Response to the Legal Services Board

Consultation Document

Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities

Wilson Cotton

The author

I have specialised in trusts and estates since qualifying as a chartered accountant in September 1981.

I am currently a member of the Private Client and Inheritance Tax and Trusts Committees of the Tax Faculty of the Institute of Chartered Accountants in England and Wales (ICAEW). I am a founding member of the Society of Trust and Estate Practitioners (STEP) and have served on its council, as the inaugural chairman of the City of London Branch and on the International Estates and EU Law Committees. I have recently completed my four year term of office as the president of the Association of Corporate Trustees (TACT) and am one of only two non-lawyer members of the Trust Law Committee, which is made up of academics, solicitors, barristers and members of the judiciary and is linked to the Law Faculty of King's College London.

I am a partner of Smith & Williamson LLP, which is ranked as the eighth largest firm of Chartered Accountants in the UK by fee income and is unique in combining an accountancy practice and a private bank and investment business. Smith & Williamson Investment Management Ltd manages approximately £13billion of client investments and is one of the largest investment managers in the private wealth sector. Approximately 60% of Smith & Williamson's turnover derives from private client work. I am also a member of the management board of Smith & Williamson Trust Corporation Limited, which acts as a corporate trustee and executor on behalf of the firm's clients.

I am a director of NSF Trustees Ltd and Rethink Trust Corporation Ltd, two trust companies set up by Rethink (the National Schizophrenia Fellowship), a leading mental health charity, which act as trustees for persons suffering from acute mental illness.

I act as a trustee and executor both personally and via Smith & Williamson Trust Corporation Ltd. I have been appointed by the courts to carry out both roles, often in the context of major family and other disputes. Examples of the estates with which I have been involved are set out for illustrative purposes in this report. I was also a member of the working party for the important case on the administration and distribution of the estates of deceased Lloyd's names reported as In Re Yorke Deceased [1997] 4 All ER 907.

Smith & Williamson acts as accountants and tax advisers to a number of leading firms of solicitors and has publically stated that it currently has no intention of setting up or investing in its own law practice.

Disclaimer

The opinions expressed in this response are those of the author. They should not be regarded as representing those of either Smith & Williamson or any of the professional bodies and organisations of which I am a member.

Wilson Cotton **1 November 2012**

INTRODUCTION

I welcome the opportunity to comment on the consultation document published in September 2012 by the Legal Services Board entitled Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities.

I confirm that I am happy for this response to be made publically available, including by publication on the website of the Legal Services Board.

Main Principles

The principles underpinning the proposals contained in the consultation document are stated as:

- Keeping the market open to all types of will-writing and estate administration providers;
- Ensuring that proportionate protections, including access to redress, are in place for all consumers irrespective of who provides their service;
- Providing the opportunity for all providers to be regulated on an even-footing to support a fair and competitive market for both consumers and businesses; and
- Improving the existing legal services regulation that applies to the majority of providers in these markets.

I would suggest that there are two further principles that should underpin the proposals.

- Not to place a restriction on the ability of a testator or the courts to make an informed decision as to the selection of those persons regarded as best qualified to carry out the role of executors or administrators of an estate or intestacy; and
- Not to place a restriction on the ability of those persons named as executors to fulfil the wishes of the deceased and discharge their duties in the best interests of the legatees and any other interested parties.

For the reasons set out in my responses to the questions set out in the consultation document, and in particular the proposed reservation of estate administration, I do not believe that the proposals satisfy those objectives; indeed, I would argue that they contravene those principles.

Evidence presented

The evidence presented in support of the proposals appears weak and is very much concentrated on one narrow sector of the market, which might typically be described as High Street work. This term is not intended to be derogatory, but is one that is well understood and in common parlance. I would highlight in particular the examples set out at paragraphs 36, 37 and 38 on pages 22 and 23 of the consultation document.

