

# CONSULTATION RESPONSE



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## Investigation into will-writing, estate administration & probate activities

### Introduction

Which? welcomes the opportunity to submit evidence to the LSB's investigation into will-writing, estate administration and probate activities. We particularly welcome that the LSB has widened the investigation to consider probate and estate administration as well as will-writing.

Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and funded through the sale of Which? consumer magazines, online services and books. Which? works to make things better for consumers. Our advice helps them make informed decisions. Our campaigns make people's lives fairer, simpler and safer. Our services and products put consumers' needs first to bring them better value.

Which? Legal Service now provides a will-writing service to Which? members<sup>1</sup> and we have long published a guide to Wills and Probate<sup>2</sup>, part of our essential guide series.

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<sup>1</sup> <http://www.whichlegalservice.co.uk>

<sup>2</sup> <http://www.which.co.uk/publications/books/finance/wills-and-probate/>

[www.which.co.uk/policy](http://www.which.co.uk/policy)

For all  
consumers



## Summary of our views and evidence submitted

Which? has not conducted full research into this market so the evidence we are able to submit to the LSB's investigation is limited to the following attachments, and the general points and observations that follow.

- Which? Money article on executors (July 2010) which found that some providers charge as much as 4.9% of the estate's value<sup>3</sup>.
- Which? Money article on probate (December 2011) which found fees ranging from £1,500 to £4,320 to carry out probate work on a straightforward estate. The investigation also found that quotes varied from £300 to £1,080 for simply obtaining a Grant of Probate. Linked market research found that just 1% of consumers 'shopped around'<sup>4</sup>.
- A Which? Conversation (online) about wills and probate<sup>5</sup>.
- October 2011 market research conducted with 1,217 Which? members about their attitudes to will writing and probate<sup>6</sup>.
- Though it is now superseded by the LSB Consumer Panel's July 2011 report, for background information, we also enclose the October 1996 Which? article on will-writing.

Which? members are far more likely to have made a will - research conducted in 2009<sup>7</sup> found that 80% of our members have made a will compared to the national estimate of 36-48%<sup>8</sup>. They are also more likely to handle the probate process without professional assistance. In 2010, 36% of probate applications were personal but 54% of the 340 members who told us they had acted as an executor of a will in the past 5 years had managed probate themselves compared to 42% who used a solicitor, confirming our belief that it is possible to self-manage probate for the majority of estates<sup>9</sup>.

Which? of course supports greater protection for consumers in will-writing and the associated probate and estate administration services. We welcomed the July 2011 report of the LSB's Consumer Panel and we concur with all their conclusions on will-writing.

On the quality of wills, it is interesting to note that as far back as October 1996, Which? reached a similar conclusion to that of the Panel. Their July 2011 report found the same proportion of wills (one in four) prepared by solicitors and will-writing companies failed a quality test. In a

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<sup>3</sup> full figures were quoted in LSB Consumer Panel's July 2011 report (page 35)

<sup>4</sup> Which? Money December 2011 will be published on 14 November 2011.

<sup>5</sup> <http://conversation.which.co.uk/money/writing-a-will-probate/>

<sup>6</sup> All statistics quoted in this response are drawn from this market research (October 2011) except where noted

<sup>7</sup> Which? omnibus 16 report (March 2009)

<sup>8</sup> LSB Consumer Panel: regulating will writing (July 2011)

<sup>9</sup> Which? Money (December 2011)





similar vein, our 1996 investigation found that no one type of will writing professional gave a consistently good service or was significantly better than the other types.<sup>10</sup>

Now that the Legal Services Act 2007 is in force, we would not now oppose making will writing a reserved legal activity as this would mean other providers of wills other than solicitors could be regulated as 'approved regulators' by the LSB. This would ensure standards are raised across the sector. It would also bring consistency with Scotland, where will writing was made a reserved legal activity in 2010. In England and Wales, it would also have the advantage of ensuring that all will writing would come under the aegis of the Legal Ombudsman thus enabling consumers to access redress regardless of who wrote their will. When we asked our members their view on redress, just 12% disagreed with the idea that it should be possible to complain about a will to the Legal Ombudsman regardless of who wrote it.

We also think the Legal Ombudsman should have jurisdiction over any dispute relating to probate and estate administration as consumers are likely to be confused to find that a service they think of as a legal service - probate and estate administration - does not fall fully under its jurisdiction.

Given the changing legal services market as a result of market liberalisation (alternative business structures) and the various routes from which it is possible to get a will (via a bank, a will-writing firm, DIY), we asked our members about where they got their will from. We found that the vast majority of our members use a solicitor (75%) and get their will in person (88%). The use of DIY will-kits was very low, though younger people were more likely to use a DIY will-kit (10% of under 45s compared to 3% overall) so this might suggest a changing market in future. Just 2% of our members had got their will online though this varied from 0% to 6% depending on source. It is also striking that 27% of our members (with a will) said they would consider doing so without using a professional in future, a significant rise from the 8% of our members who actually did write their own will (including those who used a DIY will-kit).

On fees, we found that 12% of our members considered the fees charged by a professional to be more expensive than they were expecting. The vast majority (68%) thought the fees were in line with what they expected. It should be noted however that this does not probe whether fees charged are in fact proportionate or fair.

Which? also welcomes the LSB's decision to widen the investigation to include probate and estate administration as we believe these activities are closely related to and should not be disentangled from will-writing services. The will writer is likely to be the link between the

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<sup>10</sup> This was the reason Which? opposed making will-writing a reserved legal activity prior to the enactment of the Legal Services Act 2007 as we did not think that this legal activity should be reserved to solicitors alone, in the same way as has been the case with conveyancing since 1985,





deceased person whose will it was and the person (or persons) who is (or are) the executor and/or the beneficiary of the will.

In some cases, this link is even more direct where the professional person who wrote the will is also an executor. This can be a very important link because, as noted above, our December 2011 article on probate found that just 1% of consumers 'shopped around', in other words they use the firm that wrote the will for the deceased person to then also manage probate. We found around a quarter of our members had named a professional executor, though the vast majority (86%) had chosen family members too, following best advice. Where a professional executor was chosen, it was most likely to be a bank (61%) but 24% had a solicitor executor and 11% chose a specialist will-writing firm. When asked why they did this, views were mixed. The most common reason given was in case the other (family or friend) executor died.

We also found that, while most people were told about probate arrangements and appointing a non-professional executor, fewer were told about fees associated with probate. While most of our members (65%) were aware they could self-administer probate, when asked if they knew they could ask a professional executor to stand down, 48% did not know this compared to 42% who did.

We hope this evidence is of assistance to the LSB's investigation. Please let us know if there is any further information we can provide. We look forward to seeing the conclusions and your recommendations for improving the wills, probate and estate administration market to the benefit of consumers.

