Our Ref: TPH/LAU
9th July 2012

Consultations Legal Services Board
Email: Consultations@legalservicesboard.org.uk

Dear Sirs

This Company (trading as The Fry Group but strictly Wilfred T Fry (Executor and Trustee) Ltd) is a Trust Corporation which commenced trading in the Probate/Will field in 1976. Our staff are broadly either trained in house or, for the most part, are / have been STEP Members, with some holding the Trust Deed Diploma of the Chartered Institute of Bankers.

We have long recognised that the issues that reserved activities impose on us. For instance, we have had to say to clients over the years that whilst we can write Wills, and undertake estate administration, we have had to outsource the reserved activity of the probate application, so the potential for change is welcome.

We have certainly seen evidence ourselves of poor quality work by both solicitors and unregulated will writers and welcome the opportunity to comment on the proposed changes.

Question 1

We are not aware of any further evidence that you should review, but we think that the existing evidence is compelling in relation to the need for change.

Question 2

We do not consider that general consumer protections and /or other alternatives to mandatory legal services regulation can play a more significant role in protecting consumers against the identified detriment.

Question 3

We are not clear whether the list of core regular treat features covers the items bullet pointed at Section 123. If that is what you are referring, then yes, we agree with that list in broad terms. Unfortunately, we have to agree that the features will need to be mandatory since in our view, a voluntary based approach has not worked.

Question 4

Yes, I think it would be appropriate to have a fit and proper person test for individuals within an authorised provider named as Executor or Attorney. Care will have to be taken as to the level at which this test ought to function. For instance, someone operating as a filing clerk ought not to need to be designated as a fit and proper person. We suggest that it would be more appropriate to restrict this to those with signing authority on the organisation's bank accounts or authorised by the firm to sign application forms/repayment forms/stock transfer forms on the organisations behalf.

We are not clear however that the analysis of the bullet points at paragraph 126 is quite right. In relation to the first bullet point, we consider it poor business practice to allow an individual sole control of the assets of the estate. As a result, no payments can be made from our bank account without two signatories. It is therefore not true, with these arrangements, to say that an individual has full control of the estate. We have no comment to make on the second and third bullet points as these are not currently part of our business practice and are never likely to become part of our business practice.

We certainly tell clients where their Wills are to be stored and often stressed that we have fire proof safes to give a little bit more security in the event of a fire at our premises. We do not quite see how the requirement to tell clients what would happen to their Will in the event of the closure of the business would work in practice. Presumably this would be a duty on the administrators to "re-house" those Wills. It is not clear in my mind how this could be made a binding obligation on the administrators / liquidators. We have no comment on the final bullet point. We accept the position may be different in respect of firms of solicitors where one or more partners is appointed as a executor directly in the Will, and in the event, the Grant is taken out by one individual only, but our Wills appoint the company itself if a professional executor is selected.

Question 5

We are clear that the detriments identified in paragraph 137 of the report require serious consideration. In respect of the first bullet point, a requirement to hold separately designated client account and to hold no client money in office accounts ought to be sufficient. Whilst in our view, approved regulators ought to insist that whatever the scale of the business, an audit or at the very least an independent examination (in like manner to the regulations covering charities) should take place each year to ensure that the distinction is maintained. If the money cannot be held in accounts other than client accounts where interest (if any) is the provider is obliged to pay to the estate and therefore ultimately the beneficiaries, the detriments identify will cease.

In relation to the second bullet point in paragraph 137 if the money is held in designated client account over which the bank has no lien, whilst the insolvency will be inconvenient and introduced delay, no client money ought to be lost. We consider it inappropriate for providers to take payment in advance of a client's death. We suggest that no regulator be approved who does not ban that particular practice. We agree it is impossible to eliminate all risk in the transaction. We are not sure how could you word information to consumers in such a way that it would not discourage them from using appropriate professional services.

