

Lawtalks



SRA Approved CPD Provider

Craig Ward
Author and Solicitor
Lawtalks.co.uk
07943 160955

This response is from Craig Ward, Author, Solicitor, CEDR accredited Mediator and Speaker. He is a member of *Solicitors For the Elderly* and the *British Psychological Society*. Craig speaks internationally on elderly care law and Court of Protection issues. He mediates on elderly care, probate and civil disputes and conducts legal research.

Publications include:

Lasting Powers of Attorney: A Practical Guide (2nd Edition) 2011, The Law Society

Managing a Resident Transfer Caring Times February 2012

Can Practitioners spot a Client who lacks Capacity? Private Client Adviser December 2011/January 2012 (Vol 17:2).

Opportunities Legal Update weekly publication (from October 2009 to August 2011).

Restraint or Deprivation of Liberty in Disguise? Elderly Client Adviser March/April 2009 (Vol 14:3).

Lasting Powers of Attorney: A Practical Guide 2008, The Law Society

Response to Legal Services Board consultation Enhancing consumer protection, reducing regulatory restrictions: will- writing, probate and estate administration activities

Question 1: Are you aware of any further evidence that we should review?

A wide range of evidence already appears to have been considered in the construction of this consultation. The evidence so far presented appears to provide a representative sample pool of legal practice. Although contributions have already been made regarding suitable evidence, the LSB may wish to consider whether it is appropriate to seek evidence from the legal writing community working outside law schools or universities, some examples of concern regarding practice are given below.

Question 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?

Consumers should be presented with a choice as to whom they wish to engage in conducting legal matters on their behalf, which is provided by suitably qualified and trained individuals. Ongoing training and evidence of such training should be seen as key to the provision of a confident consumer service. Without such ongoing training consumers may be placed at risk whichever practitioner they choose to engage, irrespective of cost, their regulation or business structure.

Question 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?

It is essential that service providers are required to maintain an appropriately trained workforce. Training being obtained from organisations or individuals themselves holding recognised teaching / training awards or qualifications. A minimum standard for training providers should include SRA accreditation, together with individual trainers at least attaining a City and Guilds award such as, 'Preparing to Teach in the Lifelong Learning Sector' (PTLLS). Receiving training from someone without such minimum qualifications may be seen as a failure in the provision of an appropriately trained workforce. Trainers should be able to demonstrate they have undergone training themselves alerting them to teaching strategies and models together with learning styles and appropriate assessment procedures.

Question 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?

Ensuring the fitness to practice and undertake paid professional work should be seen as an essential component of consumer protection. Being appointed an executor, or for that matter an attorney acting under a Lasting Power of Attorney for remuneration should attract a demonstrable measure of their fitness to undertake such work. Suitable background and character checks should also be considered.

Question 5: What combination of financial protection tools do you believe would 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?

The current position regarding separating client money from office money pursuant to SRA guidelines appears to provide suitable financial protection. Additional consumer protection from fraud and theft should be considered, such as by way of a compensation fund.

Question 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 could this work in practice?

At the heart of any organisation providing legal consumer services must be the ability of its workforce to understand current legal practices and requirements. To achieve this it is essential that anyone undertaking legal service provision for remuneration is appropriately trained, and that this training is up to date and ongoing with suitable records kept of training courses attended. A level may wish to be set requiring attendance for a number of hours on a basic minimum training course, together with a similar annual attendance requirements for ongoing training. Such requirements should be tailored to the amount of work undertaken by individuals, not necessarily by the organisation as a whole.

Question 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/ or trusts?

I am deeply concerned regarding practices and understanding of Lasting Powers of Attorney (LPA) which are brought to my attention. These range from practitioners only advising on financial LPA's, ignoring the fact that a client may benefit from a health and welfare LPA; banking institutions advising that an ordinary power of attorney, not an LPA, "... can only be accepted if the Power of Attorney has been registered with the Court of Protection..." or advising the spouse of someone lacking mental capacity it is quite acceptable to transfer the savings of the person lacking capacity into the spouses name, as it makes it easier to manage the bank account; or the failure of members of the banking and care service provision community to recognise the importance of appropriate training in the area of LPA's.

With these thoughts and others in mind it is hard to see how LPA's should not be considered either as a reserved legal activity or suitably regulated.

Creating a Lasting Power of Attorney allows you to appoint someone you care and trust to make decisions on your behalf, in the event of you lacking mental capacity sufficient to make these decisions yourself. Professionals who fail to understand the application, creation and subsequent use of an LPA may potentially be considered as placing consumers at risk.

The LSB may well be advised to consider a separate review of LPA's.

Question 8: Do you agree with our proposed approach for regulation in relation to —do -it –yourselfll tools and tools used by providers to deliver their services? If not, what approach do you think should be taken and why?

It is important consumers retain an entitlement as to whether they wish to seek legal advice. However where services are provided on a professional basis for remuneration, including checking / advising / confirming any form of self completion package, such a service provision should be brought within a regulatory framework.

Question 9: Do you envisage any specific issues relating to regulatory overlap and / or regulatory conflict if will-writing and estate administration were made reserved activities? What suggestions do you have to overcome these issues?

Regulatory measures should ideally ensure appropriate management of consumer services, ensuring risks to consumers are minimal. It would seem inappropriate for the duplication of regulatory schemes managing practitioners.

Question 10: Do you agree that the s190 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?

Confidentiality should be seen as a significant factor regarding practitioner / client relationships. Such a relationship provides for frank discussions with clients allowing practitioners to understand the clients needs. Extending s190 provisions would seem appropriate as this would allow greater confidence by consumers to be placed in practitioners.

Question 11: Do you have any comments on our draft impact assessment, published alongside this document, and in particular the likely impact on affected providers?

No.

Craig Ward
Author and Solicitor
July 2012