

Pavilion Row Ltd - Response to LSB Call for Evidence

Introduction

Pavilion Row is a firm of non solicitor trust & estate practitioners who specialise in probate administration and wills. We operate with the professional credentials in this area of law being registered trust & estate practitioners (TEP's) or having completed the STEP Certificate in Will Preparation.

We generate business through professional introducers including solicitors, accountants and financial advisors.

In broad terms we welcome the findings of the report published on 14 July 2011.

Education

A key requirement given the poor outcome of the mystery shopping exercise.

Education provided by the Law Society (non mandatory), the Institute of Professional Willwriters (IPW) and the Society of Will Writers (SWW) falls well short of a real test of knowledge, as has been proven.

The STEP Certificate in Will Preparation is the only substantial challenge for testing knowledge in this field. The paper is set at Diploma level, involves a 3 hour, closed book exam and incorporates a practical client interview. For more details please follow the link

http://www.step.org/professional_development/step_qualifications/step_certificate_series/certificate_in_will_prep.aspx?link=contentMiddle

Greater knowledge through recognised qualification will both improve the quality of work and 'regulate' by default if the general public are made aware of the need for specific qualifications.

Office Holders

Agreed – liability should reflect the size of organisation (with ABS in mind)

Conduct rules

A 'key facts' style document to be provided to customers to enhance their understanding

Rules should be a requirement e.g. recording justification for appointing a professional executor, insisting a professional executor renounces if all beneficiaries agree

Ensuring ongoing competence

Structured CPD is essential

Further qualifications/accreditation should be considered but we must be mindful as to cost factors as this will inevitably impact on customers. I think suitable CPD should be sufficient once a general knowledge/understanding has been tested and confirmed through examination.

Reaccreditation may be appropriate following discipline (in the same way people have to retake their driving test)

Monitoring compliance

Agreed

Redress

Agreed



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Discipline

Agreed

Estate Administration

Key outcomes

Estate administration is an area in which most people have little knowledge of what is involved or what to expect. A key outcome would be to improve this knowledge so that poor experiences were easily identified and those responsible were held accountable.

Improved awareness should include transparent costs for ease of comparison purposes and ensuring professional executors renounce when requested. It is unacceptable that individuals appoint professional executors without being made aware that family members will not be able to remove them easily if requested.

Existing problems

Fraudulent activity – no experience of this

Errors in the will

Example 1:

First death

Will included NRB trust whereby the share of property should have been placed in the trust

Severance of tenancy was never completed and the property passed by survivorship as owned as beneficial joint tenants

Unnecessary delays

Example 2:

£1.4m estate comprising liquid assets

No property, no complex assets, no contentious issues

Qualified practitioner dealing with the estate was “dilatory” with the paperwork

Estate administration took 3 years to complete

Overcharging

Example 3:

£700k estate

High Street firm of solicitors not qualified in estate administration but undertook the work

Client requested a Deed of Variation, passing the assets in to a discretionary trust rather than to a beneficiary directly

They had no experience in trusts and did not understand the clients request

They were unable to draft a DoV

Client engaged an experienced Trust & Estate Practitioner to draft the DoV

Client was invoiced £10,000 – no breakdown was given

Following request for a breakdown of the fees the invoice was immediately halved to £5,000

Example 4:

Will writing company

Terms & Conditions state “Tick the box if you do not want to appoint us as your executors”

Other thoughts

Estate administration charges:

Should not be agreed at the time of the will but by the personal representatives following death when the work is known. Unlike funeral plans for example, the level of work cannot be determined until after an individual has died due to changing circumstances.

Reserved activity:

Anybody working in this field for a fee should be suitably qualified, having successfully completed a challenging test.

This should include will ‘instruction takers’

Grant applications:

Should be open to registered trust & estate practitioners (as per Tristram & Coates) and not just to solicitors. The Court service will then deal with poor practitioners

Will instructions:

Should incorporate a service in line with financial advisors including key facts, and a full, documented factfind on which the advice and instructions are then based.

Traditional business model:

The traditional providers use wills, often as “loss leaders” and encourages the appointment of professional executors which generates “will banks” or assets with guaranteed future revenues. Customers are tied to using that executor as the will has become a legally binding document.

Key changes should incorporate:

Improved customer understanding – perhaps via a “key facts” style document

The ability to insist the professional executor renounces their position where all beneficiaries agree (as with a deed of variation)

Transparent fees whereby comparison with other providers can be made

Transparent invoicing so that fees can be easily understood and queries where appropriate

If you have any queries in relation to this document please contact Angus Houston

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