

# Liverpool Law Society

Response to:

## *Legal Services Board*

*Call for Evidence: Investigation into Will writing, estate administration and probate activities*

November 2011

# Introduction

This is a response to the call for evidence by the Legal Services Board on its paper entitled:

*Call for Evidence: Investigation into Will writing, estate administration and probate activities*

This response reflects the views of the members of the Non-contentious Business Subcommittee of the Liverpool Law Society.

# Consultation response

## Will writing

### Response to Question 1

Yes, we do agree with the Panel's assessment of the problems in the will writing market and resulting consumer detriments and are sure you will have sufficient examples.

One member firm has however asked us to convey the following specific example:

*"I have recently had five different clients come into the office who had attended a seminar at a local golf club carried out by a Will Writing company*

*They advised the clients to put everything into a trust, ie the share of the house and any individual money and under the terms of the Will they set up a nil rate band discretionary trust. The clients are not into IHT and they have less than £20,000 in savings, their house is less than £180,000. The costs of administrating the Wills would be extreme in light of their assets.*

*They also talked them into Lasting Powers of Attorney when they already had valid Enduring Powers of Attorney.*

*The costs that the clients had to pay up front before receiving any of the paperwork were in the region of £1,700.*

*When they received the documents they had to provide their own witnesses and the company would not accept any liability if the clients had not executed them properly.*

*Only that relatives of these elderly people were concerned about the costs, and they came in to have everything checked over.*

*It is quite concerning that companies such as Will Writers can dupe clients into paying vast sums for Wills and other documents that are not relevant to their needs with no governing body to regulate them."*

### Response to Question 2

We consider that will writing should be a reserved legal activity but think assessed accreditation schemes and ongoing assessment would be advisable as a supplement as we would agree that wills written by solicitors can be just as poor as those written by unregulated will writers.

### Response to Question 3

'Good' will writers see will writing as the most important thing most consumers will ever do and so attach sufficient gravity to this area of work. The will writing industry has for many years not taken this area seriously enough which may in part be due to the low value return many make from it.

Because the price predominantly charged for Wills does not reflect the importance of the work involved in writing them, this work can be delegated to less qualified (and generally less well remunerated) staff to carry out in an attempt to make some profit from it. This can drive standards down which cannot be allowed to happen in such a critical area.

#### **Response to Question 4**

We agree with the suggestions of the Panel.

#### **Response to Question 5**

We agree with the suggestion of the Panel and would suggest that there is also mandatory ongoing training and assessment to ensure adherence to best practices and to current law and practice.

#### **Response to Question 6**

With the recent introduction of the Legal Services Act, competition should not necessarily be affected by making will writing a reserved legal activity. Those serious in wanting to provide this service to the public have the ability to do so and it is not wrong to want such will writing providers to be subject to high regulation in order to provide necessary consumer protection.

## **Probate and estate administration**

### **Response to Question 1**

Outcomes for the consumer that should be strived for are a will writing, probate and administration service that is taken as seriously as this area deserves bearing in mind it will be one of the most important things most consumers do combined with the other problem that errors and issues often only come to light many years later when the testator has passed away.

### **Response to Question 2**

We feel the majority of problems experienced by consumers of probate and administration services is incompetence on the part of the provider more than anything else. Such mistakes, while often not fatal, do cause delay which in turn can mean greater cost to the consumer.

### **Response to Question 3**

Where there is no will, the administration of the estate can often be a little more complicated and so cost more to deal with and thus, there is often a false economy on the part of the consumer who avoid writing a will so as to save the cost of doing so.

### **Response to Question 4**

Errors in the way a will is written often only come to light after the testator has passed away. This means that these problems can then often not be put right as they could have been if the testator was alive and could have written a new will or codicil.

It is very difficult to put problems right and to reverse any detriments as the courts generally feel such errors should stand with the redress being to sue the will writer. This of course highlights another problem of unregulated will writing – that being the will writing practice having disappeared or having no substance against which to bring a successful claim.

### **Response to Question 6**

Self regulation and general consumer and criminal law are little use where the will writing practice has ceased to exist without a trace.

We feel that the price of regulation and ongoing scrutiny and assessment are fair, reasonable and proportionate if wanting to write wills and administer estates as this is an area that will affect everyone in society and cannot be stressed enough as to how important it is.