



**Submission to the
Legal Services Board Consumer Panel
Investigation into Will Writing, Estate
Administration and Probate Activities**

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Solicitors for the Elderly (SFE) is a national organisation of lawyers, such as solicitors, barristers, and legal executives who are committed to providing and promoting robust, comprehensive and independent legal advice for older and vulnerable adults, their family and carers. Our membership includes those working in private practice as well as those working for local authorities, charities and the Official Solicitor's Office.

In addition to their professional qualifications members must have at least five years experience advising older and vulnerable people and complete an examination before joining as a Professional or Full Professional member. The pass mark is 80%. Membership is given to the individual and not the firm. The skills they claim to have must be personal to them and not others within their practice. They must also follow our own code of practice. There are currently over 1200 members based mainly in England and Wales.

Response to call for evidence

1. Do you agree with the Panel's assessment of the problems in the will-writing market and resulting consumer detriments? Are you aware of any key problems and detriments that have not been identified or evidence that any problems and detriments identified are not as significant suggested or are worse?

We are in agreement with the Panel's assessment of problems in the will-writing market. We are however concerned that the problem of will writers mixing client money with business money has not been addressed in the core elements of regulation. Solicitors must follow Account Rules and we would suggest something similar should exist for others, to protect the consumer.

Example problems

Will writer is dealing with the administration of estates and is paying funds from the realisation of assets into his own personal bank account, rather than into a client account, or even his business one.

Will written by the [REDACTED]. However family were surprised to discover the executors were a firm called [REDACTED]. The estate was administered by this organisation. On a number of occasions cheques paid to beneficiaries bounced and had to be re-presented to the bank. The firm was reluctant to provide estate accounts to how explain what was realised and where the money was paid out to

2. Do you agree with the Panel's assessment that will-writing should be a reserved legal activity? Do you agree with the Panel's assessment that alternatives to statutory regulation - such as consumer information, enforcement of existing legislation and voluntary self-regulatory schemes are

unlikely to protect against the identified problems and detriments? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?

We are in agreement that will-writing should be a reserved legal activity and that alternatives to statutory regulation are unlikely to protect consumers adequately. Assessed accreditation schemes should supplement statutory regulation. These benefit consumers by informing them of the training and skills of the advisor and providing some assurance of the ability of the advisor and service delivery.

However there should be recognition that for many solicitors currently in practice, they will have undertaken will drafting and estate administration as a compulsory part of the Solicitors Final Examination until 1991 and its successor, the Legal Practice Course, previously regulated by the Law Society and then The Solicitors Regulations Authority. Similarly Legal Executives also have to undergo compulsory training in this area as part of their qualifying. Any requirement to have undergone accredited qualification training must take this into account to avoid duplication, although we support 'refresher training' as part of continual professional development.

3. What do good providers of will-writing services currently do to protect against problems and ensure that consumers receive a quality service?

For ease, this is listed as bullet points and divided into 'the person providing the service' and the 'delivery'. The first list protects the consumer as the person has the knowledge to do the work and so it reduces errors, with ramifications if things go wrong and provides redress for the consumer. The second is so the consumer (client) fully understands what is being delivered, what to do if things go wrong and only provide the service the consumer needs.

The person providing the service:

- Holds a relevant legal qualification and is independently regulated.
- Undertakes continual training (CPD) to have up to date knowledge of will drafting and related services.
- Required to have insurance to practice.
- Must follow Rules of Conduct and a Code of Practice, with repercussions if they are not followed.
- Access to educational and practice resources to stay up to date between formal training updates.
- Access to tools, such as books and/or on line documentation to deliver the service.
- Membership of professional organisation that advises of best practice.

The delivery of the service

- Produces a client care letter setting out the terms of business, including cost, details of the complaint process, and the work to be undertaken and by whom.

