

Which?

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Consultation Response

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Which? response to Legal Services Board's (LSB) Consultation 'Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities'

About Which?

Which? welcomes the opportunity to submit written evidence to the LSB's consultation into will-writing, estate administration and probate activities.

Which? is an independent, not-for-profit consumer organisation with over 700,000 members and is the largest consumer organisation in Europe. Which? is independent of Government and industry, and funded through the sale of Which? consumer magazines, online services and books. Which? works to make things better for consumers. Our advice helps them make informed decisions. Our campaigns make people's lives fairer, simpler and safer. Our services and products put consumers' needs first to bring them better value.

Which? Money and Which? Legal Service¹ give advice provided by professional money advisers and solicitors respectively, including financial and legal advice on wills, probate and the administration of estates. Which? also has its own on-line will writing service and has long published a guide to wills and probate², part of our essential guide series.

Summary

Which? believes in greater protection for consumers in will writing and probate and estate administration services, whilst also giving consumers the widest possible choice of options of service providers and also encouraging market liberalisation through innovation, new business providers, new services and methods of delivery. Unfortunately, Which? members have provided considerable evidence of problems in these areas of legal work and the problems which result including some intangible ones such as breakdown in family relations.

¹ <http://www.whichlegalservice.co.uk>

² <http://www.which.co.uk/publications/books/finance/wills-and-probate/>

Which? Is a consumer champion

We work to make things better for consumers. Our advice helps them make informed decisions. **Our campaigns make people's lives fairer, simpler and safer.** Our services and products put consumers' needs first to bring them better value.

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We therefore support the proposed regulation, and the proposed definitions of the activities to be subject to this regulation. We believe that it will on the one hand help liberalise the market so that it is more diverse but at the same time ensure the necessary safeguards are in place to ensure high standards across the market.

Though this consultation only covers wills, probate and estate administration, we urge the LSB to also investigate, or ask the Consumer Panel to investigate, consumer detriment in the related areas of trusts and powers of attorney. It is clear from the Which? Money Helpline and Which? Legal Service that these areas of legal work cause as many problems as wills and estate administration³

In the appendix, we have included some anonymous Which? members' case studies to illustrate the type of problems consumers can have with will writing, probate and estate administration activities.

This response should also be read in conjunction with our response dated 4 November 2011 to the LSB's initial call for evidence.

Question 1

Do you agree with the scope of the proposed reserved will writing activities and estate administration activities?

Which? agrees that Section 12 and Schedule 2 of the Legal Services Act 2007 (the Act) should be amended to include will-writing and estate administration activities, as we believe this would enable solicitors, will writers and other providers to supply services on a level playing field and to bring greater clarity to consumers about the service they are purchasing. We also agree that it is in the interests of consumers for all providers (including solicitors) to work to appropriate standards set by LSB and to be regulated by a regulator approved by LSB. Many consumers are unaware that will writing is unregulated; that different rules apply to solicitors as against other providers; and that there are different procedures for redress when things go wrong, or even no redress at all in the case of some non solicitor providers.

Can the scenarios provide in Annex 1 of the Provisional Report be caught within the scope of the proposed new reservations?

We agree that the answers given to all of the eleven scenarios in Annex 1 of the Provisional Report accurately reflect the policy of the LSB and that in those instances where the activity would not be regulated, this is appropriate. We do not believe that regulating activities which are neither core will-writing or estate administration services nor ancillary to core activities is necessary and we also believe that consumers would readily understand what services are regulated, should the Government implement the LSB's proposals in their current form.

What are the likely impacts of the scope of the proposed activities as described?

We believe that consumers would receive protection in the service areas where it is required, such as advising and producing wills and dealing with the assets of a deceased's estate.

³ Which? November 2012: 'Where there's a will there's a bill'



However, we do not consider that there would be detriment to consumers in those services where advice only is sought.

Question 2

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

Voluntary Schemes

We agree that voluntary schemes for regulation are not a viable option. The service providers from whom consumers most need protection would either choose not to join any voluntary scheme or would not meet any regulator's requirements, yet those service providers would still be legally entitled to provide will-writing and estate administration services. Anecdotal evidence collected by Which? endorses the LSB's view that the OFT's Consumer Codes Approval Scheme has not prevented poor or even criminal activity by some will-writing and/or estate administration service providers.

Consumer Education

One of the main objectives of Which? is to provide legal and service information to our members and consumers as a whole. Nevertheless the current inconsistent rules surrounding will-writing and estate administration mean that some consumers are unable to appreciate the risks they may be taking and adequately protect themselves. For this reason, we advocate mandatory regulation to cover all service providers.

Enforcement of Existing Consumer Protection Legislation

Existing legislation would not provide adequate redress in many situations. We provide some examples below:

- the individual making the contract with the service provider may be deceased by the time the problem with the will and/or estate administration becomes apparent and so first-hand knowledge from the consumer is unavailable
- any claim may be time barred by statute
- the service provider may no longer be in business and there may be no professional body or other alternative body against which legal or other action could be taken
- the loss suffered by the consumer or administrators or beneficiaries may not be a financial one but one of distress and inconvenience for which the current law may not permit adequate financial compensation or other appropriate remedy

Although the law could be amended to address at least some of these issues, we believe that consumer protection would be better served by regulating service providers and trying to reduce the problems arising in the first place. Where there are problems, there should be a uniform system of redress from the Legal Ombudsman and, where appropriate, regulatory intervention by the relevant Approved Regulator.

