



THE NOTARIES SOCIETY OF ENGLAND AND WALES

SUBMISSION CONCERNING THE LEGAL SERVICES BOARD'S CALL FOR EVIDENCE AND INVESTIGATION INTO WILL WRITING, ESTATE ADMINISTRATION AND PROBATE ACTIVITIES

The Notaries Society of England and Wales is pleased to submit the following comments as part of the Legal Services Board's consultation on whether Will Writing, Estate Administration and Probate activities should be made reserved legal activities.

1. WILLS

We agree with the Panel's assessment of the problems in the Will Writing Market and believe that the key problems and detriments have been identified.

We support the Panel's assessment that Will Writing should be a reserved legal activity. However, recognising that this may not happen in practice, we make certain suggestions about the level of regulation which would be required in those circumstances.

We agree with the Panel's assessment that alternatives to statutory regulation, such as mentioned in the Call for Evidence, are unlikely – in fact we would say extremely unlikely – to protect against the identified problems and detriments. Whilst Assessed Accreditation Schemes and Quality Marks would benefit consumers, they must be considered only as a supplement, and never as an alternative to statutory regulation.

We agree with the core elements that the Panel believe are needed, and also consider that all of them are required on a mandatory basis.

Notaries, Solicitors and other branches of the legal profession are already regulated. We believe that there should be a level playing field as between the various providers, which would mean applying the standards of those who are currently regulated to the providers who are not currently regulated; for consumer protection, existing standards should be applied across the board, rather than being watered down for those providers who are not members of the legal profession.

We firmly believe that there should be training, qualification, regulation, continuing professional education, secure and safe storage procedures and the keeping of proper records.

In addition, there should be internal complaints procedures followed by external complaints to the Regulator and/or the Legal Ombudsman if the matter cannot be resolved.

Professional Indemnity Insurance and Fidelity Cover are essential so that consumers may be properly compensated in the event of loss.

We also firmly believe that there should be a clear audit trail (in the way that a solicitor's practice must have a "successor practice") in the event of the firm ceasing trading; this should be known to the Regulator, so that Wills can be traced comparatively easily.

2. SCOPE OF WILLS RESERVATION

We note that the Call for Evidence asks what specific activities should be included within the scope of the reservation.

We have seen the submission of the Society of Scrivener Notaries. Whilst the members of the Notaries Society of England and Wales are not formally required to have the same proficiency in foreign languages and foreign law as a Scrivener Notary, nonetheless such proficiencies are not unknown among our members.

We believe that the Panel may not have considered in depth the logistics of foreign and/or cross border Wills and we support the comments made by the Scrivener Notaries.

3. PROBATE AND ESTATE ADMINISTRATION

Turning to Probate and Estate Administration, we refer to the five groups of problems which have been identified. We believe that these cover the existing problems, and that the key outcome for consumers is that these should be avoided.

The cause of the problem very much depends upon the circumstances.

Fraud, or the tying in of an expensive package, arises from lack of integrity in the person concerned. We cannot see how this can be avoided in advance, and it would have to be rectified by disciplinary procedures and the provision of compensation.

As regards errors in the Will, service issues and errors in handling the estate, these would appear to be the results of incompetence which could hopefully be rectified in advance by training, qualification and continuing professional education.

The consequences of the problems are additional stress for consumers at a trying time when they are vulnerable, and financial loss.

We have not sought to collate any evidence of consumer harm, as very few Notaries actually carry out any probate work and, in any event, they are already subject to training, qualification and regulation.

For the same reason, we have not sought to collate any information as to avoidable problems, problems which are a direct result of actions taken while administering the estate, and how and at what stages are the problems normally discovered. With regard to protection against problems, we would refer to the list already given in connection with the Will Writing Market.

The only exception which would not apply here would be the provision of a “successor practice”, because it would not really be necessary to contact the firm again once the Estate had been fully administered.

We believe that self regulation and general consumer and criminal law are not capable of addressing consumer harm and, as before, Assessed Accreditation Schemes and Quality Marks might be a supplement but could never be an alternative.

Regulation should be equivalent of that of the legal profession, with the same core elements to protect against the same harms.

Regulation would increase the consumer protection. Compliance with the regulation would inevitably increase the cost of services, but this may be regarded as a proportionate measure to achieve the necessary consumer protection.

4. ENFORCEMENT

Turning to enforcement issues, we support the points made by the Scrivener Notaries in Section 6 of their Report.

5. CONCLUSION

We look forward to continued dialogue on these issues which are of importance to consumers and practitioners alike.

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