Paragraph 31 of the report states,

"*We think it likely that most consumers would view preparing the papers on which to found or oppose a grant of probate as a step within the wider process of administering an estate and would therefore wish to use a single provider to deal with the whole process."*

The qualification, *"we think it likely,"* at the beginning of the statement indicates at best uncertainty about the quality of evidence. Whilst the preparation of probate papers is a step within the wider process, it is only one of many steps that need to be taken, and often forms a very minor part of the whole process. This does not support the conclusion that most consumers would wish one person or firm to be responsible for it. The term consumers is not defined and is therefore assumed to cover both testators and legatees, whose wishes may sometimes be in conflict. Further, "*most*" is not *"all",* and many sophisticated testators will have firm views on who is best qualified to carry out the different legal and financial steps in administering their estates. Many will regard the interests of their legatees as being best served by a combination of lawyer, accountant and family member, each bringing different but complementary skills and knowledge to the process.

As part of my response I will include various anonymised examples. They are all based on cases with which I have been involved. They will demonstrate the complementary skills brought to the administration of an estate by professionals drawn from different backgrounds.

Choice of executor

The choice of executor is a fundamental right of any testator and artificial barriers should not be put in the way of someone exercising an informed choice. Facing death can be a lonely and frightening experience and coming to terms with it is not helped if the testator believes that his wishes will not be fulfilled.

I would highlight the following example:

Miss A

Miss A was a former employee of Smith & Williamson. We acted as her tax advisers and managed a small portfolio of investments for her. She had no relatives and had not made a will. She had inherited her house from her parents and had no other professional advisers.

I was contacted by her local hospital. Miss A was terminally ill in hospital with an aggressive form of cancer and MRSA. She was likely to die within 48 hours and wanted to make a will. She was conscious and mentally capable of doing so, but once she lost consciousness was unlikely to regain it.

As Smith & Williamson was the only professional firm that she knew, she wanted us to be involved in the process and for Smith & Williamson Trust Corporation Ltd to act as her executor.

I therefore travelled to her bedside and instructed a local firm of solicitors to join me to take her instructions. Before the solicitors arrived, I talked her through the process so that she was able to make a clear decision about the pecuniary legacies she wanted to give to friends and neighbours and how the residue was to be divided between a number of national and local charities. Her will was prepared and executed within four hours and she died the following morning.

Under the proposals to make the administration of estates a reserved activity it is unlikely that she could have appointed Smith & Williamson, the only professional firm with which she had any relationship, and in whom she had considerable trust, to act as her executors. This would have caused her considerable distress in her final few hours. My reasons for holding this view are set out in the response to Question 2.

RESPONSES

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

The report has looked at three distinct activities, will-writing, the preparation of papers and the administration of estates. I intend to look at each in turn.

Will-writing

Will-writing is a skill that demands formal legal training and appropriate experience. Despite the many years of experience that I have had, I have never prepared a will or legal document for a client, nor am I insured to do so. I might assist a client in formulating his wishes and advise on the tax and financial consequences of them, but I would always insist that he instruct a suitably qualified and experienced solicitor to carry out this work on his behalf. If he does not have a retained adviser, I might introduce him to an individual or firm whose quality of service I could vouch for. Such an introduction would be wholly at arm's length and neither I nor my firm would receive any commission or other financial reward for making the introduction.

I believe that the preparation of legal documents, including wills and trust deeds for reward should remain a reserved activity. There is however one aspect of will-writing, which needs to be addressed by the bodies with responsibility for oversight of those individuals and firms involved, which is highlighted by the first example quoted on page 22 of the consultation document. That concerns the pricing of will-writing services.

Currently the regulatory bodies responsible for overseeing the financial services sector are carrying out a major programme of reform to ensure that fee structures of financial products and for investment management services are transparent. I believe that the fees charged for legal services should be similarly transparent.

Many firms of both solicitors and will-writers advertise themselves as offering will-writing services at a price that does not meet the true costs of the work carried out. This is recognised in scenario 8, at paragraph 87 on page 36 of the consultation document.

The cheap will is a financial inducement to use that firm as the administrator of the estate. This practice colloquially known as low-balling can have the following results:

- Because the will is prepared for less than cost price, corners can be cut, leading to appropriate advice not being given and poor quality drafting;
- The testator might obtain an unrealistic impression of the likely future costs of administration; and
- Might not make an informed choice of who should act as his executor.

