

INVESTIGATION INTO
WILL WRITING,
ESTATE ADMINISTRATION &
PROBATE ACTIVITIES

CALL FOR EVIDENCE FROM THE LEGAL SERVICES BOARD

Response from

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Institute of
Professional
Willwriters

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BACKGROUND

The Institute of Professional Willwriters was formed in 1991 by a group of Willwriters who wanted to form a representative and regulatory structure following the failure of franchise operation Quill Wills in 1993 when the business was wound up in the High Court on petition of the Department of Trade and Industry.

The aims of the organisation were:

- 1) to put in place a system of technical training and mandatory examination to ensure that the advice and documentation that consumers received was valid and relevant
- 2) to put in place a professional indemnity insurance scheme that would be mandatory for all members – to ensure that if anything did go wrong, consumers (or more likely, their beneficiaries,) would receive adequate financial redress

In 1994 the IPW started to provide training courses – both initial training to new and prospective members to help them achieve the standard required to pass the entrance exam and ongoing training to existing members to enable them to expand their knowledge and keep up to date with changes in legislation and new working practices. Much of this training was, and still is, delivered by solicitors with specialist knowledge in the sector and by commercial legal training providers who provide training to the wider legal profession.

In 1997 the IPW introduced a programme of Continued Professional Development (CPD) to ensure that members were not only competent when they joined the organisation but remained so throughout their membership. CPD became mandatory in 2001 and since then the IPW have expelled members who have failed to meet their CPD requirement. However the unregulated nature of the sector means that those who have failed to meet training targets are still able to provide Willwriting services.

In 2003 the IPW introduced an examination and membership for employees and self employed agents who work for members of the IPW and this requirement became mandatory in April 2006. The IPW had recognised that it was essential that the quality of the frontline advice given to consumers, and the instructions that developed from that advice, was critical to the quality of the finished document and therefore everyone who gave advice should be tested on their competence to do so. Members of the IPW have had their competence tested, specifically in the fields that they advise in, meet ongoing competence tests and have professional indemnity insurance.

In 2010 the IPW achieved approval of its Code of Practice from the Office of Fair Trading under its Consumer Codes Approval Scheme (CCAS). Compliance with the IPW Code of Practice is mandatory for all members and their firms and sets high standards of technical competence and customer service.

In 2010 the IPW formed the Institute of Scottish Professional Willwriters (ISPW) and later that year the Scottish Government started to investigate whether Willwriting in Scotland should be regulated. When it subsequently made the decision to regulate Willwriting, the ISPW indicated that it would apply to become a regulator of Willwriting services in Scotland and that the IPW Code of Practice would be central to that application.

We have divided our responses into responses to questions relating to Willwriting and responses in relation to questions relating to Estate Administration and Probate.

This submission contains reports of cases that are in the public domain, either through having been reported in the media or in other ways. In referring to these the IPW is not in any respect expressing any opinion on their accuracy.

Willwriting

Question 1

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?

- 1.1 The IPW does agree with the Panel's assessment and endorses the recommendations for a regulatory regime.
- 1.2 The IPW is concerned that the Panel has recommended that the provision of online activities are excluded from the regulatory regime because 'regulating online services and establishing liability for defective wills may prove difficult'. The IPW does not deny that this method of delivery will be more difficult to regulate, but leaving it outside of the regulatory net creates a loophole for dishonest and incompetent Willwriting providers to exploit. It makes a nonsense of any effort to regulate other methods of service delivery – to the point where it begs the question whether any form of Willwriting delivery should be regulated at all. The IPW recognises the right of a consumer to write his own will, using a 'kit' or a package if need be. However there is a difference in consumer expectation and perception between a kit and a service (which may or may not be online) which offers or implies additional protection or assurance, maybe through expert involvement in the document compilation procedures or checking the final document. The IPW believes that any service holding itself out to be expert, or advice driven, or checked should fall within the regulatory net.
- 1.3 Since the publication of the Panel's report, the IPW has become aware of the following issues of consumer detriment that are in the public domain:

Case 1

A Bracknell man who conned more than 100 people into paying made-up fees to change their will has been jailed for 14 months in August 2011. Walter Ventriglia, 47, pleaded guilty to fraudulent trading contrary to section 9 of the Fraud Act 2006 on July 20, at Reading Crown Court.

