

Enhancing consumer protection, reducing regulatory restrictions; will writing, probate and estate administration activities.

The Society of Will Writers response to the request by the Legal Services Board
consultation on the regulatory approach to will writing, probate and estate
administration

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LSB Consultation

The Society of Will Writers & Estate Planning Practitioners

Question 1: Do you agree with the scope of the proposed reserved will writing activities and estate administration activities? Do the scenarios provided in Annex 1 of the Provisional Report clarify when activities will and will not be caught within the scope of the proposed new reservations? What are the likely impacts of the scope of the proposed activities as described?

The proposals are broadly as expected. There are no provisions that specifically strike a discordant note; however the development of actual rules by regulators applying to regulate will writers as well as providers of probate and estate administration will reveal the effect of the true nature and cost of the LSB proposals to regulate these activities and the entities supplying them to consumers.

The activity of an adviser from whatever professional background outsourcing a will which includes advice on the incidence, mitigation and management of inheritance tax will, it seems, amount to the performance of a reserved activity not only by the adviser responsible for drafting the will, but also by the adviser who introduces to the will draftsman. There does not appear to be a provision covering the activity of instruction-takers who are the first link in the chain and potentially capable of giving wrong advice. To counter this gap in the provisions the activity of will drafting must take formal responsibility for the actions and advice provided to the consumer by an instruction-taker.

The period indicated by the LSB of 2 years between the decision for these activities to become reserved activities being set in stone and the first regulator becoming authorised must give the potentially regulated advisers full scope to comment on the actual regulatory rules as proposed by the authorised regulators. Without advisers being given the opportunity to comment on the proposed regulation as it is developed would be to miss the chance of keeping advisers on message throughout the development process.

Question 2: What are your views on the options for implementation that we have described? What do you think would be the likely impacts of each?

Only options 1) and 2) above meet LSB objectives and Option 2) is preferred as being efficient in delivery and the achievement of LSB objectives. It is for the LSB to complete a thorough analysis of its preferred path bringing in its proposals for new regulation and bring the proposals as eventually agreed and authorised by the LdCD and Parliament into effect.

Arrangements to enable all existing providers of the “to be” reserved activities to be allowed to continue during the transitional period is essential. During this period the LSB should redouble its efforts to ensure full and frank communication takes place between interested parties: LSB; those applying to become regulators; representative bodies; new and existing advisers of

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reserved activities. If adequate communication does not take place the likely impact on the sector could prove detrimental to entities and consumers alike. At all times during the transitional period the LSB should be focussed on the effect of new regulation on advisers; so that regardless of the regulatory outcomes adviser goodwill is not reduced or diminished.

Question 3: Do you agree with the initial assessment of the consequential amendments that would likely be needed? Are there any other consequential amendments you consider would be necessary?

No comment to make – as no knowledge of the requirements placed upon legislators to bring in the addition to the reserved list the activities of will writing, probate and estate administration. The whole sector is in the hands of LSB; LdCD and ultimately Parliament especially if Option 2 (Paras 68-70) is adopted to implement the new regulation.

Question 4: To prospective approved regulators: what legislative changes do you think will be required in order to implement regulatory arrangements for these activities (in line with the draft section 162 guidance)?

The Society of Will Writers does not plan to apply to become an approved regulator so we will not comment on this section.

Question 5: To prospective approved regulators: Will this guidance help you to develop proportionate and targeted regulation for providers offering will-writing and or estate administration activities? What challenges do you think that you will face?

Although a question primarily intended for those applying to become an approved regulator, it is worth noting that the degree of compliance to the new regulation adopted by those advisers to fall under the new regulation will likely determine the success of the LSB proposals in combating the consumer detriment that has been observed and analysed throughout the consultation period and is now in the process of being legislated and will presumably shortly be implemented throughout the affected sector. Approved regulators of the newly reserved activities should concentrate on implementing the new outcomes focussed regulation effectively, without disturbing the ability of the sector to provide valuable and necessary services to consumers.

Question 6: Do you agree that having mandatory regulation for all firms in the market will improve consumer confidence?

