

From: kal badesha [<mailto:kal.badesha@penmanssolicitors.co.uk>]

Sent: 26 October 2011 12:24

To: Chris Handford

Subject: RE: Legal Services Board call for evidence: Investigation into will-writing, estate administration and probate activities

Dear Mr Handford

I confirm that I am a Solicitor dealing with Wills; Powers of Attorney and Probate matters and have been practising in this profession for 12 years.

I am strongly of the view that Wills and Probate Services provided by non-Solicitors should be regulated due to the problems caused to the client when the work is not done properly.

I have come across numerous clients whose spouses have died having made a Will with a Will writer. I have provided some examples of the problems that have arisen and the consequences for the client:-

1. On some occasions, the clients have not been able to retrieve the original Will from the company concerned since it has ceased to trade. This has left the client with a potential intestacy during a very difficult period in their life causing further stress etc to them. Alternatively, we have drafted a Deed of Variation for these clients but this has cost them a few hundred pounds. If the original Will had not "disappeared" they would not have incurred this cost.
2. On numerous occasions the Will has been poorly drafted eg, to include a Trust in the Will when it was not required (eg the estate was significantly under the inheritance tax threshold and the client was wrongly advised and charged for IHT advice). The client has had to incur additional legal costs to terminate the Trust when their spouse has died
3. On many occasions a Trust has been set up in a Will writer's Will and two trustees have not been appointed. The client has had the additional cost of appointing a new Trustee by deed ie a few hundred pounds
4. Recently, I have dealt with an estate with a Will writers Will where the clause was very badly drafted. The clause creates what appears to be a Discretionary Trust. The client had not wanted any Trust in the Will and was not advised about it when they made the Wills
5. On numerous occasions, a joint tenancy has wrongly been severed where no Trust has been set up in the Will and the Will leaves everything to the surviving spouse (ie the co-owner of the property). The surviving spouse has then had to incur the cost of obtaining Probate to transfer the property into his/her sole name. If the ownership of the property had not been severed, it would have passed automatically to the surviving spouse and Probate would not have been required. Hence the client has incurred significant additional unnecessary cost.
6. I have also come across many Enduring Powers of Attorney where two attorneys have been appointed jointly. This means that when one Attorney dies, the EPA comes to an end and cannot be used at the time when the client requires it the most. The client then has to make a Lasting Power of Attorney which is significantly more expensive than an EPA and time consuming. But if the client has lost capacity then a Court of Protection application has to be made. Thus the client is significantly out of pocket through a badly drafted EPA.
7. many clients have also been wrongly advised by will writers that their current EPA is now invalid and they must make an LPA due to change in the law. However, the EPA is still valid and an LPA is not required. Many clients have paid for a new LPA unnecessarily and been overcharged for it.
8. Many clients have been sold long complicated Wills when their circumstances required a simple shorter Will. They have also been charged alot of money for this privilege.
9. It concerns me that the majority of my clients who have had a Will writers Will drawn up, believe that the Will writer was a Solicitor. They do not understand that the person who drafted the Will was not a Solicitor hence the client will often pay the price being charged and not question it and will instruct the Will writer to act on his/her recommendations.
10. Finally, to conclude many many clients who made Wills with a Will writer have been overcharged significantly and paid for work that was not necessary.

I believe many of the problems arise from Will writers not understanding the law and not drafting Wills properly. In my view, they must be regulated more heavily, perhaps with a compulsory qualification

before they are allowed to offer services to the public. The existing system clearly does not work causing unnecessary expense and stress for the client.

In 80% of cases, the problems with badly drafted Will writer wills are not discovered until the client has died. In the majority of cases, It is then too late to rectify the problem without the family of the deceased incurring additional unnecessary cost.

The issue about Probate and estate administration is clearly linked to badly drafted Wills.

There must be an increased qualification for Will writers is these problems are to be dealt with and greater regulation of Will writers.

Please do not hesitate to contact me if you require any further information.

Kal Badesha (Ms)
Solicitor