



**ENHANCING CONSUMER PROTECTION,
REDUCING REGULATORY RESTRICTIONS:
WILL-WRITING, PROBATE AND ESTATE
ADMINISTRATION ACTIVITIES**

**A RESPONSE BY
THE CHARTERED INSTITUTE OF LEGAL
EXECUTIVES
AND
ILEX PROFESSIONAL STANDARDS LIMITED**

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Introduction

1. This response represents the joint views of The Chartered Institute of Legal Executives (CILEx) an Approved Regulator under the *Legal Services Act 2007 (the 2007 Act)*, and ILEX Professional Standards Limited (IPS), the regulatory body for 20,000 members of CILEx. The consultation was separately considered by CILEx and IPS. The outcomes of those respective considerations were exchanged and with no significant difference of opinion between the two organisations, a joint response is tendered. For the purposes of this consultation response, 'we' is used to mean both CILEx and IPS unless the context suggests otherwise.
2. CILEx and IPS promote proper standards of conduct and behaviour among Chartered Legal Executives and other members of CILEx. We aim to ensure CILEx members are competent and trusted legal practitioners and are fully aware of their obligations to clients, colleagues, the courts and the public. We aim to help good practitioners stay good and improve throughout their careers and to ensure the public know the quality of work Chartered Legal Executives can provide.
3. We welcome the opportunity to comment on proposals put forward by the Legal Services Board (LSB) on the regulatory approach to will-writing, probate and estate administration. We hope the responses to questions below may be of value to the LSB and help to inform its approach.

Question 1: Do you agree with the scope of the proposed reserved will-writing activities and estate administration activities? Can the scenarios provided in Annex 1 of the Provisional Report be caught within the scope of the proposed new reservations? What are the likely impacts of the scope of the proposed activities as described?

4. In the consultation the LSB defines the activities that should be reserved in relation to will-writing and estate administration as:

'Will-writing and legal activities provided ancillary to the writing of a will, such as:
 - taking instructions and obtaining background information;
 - drafting the will and making subsequent amendments;
 - providing advice relating to the preparation of a will and subsequent amendments – for example, advice about tax, wealth management or the legal instruments available to give effect to the consumer's wishes; or
 - advising on and overseeing the execution of a will.'
5. At first glance bullet point 3 'providing advice relating to the preparation of a will and subsequent amendments', appears to fall within the remit of general legal advice which is currently not a reserved activity.

6. However, when studied carefully in the context of the entire consultation, it would appear that the 'and subsequent amendments' in bullet point 3 distinguishes this activity from general legal advice. This interpretation of bullet point 3 corresponds with scenario 5 at Appendix 1 of the Provisional Report which states:

'...the simple provision of advice, even where it is in relation to a will or an individual's estate, will not fall within the scope of the new reservations unless it is provided in conjunction with the actual writing of a will or administration of an estate'.

7. We welcome clarification as to whether we have interpreted bullet point 3 correctly. The LSB should consider re-wording bullet point 3 so that it is clear whether only advice provided ancillary to one of the core activities of creating a will or administering an estate is reserved.

8. As per our response to the LSB's consultation in April 2012 on this topic, we are pleased that the exemption for individuals not acting in expectation of fee, gain or reward will be extended to will-writing and estate administration. This is a common-sense exemption and consistent with some of the existing reserved legal activities. The scenarios in Appendix 1 of the Provisional Report provide clear examples of how this will work in practice.

9. We agree with the LSB's view that approved regulators designated to authorise providers to carry out estate administration should also be designated to authorise providers to carry out probate activities due to the close alignment of the activities and that each regulator has a single set of regulatory arrangements to cover both activities.

Question 2: What are your views on the options for implementation that we have described?

10. Paragraph 62 outlines that reservation will only take effect when there is at least one approved regulator and licensing authority (including provisional designation) with regulatory arrangements that allow for authorisation. This reflects option 1 on page 29. Provisional designation will create an un-level playing field as some approved regulators and licensing authorities may be given default authorisation in the first instance.