The case relates to Ventriglia's will writing company Legacy & Law and his will storage business called UK Will Register. Under Legacy & Law, Ventriglia conned clients by writing to them under the alias Tony Edwards and advising them that due to a change in law their wills would become invalid unless they paid him between £30 and £60 to modify their will. There had been no change in law.

Ventriglia was warned about the letters by both Bracknell Forest's trading standards team and the probate service but he continued to send the letters and make further false statements. It is estimated that Ventriglia received payments from between 100-130 people as a result of these fraudulent letters

Customers were also informed that these two companies were separate and that UK Will Register stored their documents in a secure facility in London. However, a trading standards investigation found the wills stored in an airing cupboard at Ventriglia's home.

<http://www.bracknell-forest.gov.uk/news.htm?itemid=79676>

Case 2

A North East man, Allen Hope pleaded guilty to a count of fraud (under the Fraud Act 2006) connected to his Will Writings, activities In May 2011 but at the time of writing had not been sentenced.

Mr Hope told customers that their documents would be stored with another company, National Willsafe Limited. However documents were never forwarded to the firm for storage – though Hope collected payment for storage services. As part of the investigation, Cleveland Trading Standards were handed over 200 Will documents by the police who found them loose in a spare bedroom after they had searched Mr Hopes house while investigating the fraud offences.

Mr Hope is also now the subject of an Enforcement Order under ss217 and 218 of the Enterprise Act 2002, placing restrictions upon his behaviour as a Willwriter. This means he must carry out Willwriting with reasonable care and skill. Mr Hope was declared bankrupt on the 20th September 2011 at Teesside County Court and will be sentenced for his fraud conviction in November 2011.

Appendix 1

Case 3

Three companies involved in the provision of wills and trusts writing services were closed following investigation by the Insolvency Service. Minster Legal Services (UK) Limited and Legal Assistance Limited – both based in Gainsborough, Lincolnshire – and Legal Assistance 4 U Limited, trading from Newark, Nottinghamshire, operated nationwide using telesales staff to cold call members of the public in the hope of persuading potential customers to accept a home visit from a self-employed 'legal consultant' who would then promote the companies' products.

Anecdotal evidence received by the IPW indicated that Minster Legal Services (UK) Limited was connected to Gerald Barto, (who is disqualified from being a director) and the Insolvency Service Report confirmed that connection. Barton was connected to National Legal Services Limited before that firm was closed down by the DTI. Prior to that, Barton was involved in the failed Willwriting firms Willmakers and JHD Associates, the latter which collapsed leaving 12,000 wills, drawn up on behalf of people who paid for "secure storage", but were dumped in a barn.

<http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=421761>

<http://www.theyworkforyou.com/whall/?id=2008-02-19b.61.0>

Case 4

On 24th October 2011, BBC series Inside Out broadcast in the East region featured the case of Willwriting firm Universal Asset Protection and highlighted some of the false claims made about themselves and the exaggerated claims that they made about the benefits of one of the services that they provided. This was in relation to the creation of trusts to avoid exposure to paying for care home fees but the way the solution was marketed meant that there was a danger that the trust could be ineffective in solving the issue that it was claimed to solve.

<http://www.bbc.co.uk/programmes/b016pbkt>

1.4 The IPW is aware that the BBC Programme 'Rip Off Britain' is planning to feature Willwriting companies in its latest series to be broadcast in November 2011. This follows a similar feature by the programme in Autumn 2010.

1.5 There doesn't seem to be any let up in the scandals and stories of customer detriment that have plagued the Willwriting sector for years.

1.6 In the first 3 cases quoted in section 1.3, one may take comfort in the fact that cowboys have been brought to book and further consumer detriment halted. That is true. But no consideration has been given to those who have already purchased products and services from these firms. Where do they go now for redress if their Wills turn out to be problematic? Frequently the redress causes problems for others, which is why a regulatory regime that has prevention of problems at its core is essential if it is to be effective.

Question 2

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?