For these reasons I would recommend that low-balling and similar predatory pricing behaviour should be forbidden.

Probate applications

There are two processes in the preparation of an application for the grant of probate. The first is the preparation and submission of an inheritance tax return, the second the preparation of papers, including the administration of an oath, for submission to a probate registry.

The inheritance tax return is a financial record, which may contain specialist valuations. Often, but by no means always, a solicitor may not have the same familiarity with a testator's affairs as an accountant who, having been retained to prepare annual tax returns is in regular contact with him. It is often more appropriate for the accountant to prepare the inheritance tax account. The account may also include specialist valuations, which the accountant is required to provide.

The probate oath and other required papers are a different matter. They form an application to court and it is right that only those with the requisite professional qualifications and experience should be permitted to prepare them.

I always instruct a solicitor to carry out this work and this is accepted without comment by legatees. The point made at paragraph 31 that most consumers would prefer one individual or firm to carry out the whole process therefore contradicts what I have encountered in many years of practice.

I support the proposal that the preparation and submission of probate papers should remain a reserved activity.

Administration of estates

Whilst there are legal elements to the administration of estates, most of the work is of a financial nature. I have long believed that the provision of trust services will become a regulated activity, as it is in most international financial centres, as a necessary safeguard against attacks on the use of trusts by international bodies such as the Financial Action Task Force (FATF) and the Organisation for Economic Co-operation and Development (OECD). Such organisations tend to be dominated by those from civil law jurisdictions with little or no knowledge of the law of trusts, which is such a fundamental feature of the common law.

Whilst I see regulation as inevitable and something that should be supported, I cannot accept that estate and by extension trust administration should become reserved activities. This would create a monopoly where one does not exist, exclude suitably qualified persons and firms from operating in the sector, restrict choice and be to the detriment of legatees and beneficiaries.

Many of the problems that are the subject of complaint could be solved by regulation which included the following features:

- Mandatory professional indemnity insurance – this would provide consumer protection and since premiums would reflect claims history, professional experience and qualifications, and firms' systems and controls would act to price the unprofessional out of the market;

- Fee transparency – in promotional material and letters of engagement, by bills being rendered regularly which disclose the rates charged, the time spent and the work carried out. To manage conflicts of interest there should be clear agreement over who will approve fees for payment. All commissions earned from third parties must be disclosed;
- All firms should have an agreed complaints procedure;
- All firms and individuals should be supervised by a professional body with proper codes of practice that can be enforced by investigatory and disciplinary powers; and
- All individuals are required to undertake mandatory annual minimum levels of Continuing Professional Development (CPD).

These are the hallmarks of good regulation.

Many of the functions carried out have a financial rather than a legal element. The majority of the work involves handling client money and making investment decisions. This work is similar to that currently covered by Financial Services legislation and regulation. I therefore question whether it is correct to characterise it as a legal service.

Whilst ancillary activities might not themselves be subject to reservation, it is proposed that they should be regarded as such when they are carried out by a paid executor, or by a firm in which he shares in the profits. Such tasks may include:

- The preparation of estate accounts;
- The preparation and submission of executors' annual income tax returns;
- The valuation of private company shares and other business assets for fiscal reasons or on disposal;
- Tax investigation work involving the deceased's personal affairs;
- Forensic accountancy work in support of legal claims brought by the executors.

May I now draw your attention to the following two related examples:

G

G was a wealthy gentleman. He had lived with a female companion (V) for over fifty years but had never married her because they came from different religious backgrounds. He had no children but had numerous relatives, many of whom he had helped out of financial difficulties.

His will named V, a nephew (L) and his solicitor (T) as his executors, to whom probate was granted. Subsequently V lost mental capacity and was removed by the court.

After various substantial pecuniary legacies to V, the residue of the estate was left on charitable trusts.

The assets of the estate included an important and extremely valuable collection of musical instruments, including one which has been independently described as a world heritage piece.

