LSB 'Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities' consultation paper - CLC response

The CLC is both an Approved Regulator and a Licensing Authority in relation to conveyancing and probate services.

Executive Summary of CLC Response

We agree that a case has been made for will writing to be designated a reserved legal activity. This should afford consumers the necessary protection which appears currently lacking. A fit and proper person test should be required for the individuals within an authorised provider that are named as executor or attorney on behalf of an organisation administering an estate, because they are in a position of trust. We believe that legal professional privilege should be extended to include all clients of authorised persons (and those they supervise) carrying on a reserved legal activity.

We have already indicated that we shall apply to regulate will writing, if it is determined that will writing should become a reserved legal activity.

Question 1. Are you aware of any further evidence that we should review?

1.1 We are not aware of any other evidence.

Question 2. Could general consumer protections and/or other alternatives to mandatory legal services regulation play a more significant role in protecting consumers against the identified detriments?

2.1 We acknowledge that to date alternatives such as self-regulation have proved inadequate, lacking coverage, enforceability, and appropriate processes for redress. Consumer education opportunities are limited given that purchases of these services are infrequent.

Question 3. Do you agree with the list of core regulatory features we believe are needed to protect consumers of will-writing, probate and estate administration services? Do you

think that any of the features are not required on a mandatory basis or that additional features are necessary?

3.1 We consider that the regulatory menu of:

- a strategy and early action for consumer information;
- a mandatory register of authorised providers;
- authorisation gateway checks including a fit and proper person test for ownership and control;
- appropriate financial protection arrangements, especially where a provider has access to consumers' money;
- an outcomes based code of conduct with appropriate emphasis on sales practices;
- a requirement that providers have an appropriately trained workforce;
- a risk based supervision strategy that targets regulatory action to protect consumers;
- an enforcement strategy that encourages and creates incentives for compliance, deters non-compliance and punishes transgressions appropriately
- arrangements to ensure each provider has an appropriate in-house complaints process, including signposting to the Legal Ombudsman; and
- bringing all three activities within the jurisdiction of the Legal Ombudsman;

is appropriate, underpinned by activity and entity-based regulation and targeted training and education provisions.

3.2 Further, we agree with the suggestion that Approved Regulators should consider requirements for providers to explain potential risks about particular transactions (e.g. naming a professional executor gives an individual full control of the estate) within these markets to clients and prospective clients.

Question 4. Do you believe that a fit and proper person test should be required for individuals within an authorised provider that is named as executor or attorney on behalf of an organisation administering an estate?

4.1 We agree; such a provision acts as a deterrent, provides parity with other similar licensing systems, and is proportionate to the responsibility/risk (as such persons will legally have access to and control of the estate assets.

4.2 We also consider it appropriate that 'struck off' individuals should be named on a centralised list, to be held by the LSB (as with the centralised Alternative Business Structures disqualifications list).

Question 5. What combination of financial protection tools do you believe would proportionately protect consumers in these markets and why? Do you think that mechanisms for holding client money away from individual firms could be developed and if so how?

5.1 Professional Indemnity Insurance and Compensation Fund arrangements appropriate to the risks, minimising the risks and making recompense available. However, as the LSB paper highlighted, six-year run-off cover is unlikely to provide

sufficient protection. It is difficult to determine how this can be approached, especially as we are not convinced that a scheme whereby financial institutions kept money safe would mitigate the risk relating to client money. We consider it essential that regulatory arrangements require client and provider money to be kept separately.

Question 6. Do you agree that education and training requirements should be tailored to the work undertaken and risks presented by different providers and if so how do you think that could this work in practice?

6.1 There is unlikely to be a single range of qualifications which fits all types of providers, though we consider that approved regulators will need to operate from basic expectations (e.g. a minimum of one person authorised to provide the activity, as per the ABS Framework) to offer transparency to would-be applicants. Given that the current entry/qualifications approach is not achieving what is needed, the requirements should be tailored to the provider and its controls, proposed work range and complexity. Such an approach will require approved regulators to understand the risks inherent within different legal services and different business models.

Question 7. Do you agree with the activities that we propose should be reserved legal activities? Do you think that separate reviews of the regulation of legal activities relating to powers of attorney and/or trusts are needed?

7.1 We believe that activities ancillary to those core activities should be included. The framing of those definitions will clearly have to be determined separately.

7.2 Both powers of attorney and trusts are one of the most common additional services offered to customers in receipt of will-writing and estate administration services and we would therefore expect them to be covered under the ancillary definition. The Panel's work identified (a low incidence of) risks in relation to Power of Attorney; any regulatory arrangements applied must be proportionate to this risk.

Question 8. Do you agree with our proposed approach for regulation in relation to 'do-it-yourself' tools and tools used by providers to deliver their services? If not, what approach do you think should be taken and why?

8.1 We consider that self-completion packages are an essential element of consumer choice. The approach proposed means that elements, but not all, of these packages will be subject to regulation, which is likely to be confusing for the consumer, and therefore not consistent with the regulatory objective of protecting and promoting the interests of consumers.

Question 9. Do you envisage any specific issues relating to regulatory overlap and/or regulatory conflict if will-writing and estate administration were made reserved activities? What suggestions do you have to overcome these issues?

9.1 A multi-regulator Memorandum of Understanding was established under the Alternative Business Structure banner. We would consider a similar provision for defining cross-sector arrangements between regulators and ombudsmen in this arena a sensible one.

Question 10. Do you agree that the s190 provision should be extended to explicitly cover authorised persons in relation to will-writing activities as well as probate activities following any extension to the list of reserved legal activities to the wider administration of the estate? What do you think that the benefits and risks would be?

10.1 We agree that legal professional privilege should be extended to include will writing and probate activities carried on by authorised persons or under their supervision.

Question 11. Do you have any comments on our draft impact assessment, published alongside this document, and in particular the likely impact on affected providers?

11.1 It seems to us that the consultation paper has underestimated the direct and indirect costs of regulation for newly regulated providers by some margin, although we have carried out no formal review to confirm this.