2.1 The IPW does agree that Willwriting should be a reserved activity. It is something that the IPW has been campaigning for over much of its 21 year history. The issues that we highlighted 21 years ago still exist today, despite the existence of consumer information, existing legislation and voluntary regulatory schemes. The potential use of voluntary regulatory schemes was

highlighted by the then Department of Constitutional Affairs when it looked into whether Willwriting should be regulated as part of the passage of the Legal Services Bill through parliament – and highlighted the OFT Consumer Codes Approval Scheme (CCAS) as a possible solution.

- 2.2 Five years on, the IPW is the only organisation in the sector to have achieved approval under the OFT CCAS and the majority of Willwriters fall outside of the scheme because there are easier options for them. The majority of the Willwriting sector has proven that it has no appetite to sort itself out.
- 2.3 However there is no evidence that firms within the CCAS scheme are less competitive than firms outside of the scheme – in fact the opposite seems to be true. Many IPW member firms are reporting high levels of work despite the difficult current trading conditions. Clearly there must be other reasons for a reluctance to subscribe to high standards of consumer service and the IPW believes that they are perceived rather than real. But the fact is that while easier options are available, the majority will follow the path of least resistance.
- 2.4 The future of the OFT scheme is under threat as part of the review by the Department of Business Innovation and Skills ‘Empowering Consumers’ so this alternative solution may not be available within, say 18 months. At present it’s difficult to identify any alternative voluntary schemes or potential voluntary scheme providers who could take over the scheme or deliver an effective alternative.
- 2.5 Assessed accreditation scheme and quality marks may have a benefit, but consumer groups report ‘logo overload’ and that consumers find it difficult to understand what authority and assurance the display of a logo may, or may not, offer. Any such schemes should be in addition to, not in place of, regulation.

Question 3

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

- 3.1 They ensure that they (or at least anyone providing advice on their behalf, including employees and self-employed advisers) are competent to deliver the services that they do offer through training and examination and therefore will not provide services for which they are not competent to deliver.
- 3.2 They ensure that they remain competent to deliver the services that they offer through on-going training – Continued Professional Development.
- 3.3 They provide services and advice only that are relevant to the consumers’ circumstances.

- 3.4 They have Professional Indemnity Insurance
- 3.5 They subscribe to a set of rules
- 3.6 They give consumers details of their right to cancel and their right to make a complaint
- 3.7 They provide a structured complaints procedure, including the option for complainants to pursue complaints through an independent complaints procedure.
- 3.8 They monitor levels of customer satisfaction
- 3.9 They subscribe to an organisation that periodically checks compliance with the above and periodically samples the work produced for quality.

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

- 4.1 The IPW agrees with this recommendation – but to also include the provision of such services through online delivery.
- 4.2 There is the issue of whether other services typically provided by Willwriting firms should be regulated, such as document storage, Lasting Powers of Attorney and lifetime trusts.
- 4.3 The marketing of lifetime trusts has seen a large explosion in the last 12 months since the fees charged for these products are considerably higher than for Wills (several thousand pounds per trust document), making them a very attractive business proposition. While the production of lifetime trust documents (as a Deed) appears to be a reserved activity (if done for a fee, gain or reward), giving advice on them is not a reserved activity. Some firms subcontract the reserved activity to a regulated provider, others draft the Trust documents without ‘fee, gain or reward’. The reason for raising this now is that if Willwriting does become a regulated, a loophole exists which can be exploited whereby troublesome unregulated Willwriting firms could become troublesome unregulated ‘Trust Advice’ firms and continue to exploit consumers in the provision of an unregulated activity. Clearly it’s in the best interests of consumers to anticipate regulatory gaps and such issues before consumers are put at risk.

Question 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?

5.1 The IPW agrees with the core elements.

5.2 The IPW is concerned about the cost implications of the proposal to require mystery shopping, though it is still investigating this option. The IPW examines samples of Wills drafted by its members, comparing them to the client instructions and file notes. It does this as part of the compliance testing that it carries out under its compliance obligations to the OFT under the Consumer Codes Approval Scheme. While Will checking is only in its second month, we have not uncovered any issues with Wills checked so far. The IPW would like to be able to pursue this more cost effective option of checking quality of work before any decision on a requirement for mystery shopping is made. The IPW would also like to better understand the issues uncovered during the shadow shopping exercise conducted by the Consumer Panel that resulted in Wills being judged to have 'failed' before commenting further on this issue.

Question 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?

