

Response of TenMinuteWill.co.uk to LSB Consultation Document of 27-09-2012

This is the response of Portology Ltd. of 14 Britannia Place, Bath Street, Jersey JE2 4SU – trading as TenMinuteWill.co.uk - to the LSB Cover Paper and Consultation Document entitled “*Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities*” dated 27th September 2012.

Question 1: Do you agree with the scope of the proposed reserved will writing activities and estate administration activities? Can the scenarios provided in Annex 1 of the Provisional Report be caught within the scope of the proposed new reservations? What are the likely impacts of the scope of the proposed activities as described?

- (a) I personally think that Trusts should be brought under the regulatory umbrella, as more and more people are setting up Trusts and then writing their Wills to leave (a portion of) their estate to the Trust(s). The two products are becoming more and more intertwined and “packaged” by one provider and thus to regulate one part of the “package” and not the other could leave the consumer feeling confused.

I also feel strongly that **any** Willwriting product which contains information or advice regarding Wills should also come under regulation. For example a service delivered online which doesn’t include checking would, under the current proposals, not come within the scope of regulation: and could therefore contain incorrect and erroneous information and furthermore give the consumer no method of redress – despite the provider taking money from the consumer i.e. providing a product/service “for a fee, gain or reward”.

I thus fear that the proposed approach will create a “two tier” playing field in the online market.

- (b) Yes I think that the scenarios in Annex 1 of the Provisional Report can be caught within the scope of the proposed new reservations. It all seems fairly clear to me. However, what about the following “Scenario 12”:-
“A consumer prepares a Will on an online site. Incorrect information is given on the site, the wording of the Will delivered by the site is poor and incomplete and as a result the Will does not do what the consumer was told it would do – even though he has correctly followed all of the instructions. However, because no “checking” service was offered the site is outside the scope of regulation which means that (a) the site can continue to operate and (b) the consumer’s relatives have no redress”.
- (c) As I mention above, one of the likely impacts of the scope of proposed activities is that a two-tier playing field may be created in the online market as a result of regulating the providers who actually provide the better service whilst permitting those who don’t provide as comprehensive a service to continue to operate unregulated.

Question 2: What are your views on the options for implementation that we have described?

I think that option 1 is the best route to take: short-cuts often end up taking longer and costing more than the original route, and this is an exercise that I feel needs to be done properly. I also believe that there are plenty of operators who will try to “make hay while the sun shines” and that considerable damage could be done – which would be to the detriment to the profession as it would reduce consumer confidence, not improve it.

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?

I am not familiar enough with the Acts mentioned to be able to comment, unfortunately, and given the deadline for this response I do not have the time to remedy that situation.

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)?

This question is not relevant to me and therefore I have no comment.

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?

This question is not relevant to me and therefore I have no comment.

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

Yes it will, definitely, but please see my response to Question 1: in the online market it will **not** be the case that all firms are regulated.

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?

In short, it all depends on how well it is communicated. If the average consumer (who will more often than not hear the news 2nd or 3rd hand) is left with the impression that “regulation” and “reserved activity” now means that “any Will not written by a Solicitor isn’t legal” (and, believe me, many believe that already – I get queries almost every day from people who do) then the impact would be negative for my business. If, however, the following 4 simple points were clearly communicated then I see a positive impact for all “good” providers including my business:-

- (1) That the consumer has a choice of many types of regulated provider (Professional Willwriter, Online Provider, Solicitor, etc.)
- (2) That “regulation” means that those providers have to deliver a quality product.
- (3) That “regulation” means “protection” – i.e. that if (2) above doesn’t happen then there is (a) redress and (b) financial compensation.
- (4) How to easily check that a provider is an “approved” provider

If, in particular, point (1) isn’t clearly understood by the consumer then my business may suffer, and (and I hate to repeat this) if the “rogue traders” online are to be allowed to continue to operate then again this will have a negative impact on my business. I would urge the LSB to continue to monitor the online market. I understand that there are jurisdiction issues (although I don’t really think my business would survive if I attempted to ignore the fact that I have to be regulated) but I believe that there is a risk of merely solving the problems in the “face to face” channel whilst leaving those same problems to remain in the “online” channel.

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?

I really cannot see any significant impact as a result of these proposals either positive or negative.

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?

I can see a potential negative impact if Option 2 of the “options for implementation” is taken – i.e. that the “rogue traders” may “make hay while the sun shines”.

I can also see a potential negative impact if the online “rogue traders” are to be allowed to continue to operate because the consumer who is at risk of being vulnerable will not know the difference between an approved provider and a “rogue trader”.

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