Leading dealers in the UK and US were appointed to advise the executors on their value and to dispose of some of the items. The deceased had been extremely secretive about the collection and no proper record of the individual instruments was found among his papers .

Following her loss of capacity an action was brought on behalf of V claiming ownership of some of the most valuable items. This was without merit and was prompted by members of G's extended family who stood to gain under V's will. V subsequently died. This claim was dismissed by the court.

T began to entertain doubts about the actions taken by the dealers and following investigations carried out by my firm, it became apparent that instruments had been sold and either the full profits had not been accounted for or the proceeds distributed to members of the family who were not entitled to them. One of the recipients was L, who was duly removed as an executor by the court. I was appointed in his place.

As a result of the investigations carried out by my firm, legal actions were launched in both the UK and USA. These took over four years to reach a conclusion and I was required to attend a number of hearings in both London and Chicago.

and

V

V has been mentioned in connection with G above. As a result of the case brought by the executors of G, her executors were removed by the courts and I was appointed in their place. As part of the order appointing me, I was instructed to trace and recover items belonging to the executors of G or to account for their proceeds of sale.

The reasons that the court ordered my appointment as an executor were:

- The estate and claims brought were complex and demanded the different but complementary skills of a solicitor and an accountant working together as executors; and
- The work that I and my firm had already carried out made me familiar with the estates' financial affairs and the claims being pursued in the UK and USA.

I understand that it has been suggested that if the proposals that are being put forward proceed, members of other professions, notably accountants, should either renounce their appointments or provide their services for free.

There is one matter that I should draw attention to in relation to the example G. The residue of his estate was held for charitable purposes. The appointment of a replacement executor therefore required the approval of the Attorney General and the Charity Commission. The Government Law Officers concurred with the view of the solicitor executor T that for the reasons stated the best interests of the estate were to be served by my appointment.

As can be readily imagined, actions in two jurisdictions that took four years to settle and which also involved regular progress reports being made to the Attorney General involved significant amounts of time on my part and those of my colleagues. It is unrealistic to suggest that all of that work should be carried out without charge.

Whilst the circumstances of the above related examples may be unusual, those of the following may be far more prevalent:

J

J was a successful businessman. He died leaving a wife and four children, two adult children by his first marriage which had been dissolved, and two by his second. Most of his assets were held jointly with his wife, which passed to her by survivorship. The principal asset in his estate comprised the majority shareholding in the holding company of a group of trading and property companies.

Following major family disagreements, the executors named in his will, who were opposing family members, agreed to stand down in favour of two independent executors, me and a solicitor.

It soon became apparent that the family disputes had left the group without direction. The financial records were in disarray, at least one subsidiary was potentially insolvent possibly as the result of fraud, underperforming companies needed to be either sold or closed down and a new management team appointed. My role therefore involved identifying a business turnaround expert to manage the group, instructing forensic accountants to investigate the group's affairs and valuing subsidiaries for disposal.

In addition, the deceased's personal tax affairs were the subject of a major investigation by HMRC. I therefore had to identify those areas under investigation and reach a settlement with HMRC.

Whilst the problems were caused by appointing executors whose interests were diametrically opposed and the failure of the deceased to address succession issues within the business at a time when he was undergoing treatment for a terminal illness, it again demonstrates that the work carried out by an executor is often of a financial rather than legal nature, particularly where the principal asset of an estate is an interest in a family business.

My final example involves what might best be described as the darker side of human nature.

S

S was a musician who died intestate. He was divorced with two teenaged children. His ex-wife was a wealthy socialite who had provided him with a substantial divorce settlement. He suffered from alcohol and drug addictions.

His ex-wife was unwilling to act as the administrator of the estate as a former associate of the deceased (R) had threatened to make substantial claims against the estate, which were believed and subsequently held to be fraudulent. These may have been connected with S's drug dependency.

A settlement also needed to be negotiated with HMRC covering the deceased's tax liabilities which were under investigation.