- 6.1 Appropriate regulatory requirements, as outlined by the Panel can only help to improve consumer protection in the delivery of a service where fault is often not easily or immediately identifiable. Effective prevention is essential as cure and redress is often difficult or impossible to deliver.
- 6.2 Effective measures that give consumers a high degree of assurance when buying a product that they buy rarely and which many have difficulty in measuring the quality, is essential if a goal of high consumer take up of the product is ever to be realised.
- 6.3 The IPW believes that the type of regulatory regime it currently provides is not too far from the regime proposed by the Panel and our members are surviving (and thriving) despite of it, or maybe, because of it. We therefore do not believe that appropriate regulation will have any significant impact on competition, pricing, access to justice or the administration of justice.

Probate and Estate Administration

Question 7

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

- 7.1 Dealing with the finances of a deceased person and the purchase of estate administration services inevitably takes place against a background of high emotion and at a time of high stress and is a process that is alien to those involved. The impact of delays, excuses and inefficiencies, even if they are justified, can have a disproportionate impact on loved ones and family relationships. It is essential that those who provide estate administration services do so effectively, efficiently and compassionately.
- 7.2 The most catastrophic area of consumer harm is loss of benefit by a beneficiary of an estate due to fraud. No amount of regulation will prevent a theft occurring and convictions do happen, particularly in large scale fraud. However in the absence of a statutory compensation scheme for victims of convicted fraudsters, a conviction provides little satisfaction or redress for a defrauded, disinherited beneficiary. It therefore falls to regulatory organisations to provide such redress.
- 7.3 While large scale fraud hits the headlines and is often easily identifiable, there is also the issue of low level fraud. How many estates are under reported to executors and beneficiaries by, say a few hundred pounds - easily done through undervaluing assets, non-disclosure of assets or over valuation of debts, or any combination of all three. Persistent and low level fraud is less likely to be recognised and therefore less likely to be reported. Even if it is recognised it can be dismissed as an administrative or accounting error, the funds repatriated, the complainant satisfied. The fraudster moves on to the next estate to try his luck. The overall effect of low level fraud can be just as damaging.
- 7.4 Clarity of pricing. The method by which many firms charge for probate work (by the hour) is no incentive for the firm to work quickly and effectively and, as with many things in life, the process can take longer than first imagined or planned. New providers (including those from the Willwriting sector) are increasingly offering fixed price services which concentrates their minds on being more efficient. This practice should be encouraged. The IPW Code of Practice contains rules (clause 13.6) which require members to provide timescales and advise consumers if delays occur. The IPW Code of Practice provides the opportunity for consumers to withdraw from a process if timescales are extended more than twice (clause 13.7). There is an overriding requirement for IPW members to provide details of fees for all services (Clause 7.3.4).

7.5 Consumers should be kept informed of process. The loss of a loved one is a catastrophic event and the events that follow often dominate the lives for many months afterwards. Progress towards the completion of the administration of the estate is often a key part of the grieving process and obtaining 'closure'. Some beneficiaries will make spending decisions based on the arrival of an expected inheritance and that can have consequences for the beneficiary if the money doesn't arrive when expected.

7.6 The lack of regulatory regimes in much of the sector means that, just as in Willwriting before the Consumer Panel research, it's impossible to measure the extent of any problems. In order to quantify this issue, mystery shopping of this process is required. If this is not viable, a regulatory requirement to sample audit of estate funds would be a relatively simple and cost effective consumer protection measure that would identify and prevent such abuses.

Question 8

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

8.1 Our response to the Consumer Panel on Willwriting raised the link between Wills and estate administration and contained numerous examples of cases where the administration of an estate had been problematic or had been tied to problematic practices at point of sale, usually when the Will was drafted.

8.2 Out of a total of twenty complaints handled by the IPW under its current Code of Practice since March 2007 there have been six complaints in relation to the administration of an estate as follows:

8.2.1 That the firm had not accompanied the complainant to a meeting with the probate registry in relation to her fathers estate as promised. That the firm had not effectively pursued a debt owed to the estate. Complaint upheld, fee reduced.

8.2.2 In administering the estate of her father, the member had acted in collusion with the complainant's brother to her detriment. Not upheld – the complainant was unable to identify or quantify how she had been prejudiced, especially as the estate had yet to be distributed..