- Operates an internal complaint process.
- Undertakes a face to face meeting; where appropriate the client's mental capacity will be considered; establish whether there is a conflict of interest; determine what the client's aims are; advise on the merits of aims; and provide alternatives where there may be better solutions so advice is always in the client's best interest, objective and impartial. Advice should include all tax implications and potential claims under the Inheritance (Provision for Family and Dependents) Act 1975 and mitigating such claims.
- Clients are only ever told of other related products, if it is appropriate and in the client's best interests. This would usually include details of making a lasting power of attorney.
- There is no hard sell- no reduction if you 'agree to go ahead today' or selling unnecessary products/ services.
- There is a respect for the client's dignity and autonomy, explaining the process and documents to clients in a way they will understand in compliance with the Mental Capacity Act 2005.
- The Will is drafted and sent to the client with a clear explanation of the terms.
- A face-to-face meeting is arranged for the signing of the Will, witnesses provided by the business.
- Copy correspondence and attendance notes, including any request for capacity assessments to medical professionals, are retained until 6 years after the death of the client.
- Where the client asks for the Will to be sent to them to sign, then clear explanatory notes are provided; with a follow up conversation to ensure it has been signed. The original signed Will should be returned to check that it has been completed correctly. A copy is provided for the client.
- The original document is stored in a secure fireproof safe, and logged in a retrieval system to show it has been stored. If the original Will is needed, a system is in place to retrieve the document so it is only given to a person with legal authority to have the Will.

4. If will-writing was to be a reserved activity what specific activities should be included within the scope of the reservation? The Panel has suggested that the scope of regulation should include the commission, sale and preparation of will-writing and related services for fee, gain or reward.

We would add that 'related services' needs to be more clearly defined to include probate and estate administration.

Although the preparation of a trust which disposes of a capital asset is already a reserved legal activity, there is much evidence that will-writers are selling these, as 'Asset Protection Trusts' to avoid paying care fees should the client ever need to go into a care home. They may use solicitors outside England and Wales to draft the trusts or use a 'template trust' and so argue they are not 'drafting the trust as it has already been 'drafted'. They merely fill in the

names and addresses and the asset details. We would also like it to extend clearly to these situations.

See attached the link to BBC's Inside Out programme which highlights an unregulated person misrepresenting how these trusts work. <http://www.bbc.co.uk/programmes/b016d7h8>

5. What specific protections are needed for each problem and detriment that has been identified? Do you agree with the "core elements" (as set out above) that the Panel believe are needed? Do you think that any of the "core elements" are not required on a mandatory basis or that there are other protections that are also required?

We are in agreement with the core elements being mandatory but would add the need to have specific account rules to separate the business money from the client's money as mentioned and illustrated in 1 above.

6. What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?

There is no doubt that consumer protection will improve as the situation is not acceptable at present, as all the problems identified will be prevented or the likelihood of them occurring will be reduced in the future.

Proper regulation will cause some business to go under, because of the cost and time of regulation. However, those unregulated providers who plan ahead and/or already have equivalent consumer protection processes in place are unlikely to be materially affected. It may also encourage new entrants into the field who would see the status of this field of work improve.

Unregulated will writers charge about the same as solicitors, so regulation would mean their profit margin would be more comparable to a solicitors profit margin.

Regulation will mean consumers have a more effective process of redress, than civil or legal action, which is limited because of the cost, someone to pursue (as the company may not exist at this point) and in the case of criminal action is usually reliant on the police taking action. Insurance and a regulatory body with investigative and disciplinary powers will reduce the need to take matters through the court system.

Probate and estate administration

7. What are the key outcomes for consumers that we should aim to achieve?

These are the same as with the outcomes identified for the regulation of will-writing.

8. What are the existing problems experienced by consumers of probate and estate administration services (testators, executors and beneficiaries)? What are the causes? What are the consequences? What evidence is there of consumer harm?