11. Option 3 appears to be the safest, as only those individuals and entities that are subject to oversight by specified bodies may undertake the newly reserved activities, until approved regulators are designated. However, as mentioned in the consultation, the market would be severely restricted and competition greatly reduced if this option was pursued. It is important to avoid the unintended consequence of closing the market to any existing type of provider. This would not be in the consumer interest and would impact on access to justice. However,

in order to decide whether this option is viable it would be helpful to have an indication of the 'specified bodies' whose members would be able to continue to practise, during the transitional period.

12. The LSB's preferred option is option two because the objectives will be delivered quickly. However, the speed of delivering the objectives should not be the only factor considered. The risk of unscrupulous providers within the unregulated sector accelerating their activities to maximise profit should be thoroughly considered also. That said, option two reflects a reasonable balance between the protection of consumers and the preservation of current providers.

Question 3: Do you agree with the initial assessment of the consequential amendments that would likely be needed? Are there any other consequential amendments you consider would be necessary?

13. We have no comment.

Question 4: *To prospective approved regulators: What legislative changes do you think will be required in order to implement regulatory arrangements for these activities (in line with the draft section 162 guidance)?*

14. The proposed section 162 guidance appears to be mandatory in nature. In the guidance the LSB imposes prescriptive requirements on approved regulators, prospective approved regulators and licensing authorities. Such prescriptive requirements under section 162 of the 2007 Act usually require rules to be made by regulators implementing them, which can at times, clash with outcomes focused regulation.

15. It is interesting to note here section 28 of the 2007 Act, which states:

'(2) The approved regulator must, so far as is reasonably practicable, act in a way—

- (a) which is compatible with the regulatory objectives, and
- (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.'

16. Section 28 provides approved regulators with autonomy to choose the most appropriate way to regulate their individual regulated communities, in order to meet the regulatory objectives. It would be compatible with outcomes focused regulation if this autonomy was reflected in section 162 guidance.

Question 5: To prospective approved regulators: Will this guidance help you to develop proportionate and targeted regulation for providers offering will-writing and or estate administration activities? What challenges do you think that you will face?

17. The guidance will help IPS assess its regulatory arrangements for regulating will-writing and estate administration activities. It largely contains requirements set out in other LSB papers for example Developing Regulatory Standards, Internal Governance Rules, LSB guidance on s112(2) and the Approaches to Quality consultation.
18. In the guidance the LSB proposes that there is one appellate body for appeals that affect individuals and entities conducting will-writing/estate administration and probate and that it should be the First Tier Tribunal of the General Regulatory Chamber. The process of appeals going to the First Tier Tribunal of the General Regulatory Chamber is a feature of regulation of alternative business structure. It is unclear whether the LSB intends this to apply to approved regulators as well as licensing authorities. This requirement will be a little more challenging than the others and will require a change to regulatory arrangements of approved regulators who are not also licensing authorities.

Question 6: Do you agree that having mandatory regulation for all firms in the market will improve consumer confidence?

19. We agree that having mandatory regulation for all firms in the market will improve consumer confidence. Mandatory regulation will improve quality standards across the will-writing and estate administration market. Consumer confidence in this market is likely to increase over time, particularly if regulation reduces the number of poorly drafted wills, rogue traders and the risks of fraud. Consumer confidence will also improve as a result of consumers having redress to the Legal Ombudsman (LeO).
20. Consumer confusion is likely to reduce as the regulatory landscape will be simplified through reservation of will-writing and estate administration. It will be easier for consumers to navigate the system and with the availability of up-to-date databases of individuals authorised to provide will-writing and estate administration, consumers will be equipped to make informed decisions about the services.

Question 7: What business impacts (both positive and negative) do you envisage will occur with the proposed reservation of will-writing and estate administration? How will any such impacts affect your business?