8.2.3 Company has not responded to requests for information in relation to the administration of an estate. This was resolved informally with the member accepting that he should have kept the beneficiaries better informed of progress.

- 8.2.4 That fees to administer an estate were excessive and that there had been a refusal to provide a breakdown of his fees. The investigation into this complaint was not completed because the member resigned his membership of the IPW.
- 8.2.5 That the member disposed of shares relating to the complainant's mother's estate without permission of the beneficiaries. Not upheld – the member provided documentary evidence stating her intention to sell shares unless otherwise instructed.
- 8.2.6 That in the administration of her sister's Will, no written confirmation of fees was provided, that the locks on the deceased's house had been changed without her knowledge; that a fee of 2% had been charged to administer the deceased's Irish estate; that the purchasers of the new property had moved into before the complainant was able to remove furniture and that the firm had agreed that the purchasers could charge a storage fee of £200 for the period in which the furniture was stored at the property following completion of the purchase. Upheld in part – documentary evidence of the notification of fees was provided, the fee to administer the Irish estate had already been waived following its accidental omission from the original quote. The change of locks had been carried out by the Estate Agent dealing with the sale without advising anyone. The furniture storage fee had been agreed by the solicitors transacting the conveyancing and they agreed to waive this.

Question 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?

- 9.1 Technical issues and problems with Will construction should not be confused with technical issues and problems with administering an estate. They are entirely separate processes that are rarely linked.
- 9.2 However there can be linkage between Will making and the estate administration process during the 'sales process' of Will making and this exhibits itself in the following areas:
- 9.2.1 The appointment of a firm as an executor, without consent of the testator, or as a result of mis-information supplied to the testator about the post death process, the costs and the options available including the option not to appoint the firm.
- 9.2.2 Friction within executors and beneficiaries, and in some cases warfare, arises in cases where a Will contains the appointment of a professional firm as executor in a Will, and the firm then refuses to renounce when requested to do so by the beneficiaries. This type of problem

is particularly difficult to resolve because the consumer who selects the service is not the consumer who experiences the service – or dis-service.

- 9.2.3 Sale of 'pre-paid' probate services. Misinformation about the post death process, the costs and the options available to appoint non-professionals make the option of paying for the services of a professional at the time of Will making appear to be attractive. There is little evidence that firms who offer such services ring fence such payments until the point of delivery, which maybe decades later. The IPW provided evidence in its report to the Panel of one firm who provided such services and the firm had subsequently ceased trading, leaving the relatives of those who had paid thousands for access to estate administration services unable to claim the service that had already been bought and paid for.
- 9.3 There is therefore linkage between the process of making a Will and the process of administering an estate and the IPW believes that problems and issues arising in either will only be resolved by addressing the problems that arise in both.

Question 10

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

- 10.1 Technical problems arising from administering an estate are usually only discovered at the end of the process when estate accounts are provided to the beneficiaries. Sometimes accounts are not provided at all. And just like Willwriting, it's difficult for such problems to be highlighted and corrected in the absence of evidence from the original purchaser. Detriments can sometimes be reversed (if they are picked up at all) by the completion of an Instrument of Variation. But this adds cost to the process, as well as delays – and requires the agreement of all parties, which is not always possible.
- 10.2 Removal of a professional executor who is unwilling to step down requires Court action and costs.
- 10.3 Service issues relating to the process of the administration of the estate (timescales and costs) will arise as the process proceeds - or sometimes, as the process doesn't proceed and stalls. While these can easily be identified by the consumer, redress may not be straightforward. It can be difficult for an unhappy consumer to extract themselves from the process once it has started. Work will have been completed, payment for which will be required before case notes and papers are released. Dissatisfied consumers face the choice of allowing the administration to run its natural course of events, however unsatisfactory that may be for them, or else pay up

and move the work elsewhere, where there may be the need to carry out work for a second time - and pay for the work again.

10.4 Fraud will only be picked up when accounts have been declared – if they have been declared at all. Only a sloppy fraudster would release accounts which revealed his fraud.

10.5 It is therefore difficult to put problems right after they have occurred – which is why prevention is so much more important than cure.

Question 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?

11.1 They ensure that they are competent to deliver the services that they offer through training and examination.

11.2 They ensure that they remain competent to deliver the services that they offer through on-going training – Continued Professional Development.

