
Trust Inheritance

Submission to the Legal Services Board
consultation on Will-writing and
associated Estate Management services

November 2011

TRUST

INHERITANCE

1. Introduction to Trust Inheritance

Trust Inheritance is a large UK-based legal services organisation, providing specialist advice, services and products to the public in the field of individual estate planning and linked areas of law.

Contents

1. Introduction to Trust Inheritance.....	2
2. Summary of key points and recommendations	3
3. Introduction to Trust Inheritance's submission.....	4
4. Guiding principles	5
5. The current shape of the Will-writing industry.....	7
6. The challenges and how to address them.....	10
7. The shape of any future regulation.....	11
8. Conclusion	12

These services cover:

- drafting of Wills
- updating of Wills
- secure storage of Wills
- support for executors (expert advice, guidance, legal support as required)
- estate administration, including gaining grant of probate
- the creation of Trusts
- inheritance tax planning
- preparing lasting powers of attorney
- pre-paid funeral planning

The company helps people wanting to plan and manage a smooth transfer of their estate after their death. It provides these services in a flexible, caring, specialist and cost-effective way, appealing to members of the public wanting something more accessible and affordable than the traditional service provided by solicitors.

Trust Inheritance was formed in 1990 and has written around 250,000 Wills since then. The company currently writes around 20,000 Wills in England and Wales every year.

TRUST

INHERITANCE

Head office: 01934 422 991
www.trustinheritance.com
Trust Inheritance Limited,
Crown House, 1 Stafford Place,
Weston-super-Mare BS23 2QZ

2. Summary of key points and recommendations

- The greatest consumer detriment exposed by the LSB's investigation is that some 1 in 4 of all Wills, including those written by regulated solicitors, are worthless in that they fail to achieve what was intended by the testator. This represents tens of thousands of people wasting millions of pounds in legal fees, mostly paid to solicitor firms, every year, yet ignorant of the problem.
- While there have been, we accept, some isolated problems within the independent Will-writing industry, these are mostly confined to small companies, often sole traders. Most large organisations in the sector operate professionally and ethically, and provide a service which sections of the public clearly want and value.
- Existing laws, regulations, and codes of practice provide a strong framework of protection against many of the excesses identified, whether originating in the independent sector or amongst solicitors; in particular the Consumer Protection from Unfair Trading Regulations 2008.
- Any move to add specific regulation should be guided by key interlinked principles, namely the need to:
 - enhance access, increase choice, and promote competition to drive greater uptake
 - focus on supporting better quality in outcome and process
 - recognise that the scope and scale of rules for generalist solicitors are not necessarily appropriate for those providing a more narrow range of legal services
 - ensure that any new regulatory burden should be the minimum required, so as to avoid added cost and sustain competition and innovation.
- We would support a regulatory framework that required anyone offering Will-writing for a fee or reward to:
 - demonstrate a minimum knowledge of relevant legal requirements
 - have in place professional indemnity insurance, – independently verified
 - come under the remit of the Legal Ombudsman.
- We believe solicitor firms advertising or promoting a Will-writing service should have their knowledge and skills independently audited on a regular basis; general solicitor training is clearly inadequate, and results in consumers being misled
- All those offering Will storage and retrieval for a fee should be required to have their facilities independently and regularly assessed, possibly via their annual report from auditors.

3. Introduction to Trust Inheritance's submission

This document sets out Trust Inheritance's submission to the Legal Service Board's (LSB) current statutory investigation into possible specific regulation in England and Wales of Will-writing and associated estate management services.

Trust Inheritance (TI) is one of the largest independent legal services companies specialising in the delivery of services related to Wills and estate management. Established in 1990, the company has, alongside its other services, drafted some 250,000 Wills, covering approximately 150,000 households (indicating a large number of "mirror" Wills for couples). Given this, we believe we can speak with some authority on the practices and benefits of the independent Will-writing sector.

Whilst TI accepts there are some problems with the Will-writing market – the evidence suggests by no means limited to the independent providers – we remain unconvinced that the scale of the problems is as large as some, with obvious vested interests, would suggest.

We also believe that the existing safeguards in place – through consumer protection legislation, independent codes of practice (both those of trade bodies and independent bodies such as OFCOM) – have been somewhat overlooked, and their significance underplayed, in the debate on this issue so far.

And, finally, we remain sceptical that regulation will achieve redress for many of the problems that have been identified. The fact that the Legal Services Board's

own Consumer Panel investigation found no difference in quality between Wills written by (already regulated) solicitors' firms and independent Will-writers as a whole does not suggest regulation will itself deliver a better service to the public.