S's ex-wife and children were advised by leading counsel that their interests would be best protected by appointing a trust corporation to act as the administrator of the estate. I was approached and my firm's trust corporation was duly appointed by the court to act as administrator of the estate. As the director responsible for the assignment, my duties included carrying out a forensic investigation of the deceased's financial affairs and in particular his dealings with R. I defended the claim brought by R and was successful in making a substantial counterclaim against him.

The reservation of estate administration services could have prevented the family and in particular the deceased's two minor children from employing the services of a trust corporation, which leading counsel had advised was necessary for their protection.

Many wills leave assets on trust and name the executors as trustees. Although the executors and trustees are two separate bodies, there is often no formal process whereby the executors become trustees. The transition just happens.

If reservation of estate administration is introduced, we would end up with the situation where two directly comparable functions were subject to different regulatory regimes. Executors who were unable to act for regulatory reasons might also not appreciate that they remained in office as trustees. This creates a recipe for confusion. Paragraph 28 of the consultation document rightly rejects the reservation of trust administration services, however I believe that a common regulatory regime should apply to both.

Response: Whilst I support the proposal that will-writing and probate activities should remain subject to legal reservation, I am opposed to its extension to estate administration. I would however support the introduction of regulation which included the features that I have identified. The proposals which would effectively bring ancillary activities within the scope of reserved activities will deter those who are properly qualified from taking up appointments. A monopoly will be created that does not currently exist, the courts and testators will have their choice of professional executors restricted and legatees may suffer a significant deterioration in the level of service given to them. Further, an artificial distinction is created between estate and trust administration activities.

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

Those individuals and companies who act as professional trust and company service providers are already subject to regulation under financial services and money laundering legislation. The financial Services Authority and HM Customs and Revenue have regulatory oversight of this delegating responsibility to Recognised Professional Bodies (RPB), including the ICAEW, but also acting as a direct regulator for those individuals and firms that are not members of a RPB. It is unclear whether the Legal Services Board would act as a direct regulator of those individuals and firms that are not subject to supervision by a professional supervisory body that it has recognised.

NSF Trustees Limited and Rethink Trust Corporation Limited

NSF Trustees Limited was set up by the mental health charity the National Schizophrenia Fellowship (Rethink) to act as a trustee of trusts set up by the relatives of those suffering from mental illness. Such trusts are often set up by will, or are funded by legacies. Rethink has an extensive outreach programme and a helpline and support network for patients and their carers.

In 2010 Rethink Trust Corporation Limited was incorporated. As a trust corporation it can carry out a wider range of functions than a trust company, including acting as an executor.

Fees are charged by both companies and any modest profits are distributed to Rethink to assist in its charitable activities. The board of both companies is made up of a mixture of carers (relatives of schizophrenia sufferers) and professional advisers. All serve on a purely voluntary basis and none receive any remuneration.

It is understood that a number of other charities working with the disabled and vulnerable have similar arrangements in place.

As these trust companies are not owned by financial institutions or professional practices, they risk having orphan status and being excluded from the marketplace unless a default regulator is created.

For individuals typically working as principals or employees of professional partnerships, two hurdles would need to be overcome:

1. The professional body of which they are a member would have to have reached agreement with the Legal Services Board that it could act as a designated regulator; and
2. The firm with whom they worked would itself have had to have achieved registration as a legal service provider.

The same issues affect trust companies and corporations controlled by professional practices.

As has already been noted in my response to Question 1, much of the work carried out by estate administrators is of a financial rather than legal nature. Any regulation of these activities must be consistent in both letter and spirit with existing requirements. Agreement must be reached with financial services regulators over the boundaries of the respective regimes to prevent duplication, and ensure that protection is proportionate.

Few people review their wills regularly, even the most financially sophisticated. For many a will is something to be considered at best once every decade. Sophisticated wills may often make extensive use of discretionary trusts and whilst the letter of wishes may be reviewed and changed on a regular basis, the will itself may not be, particularly if the named executors are corporate entities or the partners of a particular firm. Testators may be reluctant to incur the expense of amending their wills for purely regulatory reasons, which they do not regard as providing any benefit to their dependants and if capacity has been lost in the intervening period, it may be difficult and expensive to do so.