An increasing problem SFE members are experiencing is when a family member notifies a bank of the customer's death. They are then 'tracked' into using a probate service, without informed consent or knowledge, even when professional executors have been appointed. There is often misrepresentation made about solicitors' charges and the service provided. A common theme emerges from those who turn to a solicitor; the client feels they were approached when they were emotionally very vulnerable and did not fully understand what they were doing. These are illustrated in the first two case examples below:

The deceased appointed the partners of the firm of solicitors as Executors. The attorney of the deceased and one of the residuary beneficiaries went into Barclays to inform them of the death and get date of death balances. Barclays persuaded them that their 'partner firm' should come to see them regarding the administration.

A representative from [REDACTED] went to the attorney's home told them that they would administer the estate for a fixed fee of £2900 plus VAT and explained that the solicitor's fees would be much greater than this and solicitors would take much longer to deal with the administration. They also told the attorney that solicitors appointed as executors would renounce when written to. The representative took away the deceased's papers and unfortunately the attorney did not take copies.

Because [REDACTED] had been to see them the attorney cancelled the appointment to see the solicitor 'because [REDACTED] were going to deal with the estate'.

The Will provided for beneficiaries who lived abroad and as such it was not usual for the firm to renounce in these circumstances.

The solicitor had not heard from [REDACTED] nor had the attorney (despite telephoning [REDACTED] so they met and got information in relation to the bulk of the estate sufficient to apply for the grant, which has been obtained. A letter was sent to [REDACTED] requesting return of the documentation but to date nothing has been returned.

A client came into see the solicitor about his late wife's estate. He contacted the bank which held all of his wife's accounts to inform them of the death. They said someone would come and see him at home, which he did not request.

A lady from their probate administration service visited him at home. The client did not know why she came, but she took all of the paperwork regarding his wife's estate, including his wife's death certificate, marriage certificate and

original Will and got him to sign some paperwork. He came to see the solicitor within 4 days and said he did not understand what she had done and he had felt intimidated by the lady.

He handed the solicitor a pack that the lady had left with him, which confirmed that he had agreed for them to undertake the administration of the estate. Tucked in the back was the right to cancel under the Cancellation of Contracts made in a Consumer's Home or Place of Work Regulations 2008. This had not been brought to his attention.

The solicitor subsequently tried to telephone the lady and she would not return the calls. The cancellation notice was returned and the documents were sent back to the client.

It was clearly a case where the nature of the lady's visit had not been explained to him. He was left confused and concerned about what was happening to him.

Example of misrepresenting solicitors' fees at point of administration, bullying tactics at point of emotional distress, and charging for renouncing probate

A Will had been prepared by a Will Writing Company (at the time recommended by [REDACTED]). The deceased had appointed her two daughters as executors and it was exceptionally straightforward as everything in the estate was to pass to them equally. There was a property and two bank accounts.

There were no errors with the Will; the original of which was held by the Will Writing Company. The company was appointed as joint executors with the two daughters and required the daughters to renounce of their position to deal with the estate. The daughters doubt that their mother would have been explained the implications of this when making her Will. The daughters telephoned the Company and asked for the Will to be released. The company tried a heavy sell approach in relation to their estate administration service stating that solicitors would overcharge.

They quoted £1500 plus VAT to undertake the process which the solicitors' firm would deal with for £500 plus VAT and disbursements. The company told the daughters to think about things and they would make contact in a few days to see if they had changed their minds. This was at a time when the daughters were exceptionally distressed at the loss of their mother. They felt bullied to the point that the daughter put the phone down and asked the solicitor to communicate with them in order to obtain the release of the Will.

At the point the solicitor wrote to the Company requesting the original Will and a signed deed of renunciation. The company asked for: -

1. Certified copy death certificate
2. Form of authority signed by the executors
3. A signed indemnity (prepared by them).
4. £150 plus VAT and postage costs for releasing the Will and preparing the Deed of Renunciation

In light of the fact there were time pressures with the sale of the estate property and delays in this Company's replies, the solicitor prepared the Deed of Renunciation for them and asked them to get it signed and to waive the £150 plus VAT fee as clearly they had not incurred any time. They categorically refused to waive the £150 plus VAT fee so the daughters reluctantly paid it. Having reviewed the Terms of Business which the deceased had signed when making her Will there was no reference to this fee.