Nevertheless, insofar as the LSB investigation has served to highlight some significant challenges and problems within the marketplace, we welcome it. If these problems can be overcome, and consumer confidence in the ease and overall quality of Will-writing available to them can be boosted, this will be all the better for consumers and, naturally, those seeking to deliver services they require.

It is in this spirit that we have prepared this submission. Our vision is of a re-shaped and reinvigorated marketplace where consumers can make informed choices about the type of service they want; services which, after all, everyone will make use of at some point.

4. Guiding principles

We believe the current investigation by the LSB offers an opportunity not simply to tinker with the market for Will-writing, but to actively improve some systemic problems within it. We strongly believe any outcome in terms of recommendations should be guided by some key principles, shaped by the requirements of consumers and society as a whole, rather than those of providers.

We believe these guiding principles should be:

- **access should be increased to legal services, specifically the writing of Wills**

It is widely accepted that not enough people in the UK have Wills, and that considerable consumer detriment arises when people die intestate; there therefore seems a prima facie case for doing everything possible to improve this situation.

Sun Life Direct, in their recent (September 2010) report, “The Cost of Dying”, suggested that a quarter of adults have not written a Will when they die. A survey in October 2010 by research group unbiased.co.uk suggested 30 million adults in the UK are without a will, including almost 90% of under 35 year olds, and two-thirds of those aged between 35 and 54, despite 92% of them having a firm idea of where they would like their money to go should they die.

Given these disappointing figures, we believe the starting point in any consideration of the future shape of the market should be a focus on what will help ensure that more, not fewer, Wills are written.

- **opportunities for competition should be enhanced, as a means of reducing costs and increasing choice**

Again, we suggest this is a sine qua non; in a free market society, the way to encourage greater take-up of a service is to create the circumstance for a flourishing free market in that service (within effective legal boundaries to prevent unfairness or injustice).

It also seems clear that consumers are driving the changing shape of the market for Will-writing and associated services. The National Consumer Council report, “Finding the Will” in 2007 looked into people’s preferences for methods of preparing a will.

““ When we asked all respondent which methods of preparing a Will they would be willing to use in future, just 59% said they would consider using a solicitor. This indicates a willingness among consumers of all types, but especially the younger generation, to take advantage of the wider choice of providers...”

“Finding a will”, page 10, NCC (2007)

The clear inference is that restrictions on the choice of service being provided will mean a lower number of Wills being written than would otherwise be the case, and this will itself cause considerable consumer detriment.

- **the quality of Wills being delivered must be significantly improved across the market, as should the service provided to consumers both before and after their Will is written**

The highly disturbing statistic suggested by the LSB’s Consumer Panel mystery shopper exercise that 25% of Wills are worthless represents surely the most profound example of consumer detriment in the Will-writing marketplace. This represents tens of thousands of people a year, wasting millions of pounds on worthless Wills (mostly with high street solicitors, who still write the majority of Wills in the UK).

- **rules and regulation judged suitable for high street solicitors are not necessarily appropriate for those working within a more narrow field, such as Will-writers**

Consumers will reasonably assume that a qualified solicitor understands all areas of law. Yet the failure of regulated solicitors to deliver any better quality of Will than unregulated independent Will-writers undermines this belief.

Many solicitors will write perhaps a few dozen Wills a year, in some cases even fewer. By contrast, the larger firms operating in the independent sector write hundreds a month.

The difference between solicitors and those working more narrowly is reflected in different regulatory frameworks for those solely offering for example conveyancing or claims management services.

This all suggests that forcing the independent Will-writing sector into a set of rules and regulation designed for broad-ranging legal service firms may well not be appropriate.

- **any new regulation should be set at the bare minimum required to address real issues, so as not to increase burdens on existing providers, nor discourage competition and innovation**

As Citizens Advice have stated:

“ Regulation should be proportionate to ensure that small and large Will writing businesses can remain in the market, as long as they provide adequate services to consumers ”

(Response to Legal Services Consumer Panel December 2010)

Despite what some argue, we firmly believe cost to be a key driver in the decision to finally make a Will. Additional regulation will add some cost, which in the end will be paid for by the consumer. The price elasticity of Will-writing can be judged by the results of a real-life experiment which Trust Inheritance undertook. We undertook a test-marketing exercise and offered Will writing at two prices: £65 and £130. Potential uptake of the service fell by 50% at the higher price. We have no doubt that anything more than a small additional cost will mean a fall in the number of Wills being made, the precise opposite of what is needed to avoid the significant consumer detriment caused by dying intestate.