Any implementation programme must recognise all of these issues.

Response: Implementation must recognise the overlap with the requirements of other statutory regulators. It must not leave providers particularly from the charitable sector excluded from fulfilling a social need. It must recognise the reluctance on the part of testators to review their wills on a regular basis.

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?

As noted in my response to Question 2, there may be overlap with existing financial services regulation. The consultation document does not include mention of any financial services legislation where consequential amendments may be required. It is therefore unclear whether this issue has been considered.

Draft regulations have not been published, but given the regulatory overlap and the stated desire that protections should be proportionate and support a fair and competitive market, I would expect any regulations to include:

1. A light touch regime for those firms and individuals who are already subject to financial services regulation;
2. To provide a minimum level of customer protection, which is equal to that enjoyed by regulated firms; and
3. As noted in my response to Question 1, lowballing and other inducements should be outlawed.

Response: The effect on existing financial services legislation and regulation should be considered to ensure that no conflicts arise and an inferior customer protection scheme is not created.

Question 4: To prospective 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)?

Response: No comment is offered.

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?

Response: No comment is offered.

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

Whilst the stated aim of regulation is to improve consumer confidence, that will only be the case if the systems and procedures adopted by regulated firms avoid the trap of being prescriptive and formulaic.

Regulation must be proportionate and risk based. It must however avoid the pitfalls of other risk based regulation such as that required under the Money Laundering Regulations, where all too often

a prescriptive approach is adopted with one eye towards the regulator rather than the purpose of the legislation. This causes frustration and resentment among customers, with minimal added protection to the institution, other than for the avoidance of disciplinary action and the imposition of fines.

Sanctions taken against individuals and firms often offer no financial redress to the complainant. As previously noted, regulation must therefore include:

- A compensation scheme for clients and customers who have received a poor service;
- A robust complaints procedure; and
- A disciplinary system with the power to exclude from practice those who persistently fail to satisfy expected standards.

Response: Regulation per se will not improve confidence. It is how it is implemented that is the key factor.

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?

Question 6 refers to mandatory **regulation**, however Question 7 refers to **reservation**. They are two different concepts and should not be treated as terms that are interchangeable.

At paragraph 4 it is stated "Our proposals are another step along that path by levelling the playing field between currently regulated and unregulated providers." However at paragraph 7 it is stated "We consider reservation is now necessary to combat the inequalities that totally unregulated competition would allow." I do not regard this as a valid conclusion. Regulation may be necessary to combat inequalities, but not reservation. Far from creating the level playing field that is the stated objective, the effect of reservation will be to erect artificial barriers that favour one sector of the market and disadvantage or exclude professional firms that are already subject to a demanding regulatory regime.

At its extreme a legal executive effectively practicing on his own account as a will-writer, albeit as a participant in a franchised operation that is registered as an alternative business structure , would be permitted to act as an estate administrator, whereas a fully capitalised trust corporation owned by a multi-family office might not.

As alternative business structures are created operating on a franchise basis, reservation may not cut out the poor performers and give improved protection to consumers. At the same time highly professional firms that do not service the general public may be prevented from acting.

F Trust Corporation Limited

F Trust Corporation Limited is wholly owned by FCo Limited, a multi-family office. It has an issued and fully paid up capital of £250,000. It acts as a professional trustee and executor on behalf of the clients of FCo. The clients of FCo are all extremely wealthy and are drawn exclusively from its three founding families. Some are international families who own valuable real estate and other assets in the United Kingdom.

FCo does not offer its services to the general public or advertise for business. As an investment adviser and manager FCo is regulated by the Financial Services Authority.

F Trust Corporation Limited does not provide investment advice and is registered with HM Revenue and Customs as a trust and company service provider in accordance with the Money Laundering Regulations. Its director and staff are all experienced professionally qualified practitioners recruited from financial institutions and legal and accountancy practices. It charges a fee for its services.

Will-writing and the preparation of probate papers are already reserved activities. In my response to Question 1 I have stated that I am in favour of them retaining that status. Greater and more visible enforcement of that reservation will prevent those who are not appropriately qualified from dabbling in this work and improve confidence in the sector.