The appointment of themselves as joint executors was unnecessary and nor should they have held the executors to ransom over the release of the Will. It is wrong to exercise a lien over a client's Will (subject to the necessary authority being provided as to its release). On receipt of payment the original Will and the signed Deed of Renunciation was received.

On another matter the will writers incurred an unnecessary CGT bill due to the disposal of an estate property and the residuary beneficiaries were registered charities (no declaration had been made before the disposal).

**Examples of not providing service purchased when needed and using
bulling tactics to get the work**

Married couple had their Wills drawn up by [REDACTED] of Leicester. The couple live in London. They also prepared two pilot trusts for each of the couple for which they paid a few thousand pounds for a "package". This package was supposed to include assistance with probate when the time came.

When the husband died the family phoned the company and although they initially spoke to someone they did not receive any help and when they tried to contact them again they were fobbed off. Eventually they gave up and contacted us.

It sounded like a real hard sell when the company visited them at their home by refusing to leave until they had signed up for the "package".

Married couple made mirror Wills a couple of years ago through a Will Writer (whom they believed to be a Solicitor) and bought a "Probate Support Package" at a cost of £1,500 on the understanding they would assist the spouse to deal with any estate, free of charge.

Wife came to claim on this policy and was told that the money she had paid was for access to their "advisory" service and that to prepare the paperwork etc. They would charge 1% of the value of the estate to deal with the estate administration.

We also attach a more detailed case study as an annex to this paper. The client and solicitor have agreed to the publicity of their part.

9. To what extent are avoidable problems with the process of probate and dealing with a person's estate after death a consequence of a poorly drafted Will or there not being a Will? To what extent are problems a direct result of actions taken while administering the estate?

Problems with will drafting may not come to light where the will- writing firm is also appointed as executor, as they may not come forward with their omissions. The Will which is proved is not checked by anyone, save that it must have been executed in accordance with the Wills Act 1837 to be granted probate. Issues of conflict of interest, lack of mental capacity and undue influence may never come to light.

The case study in the annex illustrates problems. Had there not been delays, and the client sought advice from the solicitor, none of these errors would have come to light.

10. How and at what stages of the process are problems normally discovered? How and how easily can problems be put right and detriments reversed?

Unlike solicitors, if a will writer knows of an error in advice given or drafting documents, they are not obliged to draw this to the attention of the consumer and notify their insurance company. Consumers are unlikely to seek legal advice, possibly because they are unaware of the problem. Problems are only discovered if the consumer has cause to question the delivery of the service and seek professionally regulated legal advice. This may be too late for some.

Wills were made for a married couple. The wife had two adult daughters from a previous relationship. Both daughters had learning disabilities and lived in the house with the husband. The house was held in the wife's sole name. The husband was appointed as executor but totally omitted from the Will. The estate (which comprised mainly of the house) was given to the daughters.

The firm wrote to him after his wife's death to ask him, what her intentions were when she made the Will. This should have been clear, had the company kept a written record of the instructions. The husband believed the Will was

meant to provide for him by a life interest in the house with remainder the daughters. He was advised that he had this as he was an executor and trustee and trustees have a right of occupancy!

He was never informed of his right to make a claim against her estate for reasonable provision under the Inheritance (Provision for Family and Dependents) Act 1975. In any event he did not have the financial resources to bring a claim as he had no liquid assets to pay for court fees, let alone legal advice.

11. What do good providers of probate and estate administration services currently do to protect against problems and ensure that consumers receive a quality service?

For ease, this is listed as bullet points and divided into 'the person providing the service' and the 'delivery'. The first list protects the consumer as the person has the knowledge to do the work and so it reduces errors, and there are ramifications if things go wrong and provides redress for the consumer. The second is so the consumer (client) fully understands what is being delivered, what to do if things go wrong and only provide the service the consumer needs.

