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Ms J Myers  
Legal Services Board  
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Our ref: AE1

Your ref:

10 July 2012

Dear Madam

### Will-Writing, Probate and Estate Administration Activities

I have read your consultation document concerning the above in the context of enhancing consumer protection and reducing regulatory restrictions.

I write as a solicitor who qualified to practice in 1980 and who has consistently operated in these particular areas of work. I started practice in London before spending 20 years in Devon of which 6 were in Market towns and 14 in Exeter. I have now been based in Birmingham for almost 11 years. I am also a member of the Solicitors for the Elderly and the Society of Trust and Estate Practitioners for a number of years.

Dealing with the particular questions that you raise I would comment as follows:-

**1. Are you aware of any further evidence that we should review?**

I do consider that the whole question of potential for abuse under Powers of Attorney needs to be carefully kept under review. The new Lasting Power of Attorney regime has hopefully helped to reduce the risk of financial abuse – especially by non-family members such as third party providers. Time will tell however whether this continues to be the case. If it is *not* regulated then it may well be seen as a “target market” for unscrupulous individuals and/or organisations.

**2. 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?**

I do consider that a mandatory regulation is the best way forward. It is necessary to provide a mechanism whereby the bar can be set high and modifications/adaptations

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made to that as appropriate rather than setting it at a lower level only to find that that was not high enough.

As your findings indicate the regulation does need to be on a number of different levels including:-

- Appropriate training
- Appropriate systems
- Appropriate indemnity insurance and a run off cover
- Integrity of marketing/sales.

There also needs to be adequate monitoring to ensure consistency between the various types of organisation that are offering these particular services so that the consumer protections are consistent across the whole area of work.

It is unrealistic to expect the general public to understand any technical differences between what providers are offering. The public should merely have to differentiate on matters that can readily be understood by them.

3. **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?**

I agree that all of the protections that you have indicated are necessary. I do not however believe that indemnity insurance is not required for work from regulators and financial institutions who do not hold consumers' money. Indemnity cover *is* needed to cover them against inadequate or negligent advice or work undertaken. This can happen within the context of Will drafting or Estate Administration. Indeed it is not necessary to hold client funds in order to carry out fraud: the funds could be re-directed as part of the administration of an Estate.

4. **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?**

Yes. Ultimately it is the individual carrying out the work who needs to have the appropriate level of qualification and ability *as well* as any internal regulator so to speak. It will be important that regulation of this aspect is carefully monitored in order to make sure that work is appropriately reviewed in order to minimise the risk of individuals carrying out work for which they do not have the appropriate level of training.

The issue of attorney grants has been flagged up within your report and that is certainly an area where the public needs to be made more aware of what is involved and the risks entailed with that.

5. **What combination of financial protection tools do you believe 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?**

I am currently advising a client whose late uncle was resident in California and died there. The Estate has been administered and the Accounts now have to be approved

by a Court. This is somewhat similar to the Office of the Public Guardian where Deputies have to submit annual accounts where a number of these are scrutinised each year.

As part of the regulation perhaps it should be a requirement that a copy of accounts are filed with a copy of any Will or Statement of Entitlement on intestacy so that individuals who identify themselves as being beneficiaries can obtain a copy. On the basis that Grants of Probate and Letters of Administration can be obtained from the Probate Court perhaps it should be with the Probate Court that a copy of Estate Accounts are lodged. I am however conscious that Estate Accounts are often prepared in a variety of different ways and there may therefore be some form of agreed format for these – preferably one that is readily understood by the average layman. This is not always the case with accounts prepared by accountants from my experience.

One particular area of concern where Estates are administered is the question of bogus bills. Bills may be rendered by the Estate Administrator that are not approved by the Executor or Administrator or bills may simply be rendered for entirely bogus matters where the funds are then stolen from the Estate. [REDACTED]

So far as the holding of client money generally is concerned I would suggest that the Law Society model including the annual audit etc be followed as that seems to work well in ensuring that client money is separately identified from money belonging to the firm.

- 6. 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 practise?**

I do agree with this proposal. I would suggest that the different regulators should monitor their own providers in much the same way as happens at the moment – particularly so far as the Law Society is concerned. I would suggest that the various regulators should also then cross-check the qualifications that each different organisation requires their own members to retain to try and ensure a degree of uniformity and level playing field so to speak. This should hopefully then help the public to be confident that they can compare like with like rather than “apples with pears”. I am conscious for instance that STEP have produced a suite of different certificates that can be obtained to demonstrate appropriate levels of training, skill and qualification in different areas of work. Perhaps these can be used as a base level.

I have also recently read a paper suggesting that continuing education should not be limited simply to attendance at courses but be monitored by some form of examination to ensure that skill levels are being maintained. I agree with this.

- 7. Do you agree with the activities that we propose should be reserved legal activities? Do you think that separate reviews of the regulation of legal activities relating to Powers of Attorney and/trusts [should be carried out]?**

As mentioned above I do consider that the position concerning Powers of Attorney should be kept under review. Indeed I would suggest that it should be included at this stage within the ambit of regulated work even if with a “light touch” at this time but kept under review so that regulation can be strengthened if it proves to be an area of actual concern as opposed to simply possible concern.

8. **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?**

It will never be possible to regulate everything short of restricting the work to people who are qualified in a particular manner. It will never be possible to educate the public in all the areas that will be required. As the cost of living increases and with income levels for most people not keeping up with these increases (particularly at the moment) many people will continue to purchase the services based purely on cost. This may well mean “do it yourself” or telephoning around in order to get the cheapest quote. As your research will no doubt have indicated some providers are suggesting a very low “headline” fee although the final cost can often be much greater. I am also aware of sales literature suggesting that solicitors’ costs will be somewhat higher. In some cases (such as a letter recently sent out by a Trade Union) a specific figure was mentioned. From experience the figure mentioned for the work in question was only likely to apply for particularly complex work and/or perhaps be charged by City of London firms. This type of mis-information preys on the ignorance of the general public – largely because they will not be familiar with buying legal services or indeed this specific service.

9. **Do you envisage any specific issues relating to regulatory overlap and/or regulatory conflict if Will-Writing and Estate Administration were reserved activities? What suggestions do you have to overcome these issues?**

I would suggest that the Ombudsman will need to make sure that there is indeed compatibility and consistency between the way in which the regulations are interpreted and implemented by the different organisations, also ensuring that they are appropriate for the work being undertaken by the individuals in question.

10. **Do you agree that the section 190 provision should be extended to explicitly cover authorised persons in relation to Will-Writing activities as well as Probate activities following any extension to the list of reserved legal activities to the wider administration of the Estate? What do you think that the benefits and risks would be?**

I have no particular comment concerning this.

11. **General Comments**

There is an old truism that most of us know the price of everything but the value of nothing. The purchase of legal services is not like buying a bag of apples from a supermarket. My experience is that a number of the general public either believe that the two are the same or would like some form of legislation to make it so. Because the affairs of each individual are different and, most likely the circumstances of the providers of the services are different, it is not possible to create the utopia that the public may think they want. Allied with this is the balance to be achieved by the providers between, on the one hand, operating a business for profit and, on the other, providing a service to the client/customer.

Comment is also made in the report about registration of wills at the Probate Registry. So long as “DIY” wills are available a universal requirement for registration is unlikely to succeed as the consequent “public education” will be prohibitive in terms

of cost and unachievable with certainty. It could also deter will making generally if the cost is not minimal.

I trust that these comments are helpful.

Yours faithfully

A handwritten signature in black ink, appearing to be 'AEB', written in a cursive style.

**Anthony Collins Solicitors LLP**

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