11.3 They keep all parties informed of progress during the administration

11.4 They have Professional Indemnity insurance

11.5 They subscribe to a set of rules

11.6 They keep client money separate from their trading account

11.7 They have measures in place to enable estates that become the victim of fraud to be refunded

11.8 They agree to renounce any appointment of themselves as executor if requested to do so

11.9 They hold any funds paid during lifetime for services to be delivered post death separately (e.g. in a trust account) until such time as the post death service is needed.

11.10 They provide a structured complaints procedure, including the option for complainants to pursue complaints through an independent complaints procedure.

11.11 They monitor levels of customer satisfaction

11.12 They subscribe to an organisation that periodically checks compliance with the above and periodically samples the work produced for quality.

Question 12

Are self-regulation and general consumer and criminal law capable of addressing consumer harm?

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?

12.1 Criminal law can't address consumer harm arising from theft or fraud, only compensation schemes can do that. The IPW finds it difficult to believe that there will be any greater appetite for effective voluntary accreditation schemes in estate administration than has been demonstrated that there is for such schemes in the Willwriting sector.

Question 13

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

13.1 **Education** – although the risk to consumers from incompetent practitioners may be easy to identify, exhibiting itself through poor service or unanticipated outcomes, resolution is not always easy. The IPW believes that it is essential that those who provide 'expert' services should be expert, and that 'before the event' authorisation is an essential element in preventing issues arising in the first place. No doubt the probate registry would be able to work more effectively if those who submitted probate applications to them were able to do so right first time

13.2 **Office holders** – given the risk of fraud, both monetary and through detriment to beneficiaries caused by poor service and procedures and a lack of clarity of information, providers should be required to appoint a Head of Legal Practice and Head of Finance and Administration (defined roles under the alternative business structures regime)

13.3 **Conduct rules** – given the evidence of poor sales practices and the opportunity for fraud by withholding or disguising information from consumers, providers should be required to follow a set of rules

13.4 **Ensuring ongoing competence** – given concerns about quality and the impact on estates that changes to laws and taxation might have, there should be on-going training requirements and periodic reaccreditation

13.5 **Monitoring compliance** – given consumers' lack of expertise, case checking should form part of approved regulators' toolkits

13.6 **Redress** – 'after the event' redress through requirements for providers to be insured, contribute to a compensation fund or other mechanism to refund victims of fraud (if they hold client money) and fall within the jurisdiction of the Legal Ombudsman

13.7 **Discipline** – where providers are guilty of misconduct, they should be subject to a wide range of sanctions including expulsion.

Question 14

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

14.1 The IPW believes that the type of regulatory regime that it currently provides for those of its members who provide estate administration services is not too far away from the regime outlined above and members are surviving (and thriving) despite of it, or maybe, because of it.

14.2 One potentially significant additional cost will be for guarantees to replace any client funds lost due to fraud. The IPW is currently in the process of arranging such a bond for its members and indications are that this will cost around 10% of the fee income enjoyed by those of its members who offer estate administration services. Whether some, or all, of this cost could be absorbed by providers and if not, how much would be passed on to consumers in higher costs is difficult to predict. Having said that, the IPW believes that the fees charged by IPW members for estate administration services are lower than those charged by regulated providers by in excess of 10% so there is still scope for IPW members to provide services to consumers competitively.

Question 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?

15.1 The purpose of reserving this activity is not immediately clear to the IPW, nor it seems, to many other observers. When an estate is non-contentious, the process is a two part process – preparing an Oath to be sworn by the personal representatives and submission of an estate account to HMRC. The Court Service checks an Oath before a Grant of Representation is issued and can, and does, return documents that have been prepared incorrectly. It also offers a checking service to enable practitioners to have an Oath checked before it is sworn by the personal representatives. The IPW understands that around one third of papers are returned by the Court service for rectification work, so clearly the current reservation is not resolving issues surrounding quality of work and competence of those currently permitted to provide such services. We understand that HMRC does its own ‘sense checking’ of estate accounts and deals with those that it identifies are out of compliance.

15.2 There seems to be little risk to consumers from any inadequacies arising from the procedure of *preparing probate papers*, especially if the case is non-contentious.