It stands to reason that if the Press is convinced that the actions being taken by the LSB to provide good quality, manageable regulation and at an affordable cost the likelihood is that consumers will gradually over say 5/10 years receive the message that the new reserved activities are being performed to a better standard and with improved consumer safeguards than they have been of late. Therefore the new regulators may have to consider

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whether to harness the services of the Press is the best way to explain and broadcast their work.

Without the provision of effective channels of communication between the industry and the consumer, the fact of new regulation may be lost on consumers. This would be a pity. The past 5 years since the Labour Government chose not to take forward formal regulation for will writers, has been a period during which most sector entities have appreciated the need for better regulation and realising self-regulation could not reduce consumer detriment. The opportunity that is presented by the LSB's work is the culmination of significant efforts by all involved in this sector to find the means by which the consumer may be better protected when applying for the sector services.

Outcomes focussed regulation of the kind proposed should improve consumer confidence.

Question 7: What business impacts (both positive and negative) do you envisage will occur with the proposed reservation of will-writing and estate administration? How will any such impacts affect your business?

The main impact of new regulation will not be manifested until the new applicants for the role of approved regulators publish their (outcomes focussed) rule books including details of how the risk from individual entities is to be established and managed. At the point of rulebook publication advisers who need to apply to be authorised under the new rules should be capable of assessing the impact of the regulatory proposals upon their individual business. The LSB makes abundantly clear that the effect of the regulation as applied by the new approved regulators should have the minimum impact necessary to achieve the required outcomes. The outcomes are decided by the LSB, applied by the regulator(s) and delivered by the regulated entities. The chain of implementation may break down if the cost of applying and/or delivering the LSB decided outcomes becomes sufficiently onerous on the regulated advisers interfering with the adviser business to the detriment of consumers. The LSB must consider setting up timely triggers in the implementation process to ensure that the regulated advisers can indeed deliver adequate compliance with the required regulatory outcomes without putting adviser businesses at risk.

The LSB may discover that the intricate process of consultation that has taken place during the last 2/3 years, may in fact prove to have been the easier part of the process to introduce regulation reducing consumer detriment. Above all the success of implementing the LSB proposals may depend on retaining adviser goodwill. Some of the requirements for applicants applying to become regulators will need careful handling and discussion with advisers; for example the requirements listed at Para 81 of this Consultation Paper. The regulators required approach to avoiding these detriments could affect the adviser business, possibly by adding needless and unnecessary cost, which is likely to be passed on to the consumer. General business costs are rising at a rate currently in excess of inflation, regulators adding additional cost burden without proper justification can only impact negatively on entities providing the

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targeted services. If the proposed new regulation is to be successful regulators must make every effort to rein in cost, unless a regulated provider demonstrates clear unequivocal evidence of high risk in which case the decision to absorb the cost of that entity continuing to provide regulated services must lie with the entity itself.

Question 8: We are keen to understand the potential impacts of our proposals on equalities. Do you envisage any positive or negative impacts on equalities for either consumers and/or providers of will-writing and estate administration activities? Please provide details including of any evidence that you are aware of?

It is agreed that the proposed reforms should not create any disproportionate negative affect on involved consumer groups or for there to be a significant adverse impact on equality characteristics (Equality Act 2010).

But it is worth noting that evidence accumulated by the LSCP during the LSB consultation period of one group of consumers in particular who have suffered detriment, at the hands entities likely to be regulated, is elderly persons who received multiple services from those entities. Care should be exercised by newly-appointed regulators to ensure that such identifiable consumer groups are monitored to ensure that under the new regulation, future consumer detriment is minimised.

Question 9: Do you envisage any specific issues arising from the proposals to impact negatively on consumers at risk of being vulnerable? Would any of the proposals actually increase their risk of becoming vulnerable?

If the LSB proposals generally add to the cost of providing the reserved regulated activities, could an entity pass on more of this regulatory cost to those consumers who could be labelled as vulnerable? To avoid this potential abuse approved regulators must assess the risk involved of such discriminatory activities by entities and build in to their risk-assessment checks to ensure that the mischief complained of by the LSB in regard to vulnerable consumers is not allowed to thrive. The cost of investigating whether an entity is properly safeguarding the interests of the vulnerable consumer group should fall squarely on the high risk entity, not on the general pool of will writers with a “normal Risk” profile.

**The Society of Will Writers and Estate Planning Practitioners
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