

CALL FOR EVIDENCE: INVESTIGATION INTO WILL-WRITING, ESTATE ADMINISTRATION AND PROBATE ACTIVITIES

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Submission by The Law Wizard Limited, The Ron Cooke Hub, York Science Park, York, YO10 5GE

The Law Wizard Limited is a company made up of legal specialists (including non-practising solicitors) and technical specialists. We are developing an online probate management system called The Probate Wizard, a tool which will guide members of the public through the probate process and which includes document generation. We are also developing solutions for professionals.

We are not a law firm and we do not give legal advice. The Probate Wizard is automatic (aside from a non-legal review of all forms for common errors) and we do not see ourselves as providing estate administration services in the traditional sense.

We are at pre-launch stage (The Probate Wizard is due for release early in 2012) and we therefore do not have any feedback/evidence from customers to share with the LSB.

Nevertheless, we occupy what we see as a relatively unique space: neither law firm nor unregulated legal advisors, but providers of what is primarily a "do it yourself" online probate system. As such, we feel we can provide a valuable response to the LSB's call for evidence.

Please see www.thelawwizard.com for further details about The Probate Wizard.

We have answered only the questions in the discussion document which we feel are applicable to us at the present time.

Will-writing

As we do not have immediate plans for a will-writing system, we feel we are not in a position to answer questions about will-writing.

Probate and estate administration

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

We believe that the consumer should: be confident of obtaining minimum standards from probate services; have access to a wide range of probate services with a wide range of prices; be confident about accessing probate services over the Internet; and be confident that there is minimal risk of (or opportunity for) fraud.

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?

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?

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

As we are pre-trading we feel we are not in a position to answer these questions.

What do good providers of probate and estate administration services currently do to protect against problems and ensure that consumers receive a quality service?

We are putting in place a variety of systems and processes to ensure that our customers receive the best possible service. At the core of our service is our unique "Probate Wizard", a system we are building to make the probate process as intuitive, convenient and simple as possible. We offer customer support, probate guides and videos (monitored frequently to ensure they are accurate and up-to-date), regular review of probate practices and developments, a feedback and suggestions system for customers and a variety of other features to protect against problems and ensure a very high quality of service. For one-to-one legal advice, we refer customers to legal professionals, including solicitors. We have professional indemnity insurance cover of £2 million.

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?

We are self-regulating, and we consider the systems and customer experience that we are putting in place to be high quality, surpassing (we believe) the experience that many consumers receive from solicitors. Nevertheless, we are aware of the risk that not all self-regulating probate services operate to the same standards, and we believe that consumers should be confident of obtaining minimum standards of service from all providers.

Accreditation and quality marks could help consumers choose quality probate providers and therefore may provide a suitable alternative or, more likely, a supplement to regulation.

Further evidence is required but, if there is sufficient evidence that the general consumer law puts consumers at risk, we believe that regulation would be the most appropriate solution.

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?

From a consumer perspective, any regulation should achieve the "key outcomes" listed above.

To this end, we argue that regulation, if introduced, should be broad, modern and dynamic. It should recognise the changing nature of legal services, including independent Internet-based services such as The Probate Wizard.

We hope the LSB will consider how a service such as The Probate Wizard might fit into any regulatory regime. That is, neither a solicitor nor a legal advice service, but primarily a “do-it-yourself” probate package incorporating legal documentation generation. Although we employ a full time non-practising probate solicitor, we believe that legal documentation systems could be created and maintained successfully by outsourcing legal expertise, not necessarily by employing legal experts, and we believe an increasing number of such services will emerge in the UK marketplace over the next few years.

Though there are (of course) risks associated with Internet-based legal services, we believe that such systems can provide solutions for consumers that are cheaper, more convenient and just as reliable and effective as instructing a solicitor for many, if not the majority, of estates.

We argue that independent online probate services, while by no means being automatically exempt from any potential regulation, require different considerations from, say a law firm or a legal advice service.

A difficulty we see for the LSB is that the market for online probate services such as The Probate Wizard is in its infancy, and it will be difficult at the present time for the LSB to collate evidence on the quality of service offered by such systems.

We agree, on the whole, that the Legal Services Consumer Panel’s core elements of will-writing regulation could apply to probate. Namely education, office holders, ensuring ongoing competence, conduct rules, monitoring compliance, redress and discipline. However, we refer to our previous point about companies which may outsource legal expertise.

We believe that the preparation of probate papers should no longer be a reserved activity and, indeed, no part of the probate process should be a reserved activity (for our arguments, see below). If the evidence points towards regulation, we think the needs of the consumer will be better served by an even-handed regulatory regime that does not favour solicitors and which allows non-solicitors to make applications for grant.

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 believe the answer to this question would depend on the nature of the regulation.

If regulation were unduly restrictive (for example, if more of the probate process were to become a reserved activity), it would stifle competition and innovation, which are – and will increasingly become – vital to consumer confidence, choice and access to services. We believe regulation must strike such a balance as to protect and reassure the consumer while *encouraging* competition, innovation and access to services, including Internet-based services.

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?

Statistics released by the Probate Service¹ show that, since 2006, the proportion of personal applications for grant has increased year-on-year and, in 2010, solicitor applications accounted for fewer than two thirds of total applications. This is likely placing an increasing strain on the Probate Service. Furthermore, we understand that applications for grant by Independent Financial Advisors and other professionals acting under powers of attorney are increasing.

The preparation of probate papers is just one part of the probate process, with the potential for fraud continuing to exist before and after the application during the valuation and the distribution of the estate.

The LSCP's July 2011 report revealed that poorly-drafted wills were just as likely to come from solicitors as unregulated will-writers, and that consumer satisfaction was higher for unregulated will-writers than for solicitors. We suspect the same applies to probate services, and we look forward to reading evidence collated by the LSB.

With all the above factors taken into consideration, we believe the justification for – and effectiveness of – the preparation of papers as a reserved activity is increasingly diminished, and the system is increasingly out-dated.

The effect of the reserved activity on The Probate Wizard is that we deliver our product in three segments. The first is pre-grant and primarily “online”. The second is the application for grant, where the customer prints and submits the application and attends a probate registry in person (the part of the process covered by the reserved activity). After the grant is received, the customer resumes the process “online” for the third and final segment, the distribution of the estate.

¹ <http://titleresearch.com/getdoc/4d3fe50a-a25b-44cc-8de6-83fca764b184/grant-of-probate-statistics>