5. The current shape of the will-writing industry

Who writes Wills?

In the absence of any central database or register for Wills, it is not easy to give a completely accurate picture of how many Wills are written in the UK, or by whom. However, as a company trading in this marketplace for over 20 years, and one of the largest writers of Wills in the independent sector, we have what we believe to be a good sense of the shape of the market:

- Trust Inheritance writes around 20,000 Wills a year (we believe this to be around 12% of the total independent Will-writing market)
- we believe the independent sector provides perhaps 150,000 Wills per annum, two-thirds of which are written by the dozen or so largest Will-writing companies - most of whom are in the Professional Association of Legal Services (PALS) trade association. The remaining 50,000 Wills are written by small, often one-man-band, will-writers, many of whom are not in a trade association. (We estimate, for example, that the members of one of the trade bodies, the Institute of Professional Will-writers, account for around 15,000 Wills per annum which represents approximately 10% of the Wills written by the independent sector).
- we estimate Irwin Mitchell solicitors draft around 25,000 Wills per annum, mostly as third party suppliers to the high street banks
- we estimate Thomsons solicitors provide a similar third party service to many trade unions, and write around 12,000 Wills per annum
- we estimate some 600,000 to 900,000 Wills are written by third parties per annum (i.e. excluding self-prepared Wills), the balance being provided by local high street solicitors.

How does the independent Will-writing marketplace work?

As explained above, the independent Will-writing industry is fragmented, with over a dozen large firms dominating some two-thirds of the independent sector, with a wide base of several hundred small local firms, often sole traders.

The large Will-writing firms all have broadly the same business model, with some variations from firm to firm. More information on these will be set out in the submission from the trade association representing most of the larger firms, the PALS. However, it might be helpful to explain briefly the Trust Inheritance business model.

TI provides a range of legal and related services linked to the transfer of assets after someone dies. These services include:

- drafting of Wills
- updating of Wills
- secure storage of Wills
- support for executors (expert advice, guidance, legal support as required)
- estate administration, including gaining grant of probate
- the creation of Trusts
- inheritance tax planning
- preparing lasting powers of attorney
- pre-paid funeral planning

Our quality Will-writing service

Because of our specialisation in this area of law, and the large scale of our operation, we are able to deliver a high quality service at a cost-effective price, particularly in comparison with the typical high street firm of solicitors. We also provide a style of service which many consumers prefer: less formal, more flexible, transparently-priced, with Wills written in plain English, and with no strings attached: we make a point, for example, of actively suggesting to our customers that they do not make TI an executor in their Wills, unlike some others, including it appears solicitors.

Instructions are taken from the customer by our team of around 70 trained local consultants, generally - at the customer's request - outside normal working hours in their homes (as a result of which, any contracts signed are covered by a statutory 7-day "cooling off" period, unlike contracts signed in, say, a solicitor's office). According to the Citizen's Advice, in their earlier submission to the LSB Consumer Panel (General comments section), "this period should increase to 14 days when the proposed EU Consumer Rights Directive comes into force."

The original instruction form is left with the customer, to allow them to check the resulting draft Will against their instructions. A digital copy is passed to TI's legal services team, who translates the instructions into a legal Will. The draft is checked internally before being sent to the client for signing. All customers are sent a postage-paid envelope to allow them to return the signed Will for a free final check.

All members of our legal team have received legal qualifications, from the respected Institute of Legal Executives (ILEX) or, in some cases, the Society of Trust and Estate Practitioners. Our legal team is headed by our company lawyer, a qualified and experienced solicitor.

Our standard fee for a single Will or a couple is £130. There are no other obligations on the customer to use us for any other services, and indeed around half the customers only use us for Will-writing.

The importance of active marketing

As is widely accepted, there are still far too many people who do not have Wills, quite apart from those whose Wills are significantly out-of-date. We agree with what Citizen's Advice in their submission to the LSB Consumer Panel said is required to address this situation:

“ Basic Wills should be readily available at affordable prices, to encourage consumers to properly record their wishes... this service must be easily available and affordable.”

Making a Will is not something which is easily raised or discussed even within a family, yet it is inevitable that everyone will require one. We believe that given this situation, continuing to permit the active marketing of Will-writing and related services, within existing consumer protection laws and codes of practice, is entirely appropriate.