The person providing the service:

- Holds a relevant legal qualification and is independently regulated.
- Undertakes continual training (CPD) to have up to date knowledge of will drafting, probate and estate administration, including tax implications for estates.
- Required to have insurance to practice.
- Must follow Rules of Conduct and a Code of Practice, with repercussions if they are not followed.
- Access to educational and practice resources to stay up to date between formal training updates.
- Access to tools, such as books and/or on line documentation to deliver the service.
- Membership of professional organisation which advises of best practice.

The delivery of the service

- Produces a client care letter setting out terms of business, including cost, details of the complaint process and the work to be undertaken and by whom.
- Operate an internal complaint process.
- Undertakes face to face meeting; advises on the disposition of the Will, role of the executors, the process required to extract a Grant and distribute the estate as tax efficiently as possible.

- Advice should include tax implications and post death dispositions to reduce tax liability, and potential claims under the Inheritance (Provision for Family and Dependents) Act 1975.
- Communicating effectively with asset holders to ascertain assets, and values; when Grant is obtained to bring those assets into the estate; ascertain debts and pay liabilities promptly; identify and notify beneficiaries of their inheritance.
- Clients are only ever told of other related products, if it is appropriate and in the client's best interests, such as post death variations, or appropriation of assets to reduce other tax, such as capital gains tax.
- There is no hard sell- or misrepresentation of competitors' charges and processes.
- The Oath and supporting IHT forms are drafted correctly and explained to the personal representatives in a clear manner when they sign the documentation.
- Copy correspondence and attendance notes, including any request for capacity assessments to medical professionals, and documentation, are retained for an appropriate period.
- The personal representatives and beneficiaries are keep informed in a timely manner as to the progress and any reasons for any delay, with a time estimate for the next stage or completion of the matter.
- Communication with Revenue and Customs as required, including completing corrective accounts, where necessary, to finalise tax position of the deceased until death and taxation of estate until distribution.
- Arranging distribution of estate to be made promptly, including if appropriate payment on account, and obtaining receipts.
- The original Grant is stored in a secure fireproof safe, and logged in a retrieval system to show it has been stored.
- Money received should be paid into a separate account, on behalf of the estate and not mixed with the business funds.
- Estate accounts should reflect the estate accurately and completed promptly towards the end of the administration. The executors and beneficiaries should easily understand these.
- Clients should be paid interest on money held by the business.

12. Are self-regulation and general consumer and criminal law capable of addressing consumer harm? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?

We do not think that self-regulation, civil or criminal law is capable of addressing consumer harm, as the consumer will often be unaware of what has gone wrong. The case study in the annex of this response illustrates this. Furthermore the consumer may not have the resources to go to court. Local Trading Standards and the Office of Fair Trading provides some assistance but the help is very limited for the consumer. Criminal prosecutions are

dependent on the police and Crown Prosecution Service taking the matter to court.

Assessed accreditation schemes should supplement statutory regulation. These benefit consumers by informing them of the training and skills of the advisor and providing some assurance of the ability of the advisor and service delivery.

However there should be recognition that for many solicitors currently in practice, they will have undertaken will drafting and estate administration as it was a compulsory part of the Solicitors Final Exams until 1991 and its successor the Legal Practice Course, regulated by the Law Society and then The Solicitors Regulations Authority. Similarly Legal Executives also have to undergo compulsory training in this area as part of their qualifying. Any requirement to have undergone accredited qualification training must take this into account to avoid duplication, although we support 'refresher training' as part of continual professional development.

13. If providers of probate and estate administration services were regulated, what form of regulation should this take, and what are the core elements that should be included within the regulatory system? What specific harm would each core element protect against?

Regulation of probate and estate administration should take the same form, as regulation of will writing, with the same core elements as recommended by the Consumer Panel, for the reasons expressed by them.

14. What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?

The answer is the same as per 6 above.