As I have also already stated in my response to Question 1. I do not carry out these activities. The best managed firms within the sector would always ensure that appropriately qualified and independent legal practitioners are instructed to carry out this work.

Reservation of executorship and estate management activities could have a damaging effect on the market, removing competition, forcing testators to incur the expense of changing their wills and creating uncertainty for families where a named executor is no longer authorised to act.

Regulation inevitably adds to costs, which is why it is essential that duplication is avoided where firms are already subject to stringent regulation. Against that, regulation can itself give rise to better quality risk management procedures, which can in turn lead to a better claims record and less expensive professional indemnity costs.

Reservation of will-writing will not have an effect on my practice. Reservation of estate management and executorship services could potentially have a severe impact if either the professional body of which I am a member (ICAEW) was not recognised as a supervisory body, or the firm of which I am a partner was not registered as a provider of legal services.

Response: The continued reservation of will-writing will have minimal impact. The reservation of estate administration services could add significantly to the compliance costs of those firms that are already subject to stringent regulation. It will not exclude those high risk practitioners who can join a franchised alternative business structure, but will cut out specialist high-end firms that do not serve the general public.

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 consumers and/or providers or

providers of will-writing and estate administration activities? Please provide any evidence that you are aware of?

Response: I will cover this issue in my response to Question 9.

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 being vulnerable?

I have already mentioned Rethink Trust Corporation Limited in my response to Question 2. I am aware of other charities that have set up trust companies that act as trustees and executors for those either suffering from, or whose beneficiaries include those with mental or physical illness and handicap, or age related medical conditions. These are people who are vulnerable, whose families are often, but not always, relatively unsophisticated and therefore rely upon the support of the charity. Often they are the sole carer and therefore have significant concerns about who will help their vulnerable dependent when they die. Such charities have a thorough understanding of the issues affecting those suffering from the particular conditions that they represent,

It is entirely proper that the trust companies they have set up should charge a fee for the provision of this service.

These companies do not offer will-writing services and always refer clients to firms of solicitors on their panel of retained advisers. It would be to the detriment of those who are vulnerable if regulatory barriers prevented such companies from acting in this capacity.

Response: The proposals should not act to deter or prevent trust companies set up by large special interest charities from acting as professional executors and trustees on behalf of those who are vulnerable.

Summary of responses

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

Response: Whilst I support the proposal that will-writing and probate activities should remain subject to legal reservation, I am opposed to its extension to estate administration. I would however support the introduction of regulation which included the features that I have identified. The proposals which would effectively bring ancillary activities within the scope of reserved activities will deter those who are properly qualified from taking up appointments. A monopoly will be created that does not currently exist, the courts and testators will have their choice of professional executors restricted and legatees may suffer a significant deterioration in the level of service given to them. Further, an artificial distinction is created between estate and trust administration activities.

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

Response: Implementation must recognise the overlap with the requirements of other statutory regulators. It must not leave providers particularly from the charitable sector excluded from fulfilling a social need. It must recognise the reluctance on the part of testators to review their wills on a regular basis.

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?

Response: The effect on existing financial services legislation and regulation should be considered to ensure that no conflicts arise and an inferior customer protection scheme is not created.

Question 4: To prospective 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)?

Response: No comment is offered.

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?

Response: No comment is offered.

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

Response: Regulation per se will not improve confidence. It is how it is implemented that is the key factor.

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?

Response: The continued reservation of will-writing will have minimal impact. The reservation of estate administration services could add significantly to the compliance costs of those firms that are already subject to stringent regulation. It will not exclude those high risk practitioners who can join a franchised alternative business structure, but will cut out specialist high-end firms that do not serve the general public.

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 consumers and/or providers or providers of will-writing and estate administration activities? Please provide any evidence that you are aware of?

Response: I will cover this issue in my response to Question 9.

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 being vulnerable?

Response: The proposals should not act to deter or prevent trust companies set up by large special interest charities from acting as professional executors and trustees on behalf of those who are vulnerable.