As an organisation not governed by the rules governing solicitor firms, TI is permitted to pro-actively market its services to the public. That is, we are able to approach potential customers in person, rather than wait for them to approach us. This ability is central to our business.

Experience has taught us that reactive marketing of Will-writing services – such as via advertising – is ineffective. We therefore seek out prospective customers often via telemarketing, and sometimes as a follow-up to an initial contact made in person or via our website. This is not an unusual way to market services to the public. Telecoms, energy companies and many banks also legitimately bring their services to the attention of consumers in this way. What is more, the claims management industry, regulated direct by the Ministry of Justice, is also permitted to market in this way. A set of guidelines published by the Ministry's regulatory unit sets out permitted means of marketing these services. Telemarketing is explicitly permitted.

At the same time, we recognize the need for this marketing to be done responsibly. There are regulations and codes covering this activity which we naturally follow: we employ our own telesales team (based in the UK), and abide by the relevant OFCOM regulations, and Direct Marketing Association codes of practice.

As a result of our marketing activity, several thousand people a week are asked an important direct question – “Have you made or are you thinking of making a Will?” Each week as a result of our calls, several hundred people a week make a Will, many of whom might not have done so otherwise. We believe that this freedom is delivering a public good and, within existing adequate safeguards, should continue.

Existing rules governing marketing practices

The LSB in its request for evidence and opinion specifically raises the issues of sales practices as being an area of potential concern. We believe existing laws governing acceptable marketing and sales practices are clear and appropriate: these, for example, protect consumers from, amongst other things, deceptive advertising or pressure selling by anyone, including independent Will-writers and solicitors.

The relevant existing laws and regulations include The Cancellation of Contracts made in a Consumer’s Home or Place of Work etc Regulations 2008 and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The latter is we believe particularly relevant, and is perhaps best summarised by quoting the Office of Fair Trading (OFT):

“ Broadly speaking, if you are treating consumers fairly then you are likely to be complying with the CPRs. However, if you mislead, behave aggressively, or otherwise act unfairly towards consumers, then you are likely to be in breach of the CPRs and may face action by the enforcement authorities...

“ The CPRs apply to any act, omission and other conduct by businesses directly connected to the promotion, sale or supply of a product (the definition of which includes services) to or from consumers; whether before, during or after a contract is made. ”

“A quick guide to competition and consumer protection laws that affect your business” OFT

The Regulations list 31 specific practices that are considered to be unfair in all circumstances, including stating that discounts are time-limited when they are not; not giving consumers sufficient time to make an informed decision about a purchase; and not leaving someone’s home when asked to do so.

Enforcement of the Regulations is by local Trading Standards Offices, and/or the Office of Fair Trading. Both can act if they become aware of any breach (for example, via a member of the public), even if no financial loss has occurred to any consumer. Enforcement action can be taken under civil rules (legally-backed undertakings and injunctions) as well as under criminal procedures (fines and imprisonment).

While consumers cannot take individual action under the Regulations, the Government has powers under the Regulatory Enforcement and Sanctions Act 2008, Part 3 to make an order by statutory instrument empowering the enforcement agencies to impose sanctions such as the return of payment to consumers.¹ It therefore appears that a route is also open for consumers who have suffered loss to be compensated.

Several non-statutory codes of practice also cover the marketing of services, as undertaken by the independent Will-writing sector:

- Advertising Standards Authority rules
- OFCOM rules on telemarketing
- Direct Marketing Association codes

The independent Will-writing industry is also governed in its behaviour by provisions within the Competition Act (1998), especially regarding pricing and its treatment of customers; and by the Consumer Credit (Agreements) Regulations 2010, in its provision of credit facilities to certain customers.

1. “Waiting to be heard”, Consumer Focus, August 2009, page 3

6. The challenges and how to address them

“ The value of property and complexity of families means that good Wills are vital if complex and expensive legal action is to be avoided. ”

Citizen's Advice submission to Consumer Panel December 2010

The issues which have been raised by the debate go wider and more deeply than perhaps those who have been lobbying for more restrictions had anticipated. In our view, this is a good thing, and gives hope for a much improved marketplace for consumers in the future. In order of importance to the consumer, and the potential overall scale of detriment to consumers generally, these issues are, in our view:

- the quality of Wills
- secure storage and efficient retrieval of Wills
- “forced” appointment of professional executor linked to cheap Will-writing service
- access to an independent complaints/arbitration procedure
- inappropriate marketing and selling
- fraud

Any example of fraud is already covered by the law. Similarly, inappropriate or unfair marketing and sales activity is already very adequately covered by existing consumer protection regulations and codes of practice, as mentioned in our submission earlier.

