any scheme of regulation should be inclusive; i.e., it should be transferable across all distribution channels.

We disagree with the Panel's recommendation that paper-based and online services should not fall within the scope of regulation.

There are two reasons for this.

The first is that this reflects a misunderstanding of how services are delivered in this market; in particular, a clear demarcation between online services on the one hand and other methods of service delivery on the other hand is simply not possible. In our own case, we deliver online services direct to consumer, but we also facilitate the provision of online services by law firms, will writers, banks, insurance companies and other institutions to their customers or members, so that online services are already an integral feature of many services delivered through other distribution channels and this is a trend which we believe will continue.

The second reason for disagreeing with the Panel's recommendation ties in with the final question that you pose in your call for evidence, which is why we have referred to that question here.

The argument historically employed by solicitors has been that they are disadvantaged in the market because the costs of regulation mean that they cannot compete from a price perspective with unregulated will writers ("the level playing field argument"). We note that the Panel is not entirely persuaded by this argument, and nor are we. However, we do believe that a disparity within the market does not promote access to justice or consumer protection, and is detrimental to consumer confidence. Excluding paper-based and online services from the scope of regulation merely repaints the line on the playing field. The disparity within the market remains, as do the consequences of that disparity.

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



We can only speak from our own experience.

Key features (not intended to be exhaustive) of the services we provide include:

- Ease of use.
- Clear messaging as to pricing and service levels, and “no quibble” refund policy.
- Comprehensive general and context sensitive legal information, presented in ‘plain English’, to assist the customer to complete their document.
- Sophisticated, stable and secure technology and platforms. As the Report notes [paragraph 4.44]: “The Panel staff met with two software providers during the project and were impressed by the level of sophistication in the technology. Online wills can generate legally valid wills which reflect the wishes of clients even when their needs are quite complex”. Epoq was one of those providers.
- Content produced by individuals with appropriate knowledge of the subject area, who assume responsibility for maintaining that knowledge through self-study and attendance at external courses.
- A managed service. Content regularly reviewed and updated to take account of changes in law and practice. Additionally, we provide customer service and technical support help lines.
- Professional indemnity insurance cover.
- Relationships with law firms and other legal services providers to ensure (1) that customers can be confident that the document they have created is suitable for their circumstances, and (2) that customers can receive a more bespoke service where required.

*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 regulation should include the commission, sale and preparation of will-writing and related services for fee, gain or reward.*

It is not clear to us what is envisaged by the term “commission” in this context.

If it is intended to address the potential involvement of intermediaries (for example, financial advisers), we think that presents a challenge from a regulatory perspective. The analogy is with third party introductions to solicitors and the payment of referral fees, which has always been, and continues to be, a controversial subject. We do not take the view that referrals per se should be outlawed; however, we do believe that the responsibility for ensuring that the customer understands why the referral has been made and the basis of the referral must fall upon the person to whom the referral has been made, as being simply an aspect of that person’s general “client care” obligations towards the customer.

If the term “commission” is intended only to refer to the general circumstances by which the customer is persuaded to engage a person or entity to provide Will writing services, then, again, we would see that as being an aspect of the person’s or entity’s general “client care” obligations towards the customer.

In either case, we are not convinced that the term “commission” adds much to the term “sale” in this context.



*What specific protections are needed for each problem and detriment that has been identified? Do you agree with the “core elements” that the Panel believes 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?*

Consistent with our view that there should be an inclusive scheme of regulation for Will writing activities for all distribution channels, we believe that:

- Any statutory regulation should be applied to entities, rather than to individuals.
- Some differentiation may be required to reflect differences in methods of service delivery.
- There should be a mandatory education (including continuing education) requirement, but the requirement should be in terms that an entity may not offer Will writing services unless:
  - (in the case of self-help solutions) the content and any supporting guidance notes are approved by a person (who need not be an employee of the entity) who satisfies the education requirement; or
  - (in the case of other service providers) the service is provided by a person who satisfies the education requirement.
- The education requirement should be supplemented by an assessed accreditation scheme.
- There should be a quality mark specific to any relevant technology.
- There should be clear “client care” obligations. Chapter 1 of the SRA Code of Conduct would, we suggest, be a suitable starting point. These would need to cover obligations for an entity to provide information about pricing, services included, limitations on service, and any other information relevant to a customer’s decision to engage the services of the entity.
- There should be a mandatory professional indemnity insurance requirement.
- Will writing activities should fall within the jurisdiction of the Legal Ombudsman.
- Any approved regulator should have the ability to monitor compliance, and to be able to sanction entities for non-compliance.

We consider these elements to be core to any scheme of regulation.

Yours sincerely

**Paul Saffron**

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**For and on behalf of Epoq Legal Ltd**