15. How effective is the regulation of the existing reserved activity of preparing papers on which to found or oppose a Grant of probate or letters of administration? How does this regulation work in practice, what benefits does it bring for consumers and how does it impact on the way that providers organise themselves to deliver services?

The solicitor must possess the skills to complete the oath and supporting Revenue and Customs documentation. If things go wrong there is redress for the consumer. The Probate Registry check the applicant is qualified to apply for a Grant, and where necessary request evidence of their practising certificate. A solicitor is an officer of the court and his duty is to the Court. Therefore the Probate Registry can be assured of their honest and integrity in obtaining the information comprised in the Oath. For providers where their business is entirely regulated, there is no real distinction between the protections the client gets from the work, which is undertaken as reserved legal activity, and the other work they do.

Non-regulated providers usually employ a regulated person to deal with this aspect of the case, or alternatively outsource it to a regulated person. The regulated person will not have direct contact with the client, and is simply a part of the process.

ANNEX

The Estate of Mary Burtoft Deceased

Mary Burtoft died on 6th January 2009 leaving a Will appointing her brother, Father William Burtoft (a Catholic Priest), then aged 82 and in poor health, as Executor. Father Burtoft came across the path of [REDACTED]

[REDACTED] arranged to see Father Burtoft in his home. During this meeting (Father Burtoft was alone and susceptible to pressure) the representative from [REDACTED] 'persuaded' him to sign over administration of the Estate to them by means of a Power of Attorney. Also during this visit all paperwork relating to the Estate was taken from Father Burtoft's control. Father Burtoft was not provided with a receipt or any record of what had been taken. Father Burtoft could not recall signing any letter of instruction or terms of business letter and, when requested, [REDACTED] were not able to provide a copy of such a letter.

By January 2009 Father Burtoft's state of health was deteriorating and he executed an LPA in favour of a friend and colleague, namely Monsignor Ryan. Over the next 12 months Father Burtoft's health deteriorated further and the LPA was registered. Following the registration of the LPA Monsignor Ryan took over Father Burtoft's affairs and began to investigate what progress had been made in relation to the Estate of Mary Burtoft. It appeared that little, if any, had been made in the 12 months since Miss Burtoft's death and, if there had been any, Father Burtoft had not been told of it. The deceased's flat had not yet been transferred into Father Burtoft's sole name which was of great concern.

Monsignor Ryan provided [REDACTED] with a copy of the registered LPA requesting an update of matters, in particular the issue of the flat and a breakdown of [REDACTED] fees and made a specific request that the copy be returned to him. There was no response and the LPA has never been returned to Monsignor Ryan. Monsignor Ryan attempted to contact [REDACTED] by telephone on 10.02.10, 15.02.10, 22.02.10, 15.04.10 and 04.05.10 without success. He then wrote by recorded delivery on 10.05.10 setting out his dissatisfaction at their services, confirming that he did not wish them to act any further and requesting all the papers, funds and other items germane to the Estate to be returned to him. This letter was signed for by [REDACTED] on 10.05.10. but, notwithstanding this, [REDACTED] did not respond.

Monsignor Ryan telephoned [REDACTED] on 19.05.10 and was informed that no letter received had appeared on their system and as such his requested action would not be taken. Following this on 25.05.10 Monsignor Ryan sent a formal letter of complaint to [REDACTED] once again requesting that they cease work and return all relevant funds and documents to him. There was no response.

Monsignor Ryan tried to progress matters over the telephone on four separate occasions between 27.05.10 and 09.06.10 and, once again, without success.

On 03.06.10 [REDACTED] were instructed. [REDACTED] sent a faxed letter to [REDACTED] on 08.06.10 setting out the history and background to the matter and requesting the immediate release of Estate funds and papers by close of business on 10.06.10.