21. The impact on regulated businesses will be different to the impact on non-regulated businesses. With reservation, current regulated businesses may be

subject to increased regulatory costs and current non-regulated businesses will begin to pay for regulation.

22. Having mandatory regulation in place will provide minimum regulatory requirements. Reservation will create a level regulatory playing-field whereby all will-writing and estate administration businesses will be required to comply with regulatory standards. As a result, competition will increase as businesses strive for excellence above the minimum regulatory requirements, to set themselves apart from other providers.
23. In terms of practical changes as a result of reservation; on a day-to-day basis, businesses will be required to educate consumers by informing them of the risks in will-writing and estate administration services, put in place indemnity insurance and pay towards a compensation fund. Businesses will also be required to have in place a complaints handling procedure. These changes will largely impact current non-regulated businesses.

Question 8: We are keen to understand the potential impacts of our proposals on equalities. Do you envisage any positive or negative impacts on equalities for either consumers and/or providers of will-writing and estate administration? Please provide details including of any evidence that you are aware of?

24. Based on the LSB's research, reservation is likely to have a largely positive impact on equalities for consumers. This assessment is encapsulated in paragraph 65 of the LSB's *Will-writing and Estate Administration Equality Impact Assessment*, "From our research we know that consumers of unregulated firms tend to have lower income and therefore at higher risk of being vulnerable purchasers; introducing regulation to ensure that protections are in place will overwhelmingly benefit these consumers."
25. The cost impacts will largely affect those firms that are not currently regulated. Some of those firms may exit the market as a result of not being able to implement appropriate systems to meet regulatory requirements. The LSB would need to have some information on the demographic make-up of the non-regulated will-writing and estate administration community in order to come to the conclusion that the risk of an adverse impact on firms exiting the market due to additional regulatory costs is unlikely "in a substantive way, to disproportionately affect groups or people that fall within the protected characteristics of an equalities impact assessment". There does not appear to be evidence supporting this decision within the equality impact assessment.

Question 9: Do you envisage any specific issues arising from the proposals to impact negatively on consumers at risk of being vulnerable? Would any of the proposals actually increase their risk of becoming vulnerable?

26. It is not evident how the proposals could impact negatively on consumers at risk of being vulnerable. As wills can involve very sensitive and emotional issues, there is the potential for any client to be a little vulnerable. Therefore if the proposals impact positively on consumers generally they are likely to impact positively on vulnerable consumers also.
27. Non-regulated firms will experience a higher cost burden as they previously would have been in a position where they paid nothing towards regulation. If firms pass the increase in regulatory costs on to the consumer, consumers of previously non-regulated firms may be disproportionately affected. That is if non-regulation enabled non-regulated firms to provide low price services to attract consumers. Furthermore, if those consumers who would have been attracted to the low prices non-regulated firms could offer were vulnerable, possibly on low incomes, vulnerable clients would be disproportionately affected by regulation. It is debatable as to whether this affect is negative or positive, because arguably those consumers who may end up paying more for services should benefit in the long run by receiving a better quality service and product and the opportunity to seek redress if the service or product is defective.
28. The impact appears to be largely positive on consumers at risk of being vulnerable. Older people are a target market for providers. While it would be a mistake to label all older people as vulnerable, it is accepted that older people more often can become confused by complex services and intimidated by pressure sales tactics. Reservation, more specifically, the section 162 Guidance addresses the issue of poor sales practices.
29. The people most affected by a will are those named in the document, including the beneficiaries and any dependents. They are poorly placed to prevent problems with wills and the remedies available to them are limited. Beneficiaries and dependents, in particular children may be classed at risk of being vulnerable. Reservation should improve the technical quality of wills that are produced, which should benefit beneficiaries and dependents. Furthermore beneficiaries will benefit if approved regulators align their position with the position adopted by LeO, and accept complaints from beneficiaries in certain circumstances. It will also balance the bargaining power between the provider of will writing services and the recipient (consumer) of those services.