- 15.3 The same cannot be said for the procedure involved in *opposing* probate papers, where a degree of technical knowledge and case law is essential if a consumer wanting to oppose probate papers is to be effectively advised and/or represented, especially as the ultimate conclusion of such opposition is likely to be litigation.
- 15.4 The IPW understands that Trust Corporations are able to apply for a Grant of Probate under s.115 Senior Courts Act 1981 which we understand moves such transactions and any regulatory requirements and redress mechanisms outside of the Legal Services Act 2007. It is not clear to the IPW whether such providers can provide such services for 'fee gain or reward' under this legislation. But the result is that what appears to be a reserved activity can be delivered by unregulated providers. This is confusing for consumers and practitioners and we make the point that whatever regulatory regime (if any) is designed for providers acting under the Legal Services Act 2007, should also apply to providers acting under s.115 Senior Courts Act 1981.
- 15.5 The case for reservation is further weakened by the fact that this reservation is ineffective because it applies only to the provision of these services for 'fee, gain or reward'. It is not difficult for firms who operate outside the reserved activity net to provide such services without apparent 'fee, gain or reward' and account for their 'fee, gain or reward' in other ways, such as when dealing with the distribution of an estate.
- 15.6 The current reservation on probate applications forces those who need such reserved services in order to be able to offer unreserved estate administration services to sub contract those services to the limited sector of reserved activity providers – many of whom they are competing with for unreserved estate administration work. So there is little incentive for the reserved activity providers to provide attractive reserved activity services to unreserved activity providers. This distorts fees charged across the whole market, not only estate administration but it also distorts the Willwriting market because many practitioners who offer 'post death services' also provide 'pre death services' in the form of Wills and other documents.
- 15.7 The IPW believes that there is demand for low cost access to the administrative process involved in obtaining a Grant of Representation in non-contentious estates. The IPW understands from its members that they are being asked by consumers for such a service. Although the process is procedural, it is a process which, fortunately, few people find themselves having to complete on a regular basis. It is therefore alien to them. Administering an estate once the Grant has been issued is less daunting – most people can tackle the sale of property, the sale of shares, the opening of a bank account, the closing of bank accounts etc. The process of obtaining a Grant of Representation is a service that could be easily commoditised with little risk to consumers and such services made available to both

practitioners and consumers. A service delivered this way also mitigates exposure to professional fraud since the professionals involved in the process wouldn't be handling client money.

- 15.8 There appears to be no apparent reason for the continuation of the reserved activity of preparing probate papers but there does appear to be logic in the reservation of the process of opposing probate papers,.
- 15.9 The IPW however concluded that, on balance, the activity of preparing probate papers is subject to some sort of regulation – and that the regulation follows the format that we have suggested applies to estate administration (and Willwriting) for the following reasons:
- 15.9.1 Although we have pointed out that the preparation of probate papers is routine, it is not without risk to consumers in some cases – for example where an estate is contentious and subject to claims which may have either a reasonable ground or be vexatious. It's important to be able to identify which is which and, where appropriate dispute resolution is explored so that the option of cost effective solutions outside of litigation can be explored. There may be cases where an alternative distribution or a less than obvious treatment of assets may result in less tax being paid. An element of education and technical competence is therefore desirable in preparing probate papers and essential in opposing probate papers.
- 15.9.2 While there could be different levels of regulation for the different activities in probate, estate administration and Willwriting, this is likely to be confusing for many consumers – in much the same way that the existing position of regulated/unregulated services is confusing for many consumers.
- 15.9.3 The IPW suspects that the professional organisations which will be interested in being involved in regulating Willwriting, probate and estate administration are likely to be interested in regulating all three activities and a consistent requirement for regulation across all three activities is more likely to result in effective and low cost regulatory regimes for both regulators and practitioners.
- 15.9.4 Loopholes or areas of grey between each activity than would likely exist if different regimes existed for each service won't exist in a uniform regulatory regime. Greater consistency in regulatory regimes across the provision of services which consumers see as related will be helpful to consumers.
- 15.9.5 In clause 15.5 we exposed a loophole created by the current regime of having one part of the process regulated and the other unregulated – it enables unregulated providers to operate in the regulated activity but distance themselves from appearing to do so through

creative invoicing. The same thing could happen if estate administration was regulated and the application process for probate wasn't.