We can easily believe that the issues raised by paragraph 142 have not been understated. In an ideal world, compensation arrangements would be avoided in that we effectively become responsible for the losses to our clients caused by some other provider going out of business. We of course have no control of that other provider and it would encourage us to register with an approved regulator whose attitudes and methods we consider to be robust.

I do not anticipate that financial institutions will work with approved regulators to ensure that the financial institutions rather than provider are responsible for the safe keeping of funds. At present, some of the professional forums frequently mention the difficulty of getting banks and other financial institutions to acknowledge a Power of Attorney. Sometimes, banks AML/KYC requirements can seem to gold plate the underlining regulations. We do not see how we could introduce this additional level of security without the extra work involved causing extra costs for clients, whether in terms of our time sent or extra cash costs we suffer.

Question 6

Clearly, education and training requirements ought to be tailored to the work undertaken and risks presented by different providers. It is not clear to me however how to distinguish the risk presented by different providers, other than in the contexts of sole practitioners.

Question 7

We have no objection to the activities you proposed being reserved legal activities. We think this will be beneficial both for consumers and also for institutions which aim to comply with the underlying principle, to use the words of another regulator, of "treating customers fairly". So far as regulation incapacitates those who would not treat their customers fairly, we must welcome it.

In relation to Powers of Attorney matters, ultimately, the Office of the Public Guardian has some function as a gatekeeper, in terms of the registration of Powers of Attorney. I recognise that there is a sense in which this is no different to the probate court reviewing Wills but I suggest that the view of the Office of the Public Guardian should be sought, and the question addressed once this process is over and approved regulators are up and running. The Legal Services Board can then draw on experience of these arrangements to see whether a review is required in the Power of Attorney market.

In contrast, the restriction on drafting Trust Deeds for the award is illogical. It does not allow providers who might wish to use a trust as a solution for Inheritance Tax planning or dealing with particular family circumstances to offer a seamless service to their clients. It leads to firms such as ourselves outsourcing work, with varying results, and restricts competition. For those reasons therefore, we think that the existing reservation should be removed, but as this is another market where the unscrupulous might abuse consumer, we think it should only be removed once suitable regulators can be found, and it is my view that this will be one of the regulators approved to monitor Will Writing and Probate Services.

Question 8

Yes, we agree with your proposed approach for regulation. Without wishing to blacken the name of any particular provider, we think that where organisations such as WH Smiths or the Post Office offer "Will Packs" it must be made explicitly clear that the Will writer must either decide to rely on his own interpretation of the information given within the Will Pack or have it checked separately by an approved provider. For perfectly reasonably marketing reasons, at the moment, the stress is laid on the legal qualifications of the person who drafted the pack in the first place. The freedom offered by the pack does however sometimes leave people to make errors.

We believe that a consumer, properly advised, will end up with a better Will through an authorised provider than a do it yourself Will. Clearly, an authorised provider can identify issues that the client hadn't spotted or alternatively, produce solutions that it is not practicable to cover in a "off the shelf" DIY Will. Despite that belief however, we entirely understand why you do not wish to restrict the DIY route.

We therefore agree with your proposed approach in the circumstances.

Question 9

We can only draw on our own experience as a largely unregulated firm. The only regulatory overlap is that we consider ourselves to be a Trust or Company Service Provider (TCSP under the Money Laundering Regulations 2007) (Statutory Instrument 2157 of 2007)) http://www.legislation.gov.uk/uksi/2007/2157/contents/made

Effectively, we believe that to avoid regulatory conflict, approved regulators ought to be required to police the money laundering obligations of approved providers and need therefore to be added to the main supervisors' bodies as listed in Schedule 3 of the Statutory Instrument.

Question 10

Whilst it might be expedient for beneficiaries of estates to have the Section 1 90 Provision extended, we accept that it is inappropriate to do so. The current application of the Section 1 90 Provision to the current reserved activities is unnecessary.

Question 11

We have no comment to make

Yours faithfully

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