Surrey Law Society

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Legal Services Board – regulatory restrictions on Wills

Surrey Law Society Response 12.07.12

Q1 – No.

Q2 – No. Voluntary schemes can be worth little as they tend to lack teeth. The unscrupulous will not sign up. The public does not really understand the difference or what they are receiving.

Q3 – Yes. We agree with the list. There should be mandatory professional indemnity insurance cover whether or not a firm or individual holds client money as it is possible, for example, to write bad Wills which cost thousands of pounds to put right without holding client money.

Q4 – There should be a fit and proper person test for all fee earners in an organisation carrying out any reserved activities, not just owners/controllers. Solicitors should be passported through this test as they are already vetted by the SRA.

Q5 – Providers must have rules similar to the Solicitors' Accounts Rules – particularly about the need to have separate office and client accounts. With strong accounting rules, Professional Indemnity insurance and a compensation fund in place, there should be no need to keep client money away from

individual firms. Well capitalised organisations may seek to be exempt from compensation funds but recent bank collapses show us that even the largest organisations can be vulnerable and all should be covered.

Q6 – There should be a higher CPD requirement than there currently is in place and the majority of it should relate to the areas of practice covered by the fee earner. That said, all work carried out for fee or reward should be carried out by someone legally qualified – the argument that lay people can administer simple estates is irrelevant as we have no way of knowing what mistakes they are making.

Q7 – Yes but we believe that Lasting Powers of Attorney and Trusts should be reserved too. They are rarely as simple as people think and their implications can be far reaching. We do not accept that they are always ancillary to what is/will become a regulated activity. It is in the interests of the consumer to deter dabblers in this area and to deter the unscrupulous from finding loopholes.

Q8 – DIY Wills can be a disaster for consumers. Anyone who produces a kit (or online equivalent) should be subject to exactly the same regulation as those who provide face to face bespoke services. We agree that those who produce poor Wills ought not to be able to hide behind their software providers.

Q9 – It must not become the case that would be providers of reserved activities shop around amongst regulators. If it is truly necessary to have more than one regulator, they must regulate in a uniform way. Ideally, all would be regulated by the SRA in the same way.

Q10 – Privilege is a matter for Parliament. The last sentence of paragraph 206 is wrong in law because the executors would be able to waive the deceased's right to confidentiality and so the evidence might not be lost to the courts. This is extended further in the Law Society's Practice Note on disputed Wills (see http://www.lawsociety.org.uk/productsandservices/practicenotes/disputedwills/2610.article).

Q11 – We agree that of the 4 options provided, option 1 is the best. It comes closest to dealing with the issues and seems to be a genuine attempt to level the playing field. The public is clearly unaware of the current disparity in regulation and the risks they face so a levelling of the playing field is necessary.