Institute of Legacy Management

Institute of Legacy Management's response to the LSB Consultation Regulation of will-writing and estate administration – 16 July 2012

Background Information

The Institute of Legacy Management (ILM) was established in 1999 to provide charity legacy professionals with training services; sector recognised qualifications and a network of support. With 500 members, representing 300 charities, we are the foremost provider of information and training on legacy case management, relied upon by the charity sector to ensure that that the £2 billion of legacy gifts received each year is managed in accordance with donors' wishes and in compliance with the Law. In addition to our traditional role, we also work with bodies including Remember a Charity, the Law Society, the Charity Commission and the Law Commission to ensure that the legal environment supports and promotes charity legacy giving.

Summary

ILM has asked members for views and where appropriate has incorporated these views in this response.

The Board of ILM and ILM members welcome the initiative to make will-writing and estate administration reserved legal activities which are regulated by approved legal services front-line regulators. ILM believes that this would provide a practical and cost effective mechanism for redress when problems are identified which is currently unavailable to beneficiaries in some cases.

Response to Questions

Question One – Are you aware of any further evidence that we should review?

ILM is not aware of any other evidence that could be reviewed at this time. However, an ILM member charity would be very happy to host a member of the Commission if a shadowing exercise was felt worthwhile to highlight the problems faced with poor service from estate administrators.

Question Two – 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? If so, how?

ILM considers that detriments can be removed with effective but proportionate regulation.

Question Three – 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?

ILM is supportive of the list of core regulatory features. However, ILM would like to ensure that the core features do not create barriers or unnecessary bureaucracy for charities if they currently undertake estate administration activities or would like to in the future as part of their service development.

Question Four – 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?

ILM is supportive of any initiatives that reduce the number of unscrupulous practitioners. However, ILM does not believe it would be appropriate to carry out the same level of scrutiny where individuals are acting for an authorised provider which is undertaking the administration of estates in its own name and where those organisations have suitably qualified and trained staff and clear process and guidelines. Again, ILM would want to ensure that any test would not create barriers or unnecessary bureaucracy for charities if they currently undertake estate administration activities or would like to in the future as part of their service development.

Question Five – 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?

ILM is supportive of any initiative that ensures that providers have insurance and that consumers suffering a financial detriment caused by the provider can obtain compensation. ILM would like the Commission to confirm that this recompense would also be available to registered charities. Currently, most charities cannot seek the help of the Legal Ombudsman.

ILM would support the approach that estate administration providers offering a full service should keep consumer money from business money. The model of financial banking arrangements adopted by law firms should be considered as a practical way forward.

Question Six – 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 this could work in practice?

ILM is supportive of any initiative that ensures regular education and training is mandatory for providers. ILM would be in a position to scope a specialised training programme for providers should this be required and/or to work with other sector training practitioners to ensure good practice.

Question Seven – Do you agree with the activities that we propose should be reserved legal activities? Do you think that there should be separate reviews of the regulation of legal activities relation to powers of attorney and/or trusts?

ILM agrees with the activities proposed as far as will-writing and estate administration is concerned. ILM has not sought any views regarding powers of attorney and/or trusts but would welcome the opportunity to do so if the Commission brought this into scope.

Question Eight – 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?

ILM understands that many people want to write wills or administer estates personally and without the intervention of any professionals. ILM members accept these freedoms to do so. ILM does support the proposal to bring into the scope of the proposals those providers offering a "checking" or "advice" service in order to protect consumers.

Question Nine – Do you envisage any specific issues in relation 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?

ILM believes that any new regulatory body should have a clear remit and clear guidance must be produced before providers are identified and designated. It would not be in the public interest to close the market before providers had an opportunity to identify and meet any gaps in the regulatory provisions.

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

ILM would be supportive of the extension of s190 provisions to cover authorised persons in relation to will-writing activities as this would encourage and nurture important relationships of trust and confidence. However, ILM would be concerned that this could increase the risk of some providers finding it easier to refuse to disclose documents or information which are actually for the benefit of the consumer. ILM would recommend that clear guidance should be issued as to what information might remain undisclosed by way of legal privilege. ILM does not believe that legal professional privilege is particularly relevant when conducting estate administration activities as all relevant information should be available to beneficiaries when they are being asked to issue receipts for their legacies.

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

ILM has no other comments to make on the draft impact assessment.

Request for further evidence

If estate administration was to become a reserved legal activity, ILM would encourage the LSB to consider seeking further views and evidence on whether Executors should be required to prove to the Probate Registry that they have administered and distributed an estate in accordance with the terms of the Will. Currently there are no mandatory requirements on Executors to do this.

Many charities subscribe to a bequest notification service and are informed when they have been named in a Will once a Grant of Probate has been issued and the Will becomes a public document. In line with best practice guidance, many charities follow up with Executors if they have not received notification of these legacies directly after a reasonable period after death. If these estates are administered by family or friends, many charities are faced with difficult decisions about whether to ask when their legacies might be paid.

It is, unfortunately, a common occurrence that lay executors do not respond to these requests for information and legacies remain unpaid. One national charity has advised that in one financial year it was required to write-off over £50,000 worth of legacy income because of the risks to reputation if they pursued unpaid legacies too rigorously with lay executors.

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