That letter included a warning that, should [REDACTED] fail to comply, an agent would be instructed to attend at their offices. On 10.06.10 [REDACTED] received an e-mail from [REDACTED] confirming receipt of their letter and stating that their file of papers would be sent to [REDACTED] via special delivery. On 14.06.10 a file of papers was received from [REDACTED] together with a covering letter stating *"the majority of the file is held electronically on our bespoke software system, as such it is not easily retrievable. We have requested for our account department to ensure that Estate Accounts are up to date and the balance of monies held on account follow shortly"*. This letter was received approximately one month after Monsignor Ryan's original request.

Upon examination of the papers by [REDACTED] it was immediately apparent that it contained no copy correspondence, Grant of Probate, Office Copies or account ledgers. In fact, all the paperwork provided pre-dated Mary Burtoff's death. When asked for an explanation [REDACTED] confirmed that they had only provided the paperwork which they had received from the outset because [REDACTED] would have to begin the process completely anew". For an organisation holding itself out as being competent in the administration of estates and charging appropriately this demonstrated a staggering and disturbing lack of grasp on the Probate process.

[REDACTED] instructed an enquiry agent to attend the offices of [REDACTED] (17.06.10). Further papers were received on 18.06.10 confirming that an up to date Estate Account and balance of funds would follow. Only at this stage was it finally confirmed that a Grant of Probate had indeed been extracted by [REDACTED].

Upon reviewing the file the following problems were pointed out in a letter to [REDACTED] (08.10.10):-

1. 3 Substantial Estate assets had been omitted in the return to HMRC (in excess of £30,000)
2. Incorrect values of 6 bank accounts had been reported to the HMRC (totalling £8400)
3. The R27 had been completed incorrectly
4. All funds had been released to [REDACTED] on or before 16.12.09 but over 6 months later the administration remained incomplete
5. Insurance on the deceased's flat had not been renewed and it had remained uninsured for 12 months thereafter
6. Unexplained charges had been made which were not referred to [REDACTED]'s terms of business letter (Taxation Review Charge and Probate

Application Charge). This was at odds with their assertion that they provide a "transparent fixed fee service".

██████████ advised ██████████ the above was a non-exhaustive breakdown and, given the costs already incurred in relation to the Estates of Mary and William (who was now also deceased) Burtoft, the need for corrective procedures to be undertaken and matters to be progressed, ██████████ suggested that ██████████ provide a refund of costs. ██████████ declined to refund 50% and made an offer of 25% of their costs and requested that ██████████ provide a breakdown and future estimate of their costs. ██████████ replied but ██████████ failed to answer.

██████████ subsequently wrote to ██████████ pointing out that, if they had administered Miss Burtoft's Estate correctly, they would have been aware that there had been a possibility of saving tax charges because Miss Burtoft had left her Estate between charities and Father Burtoft and Father Burtoft left the whole of his Estate to charities. ██████████ dealt with this by way of Deed of Variation which was prepared and executed at short notice so as to be within the two year time limit but carrying an attendant increase in costs albeit resulting in a valuable saving in Inheritance Tax.

Still receiving no response ██████████ wrote, yet again, to ██████████ (23.12.10) confirming that they were advising their client to issue a claim for damages in respect of negligent conduct of the Estate. ██████████ were asked to state the identity of their solicitors in order that service would be affected. No response was ever received.

Pre-action protocol correspondence has been sent to ██████████ and their solicitors (now instructed) which has resulted in ongoing correspondence between ██████████ ██████████ and solicitors for ██████████. They have indicated a willingness to negotiate a settlement and the prospect of Mediation has been mentioned. Confirmation of the forum of such Mediation is awaited. If settlement cannot be reached, the issue of proceedings is all that remains.

Summary

ITC:

- Applied high pressure sales techniques to an elderly and frail man to obtain instructions in the Estate of his sister.
- Used a Power of Attorney effectively to centralise all administrative authority in themselves and thereby to sideline the actual Executor without explaining to him that this would happen.
- Failed to give proper details of their charges by terms of business letter or otherwise and levied 'hidden charges'