Question 3

Do you agree with the initial assessment of the consequential amendments that would likely be needed?

All agreed

Are there any other consequential amendments you consider would be necessary?



None

Question 4

Not applicable

Question 5

Not applicable

Question 6

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

Which? feels strongly that mandatory regulation for all firms would greatly assist in improving consumer confidence. Whilst it would be naive to believe that proper regulation would prevent all problems, it should greatly reduce publicity about firms producing inadequate services and consumers being “ripped off” by ‘cowboys’.

Question 7

What business impacts (both positive and negative) do you envisage will occur with the proposed reservation of will-writing and estate administration?

Positives

- greater incentives for consumers to have a will once they are aware of greater protection and rights resulting in increased business for will writers and estate administrators
- greater competition between providers of all types resulting in greater efficiencies and more innovation
- fewer problems for Probate Registries, HMRC etc if more consumers receive better quality professional advice

Negatives

- increased cost of service as a result of additional training costs for many providers. For all providers, the cost of additional regulation will be passed to consumers

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 any evidence you are aware of

Positives

- improved services to consumers as all will writers and estate administrators will have to be properly trained and regulated
- businesses providing services should be free of the taint of inadequate unregulated competitors tarnishing the name of the profession as a whole
- proper regulation should encourage more people to plan for trusted people to act as Executors and for the proper distribution of their estates after death



- regulation should address the problems in this sector which the OFT's Consumer Codes Approval Scheme has, in our opinion, failed to do
- providing redress to consumers to a single ombudsman if complaint to the relevant regulator has not satisfied consumers
- level playing field for all businesses

Negatives

None

Question 9

Do you envisage any specific issues arising from the proposals to impact negatively on consumers at risk of being vulnerable?

Which? has anecdotal evidence of inappropriate selling and advice of other services related to wills and estate administration, in particular trusts and powers of attorney, for example our investigation into lifetime trusts.⁴ The consumers most likely to be sold these products tend to be elderly, sometimes isolated and perhaps with memory or other mental capacity issues and so need particular protection. Though this consultation only covers wills, probate and estate administration, we urge the LSB to also investigate, or ask the Consumer Panel to investigate, consumer detriment in the related areas of trusts and powers of attorney.

Would any of the proposals actually increase their risk of becoming vulnerable?

Which? does not consider that any of the LSB's proposals would increase the risks to the vulnerable.

Appendix: Which? Member case studies

Case study 1

This case concerns alleged fraud. An unofficial "carer" managed to manipulate the situation so that the carer took control of the finances of a vulnerable person and encouraged the vulnerable person to make a will with Firm Y (which was apparently full of mistakes!) appointing the carer & some of her associates as executors and beneficiaries, cutting out and/or reducing the legacies to family and friends of the vulnerable person. The matter has been reported to the Police. Firm Y's website says that the company director has a Law Degree (LL. B) and that it adheres to the Institute of Professional Will Writers' (IPW) Code of Practice.

Case study 2

The Which? Member attended a seminar run by Firm A (a member of IPW) because the wills of the member and her husband needed updating. A home appointment was arranged and wills drafted, with which member & her husband were happy. However, at the same time, they

⁴ ibid



were talked into buying a package of wills, LPAs & lifetime trusts (asset protection trust). The latter did not seem to be appropriate to their circumstances and has not been completed some four months after the initial meeting, through no fault of the Which? Member. The consultant who drafted the Trust Deed has failed to arrange another appointment (despite promises he would do so). The Which? Member has paid the full fee of very nearly £4,000. The LPAs are not complete and, although Firm A said it would collect the LPAs & arrange registration with OPG, it is now refusing to do so without further payment of the registration fees of £130 per LPA. The Which? Member was told the registration fee was included in the sum paid. The Which? Member does not appear to have been given details of charges.

Case study 3

Which? Member and her spouse had mirror wills made with Firm B in 2003 that include nil rate band (NRB) will trusts. Which? Member was contacted recently by Firm B which said that NRB trust no longer necessary because of changes to IHT. On that advice, new wills were drafted for £450 + VAT. In fact, it seems the advice about changes to IHT was wrong and, in particular, there was no need to change their wills.

Case study 4

Which? Member's mother died in December 1999 leaving a will prepared by Firm X. The will contains a will trust, giving a life interest to member's stepfather, who has now died. The trust appoints Firm X as trustees. The solicitor dealing with the stepfather's estate has been unable to make contact with the trustees, which will be necessary to administer the estate properly.

Case study 5

Which? Member and spouse had wills drafted & stored by Firm Z, a will writing company, which is no longer trading. Member cannot find where the original wills are, which he needs as his spouse has died recently and this was her last will.

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