

LEGAL SERVICES BOARD CONSULTATION: ENHANCING CONSUMER PROTECTION, REDUCING REGULATORY RESTRICTIONS: WILL WRITING, PROBATE AND ESTATE ADMINISTRATION ACTIVITIES

Response by the British Bankers' Association

The British Bankers' Association (BBA) is the leading association for the banking and financial services sector in the UK representing over 200 banking organisations from 50 countries.

The BBA welcomes the opportunity to respond to the Legal Services Board consultation. Whilst only a limited number of our members provide will writing and estate administration services the institutions concerned are among the largest retail facing players in the industry. We believe that they (and other banks that could enter the market) have an important contribution to make in the context of the LSB's objectives for the markets under review.

We have studied the evidence assembled in the consultation document on the problems that can arise for consumers in the markets concerned and understand the reasons for the current exercise. As noted in the document the fact that consumers will typically only need to avail themselves rarely of these services is an important consideration, as lack of experience may impact on their ability to make informed judgements. It is recognised that this makes transparency on the part of service providers all the more important.

The Proposed Extension of Reserved Activity Status

In assessing the proposed extension of reserved activity status to will writing and estate administration services it is acknowledged that consumer protection considerations (in particular the scope for consumer detriment) are of key importance. At the same time due regard should be paid to other considerations that may also impact on consumers. These would include the impact that reserved activity status would have on the costs of service providers (and the consequent effect on pricing) and the extent to which such status could act as a barrier to entry or a disincentive to existing service providers

Taking the preparation of wills first, clearly the making of a will is a very important step for the individual concerned. Moreover if the task is not discharged effectively there could be serious implications not only for the individual but also for family members/potential beneficiaries. Further whilst the basic responsibility of a firm preparing a will is to express the client's wishes in suitable legal form there can often be an advisory element to the service. In these circumstances it is accepted that there is a case for regulatory oversight – which could involve the preparation of wills being a reserved activity.

The importance of efficient and effective estate administration is also self evident. That said we would draw a distinction between will writing and estate administration on the basis that the latter (as the term suggests) essentially comprise a series of administrative procedures. Provided that

British Bankers' Association

Pinners Hall
105-108 Old Broad Street
London
EC2N 1EX

T +44 (0)20 7216 8800
F +44 (0)20 7216 8811
E info@bba.org.uk
www.bba.org.uk

firms have appropriate internal controls in place we are not persuaded that the application of reserved status is necessary in this case.

Position of Banks

Extension of reserved status to the two services under consideration could raise particular issues for banks given that they are already highly regulated – mainly, though not exclusively, by the FSA. In this regard it is striking how many of the concerns aired in the consultation document are addressed by FSA requirements. The latter include the overarching FSA principles which set high level generic standards in a variety of areas – alongside detailed conduct of business and related rules. Particularly relevant are the client money/client assets rules, the rules on financial promotion, the treating customers fairly framework, the requirements on training and competence and the rules on internal complaints processes. In addition customers using banks' will writing and estate administration services have access to the Financial Ombudsman Service.

Should the LSB's proposals on the extension of reserved status be progressed we believe it would be important to review the extent to which existing financial regulation on banks could meet the concerns expressed in the consultation document. This could help to avoid (or at least minimise) the duplication and unnecessary complexity that would result if the regulatory initiative proposed by the LSB was simply super-imposed on the banks' existing regulatory framework. I should say that we have mentioned this issue to the FSA but there have been no discussions of substance.

A further consideration is that the eight regulators overseen by the LSB tend to relate to particular constituencies and it is not immediately clear which of these, if any, would be comfortable in regulating banks.

We would welcome the opportunity to meet with the Legal Services Board to discuss the comments above, in particular those on bank specific aspects, in due course.

July 2012