We regard the linking of a Will-writing service to appointment of the Will-writer as executor (whether an individual or an organisation such as a Bank) as potentially causing significant customer detriment. Trust Inheritance actively advises its clients to appoint family or friends as executors, in almost all cases. Last year, the firm was cited as executor in less than 1% of all Wills written, almost always because there was no suitable non-beneficiaries available.

There have been numerous examples quoted by other organisations of charges for estate administration being out of all reasonable proportion to the service delivered. We would like to see the practice of tying Will-writing to estate administration in this way made unlawful; however, we believe, that such activity is already covered by the latest unfair trading practices regulations, and we would urge Trading Standards and the OFT to investigate actual charges being made, especially by some solicitor firms and others, in the light of the rules set out in the current Consumer Protection regulations.

This then leaves unaddressed by existing provisions the issues of: Will quality, the storage and retrieval of Wills, and access to an independent arbitration /complaints procedure. We give our thoughts on how these might be addressed in the next section.

7. The shape of any future regulation

Will quality

Given the disturbing quantity of inadequate Wills revealed by the LSB's Consumer Panel, and the scale of consumer detriment which arises as a result, TI believes that the status quo – in which anyone can enter the market and trade as a Will-writer, and any solicitor can portray themselves as able to produce a quality Will – is no longer acceptable.

It is not for us to comment on how standards of training and regulation should be managed for solicitor firms. However, we support the suggestion of Consumer Advice that solicitor firms should have to list specialisms, and only be able to list Will-writing if there is clear independently-assessed evidence that they have the necessary skills and up-to-date knowledge to deliver a quality product.

For specialist Will-writers, we believe anyone drafting a Will should have received independently assessed training before being allowed to operate, and that this licence to operate should require regular updating of skills to cover changes in legislation or law.

Despite improving training, however, there will always be cases of inadequate or incorrect Will-writing. Problems with solicitors delivering inadequate Wills through negligence are open for redress through payment against a claim from the solicitor's compulsory professional indemnity insurance. TI has identical PI insurance in place, as do most other large professional independent Will-writers. We believe anyone trading as a Will-writer should have this insurance in place, independently verified, before they are allowed to trade.

As well as protecting the consumer directly, a requirement to have professional indemnity insurance in place will also drive up standards, by acting as an effective market barrier to those judged by insurers to be at high risk of claims. Good quality individual Will-writers will still, as at present, be able to arrange their insurance via third party trade associations.

We do not believe the case has been made for the creation of a compensation fund for the independent sector, similar to that solicitor's compensation fund. First, this fund exists to cover cases of fraud or embezzlement, recognising the particular risks which exist when members of the public employ someone they believe to be widely legally-trained and independently regulated. This is not the case for independent Will-writers. Further, Will-writers do not have access to client's funds in the same way or to the same degree as solicitors can and often do. This is a case where we do not believe the rules which extend to general practice solicitors are appropriate for specialist Will-writers. Redress for fraud or theft are in our view adequately covered by existing criminal law.

Will storage and retrieval

We believe any organisation or individual offering Will storage services should be required to be independently licenced or have their facilities audited on a regular basis.

One way this could be done is by placing a duty of auditors to include this in their reports: it could be argued that the Wills under the control of a firm are potential assets or liabilities, and therefore should be reported on. Such reports would also be required from solicitor firms, either via annual audits, or via their own regulatory framework.

Independent oversight and access to redress

The Legal Ombudsman has already extended his remit to cover some sections of the independent Will-writing industry on a voluntary basis. TI would welcome this remit becoming official, and to cover anyone offering Will-writing, probate or estate administration services.

If necessary, the Legal Ombudsman could be added to the list of organisations able to invoke powers under Consumer Protection Regulations.

8. Conclusion

The Legal Services Board investigation, specifically the evidence unearthed by the LSB's Consumer Panel, has demonstrated the need for a better understanding of the Will-writing, probate and estate administration market. The largest problems, and the largest cause of consumer detriment remain, in our view, the number of people without Wills, and the inadequate quality of a large proportion of the Wills being paid for by consumers, who are in most cases ignorant to these failings.

We hope our input, as a substantial player in the independent market, will help in the LSB's and others' further considerations of how to address these two major issues.

TRUST

INHERITANCE

Head office: 01934 422 991
www.trustinheritance.com
Trust Inheritance Limited,
Crown House, 1 Stafford Place,
Weston-super-Mare BS23 2QZ