



The Law Society

**Investigation into will writing, estate
administration and probate activities
Call for Evidence by the
Legal Services Board**

Response by the Law Society
of England and Wales
November 2011

THE LAW SOCIETY'S RESPONSE

Introduction

The Law Society is the representative body for over 140,000 solicitors in England and Wales. It negotiates on behalf of the solicitors' profession, lobbies regulators, Government and others. It also works closely with stakeholders to improve access to justice for consumers.

We welcome the opportunity to respond to the Legal Services Board's call for evidence and investigation into will writing, estate administration and probate activities.

In preparing this response, we sought the views of the Law Society's Wills and Equity Committee and the Private Client Section. These groups comprise specialist practitioners who have considerable experience in all areas of wills, probate, elderly client, trusts and charity law.

Making a will is an important decision which ensures that an individual's wishes are carried out properly after their death. The drafting of a will and administering the estate through probate can involve complex legal and financial areas, including technical issues of tax, trusts and property rights. It is therefore unsurprising that problems in the drafting of a will and administering the estate have the potential to cause the most profound repercussions for the bereaved.

Many consumers are unaware that anyone can operate as a will writer and draft wills and administer an estate without having to adhere to any guidelines or provide consumer protections. Further, in practice many of those who draft wills are entirely unregulated; they are not subject to any regulation and are free, if they choose, to prepare wills and administer an estate without any training or insurance protection.

We would like to highlight our particular concern with the protection of the client's assets during the estate administration process. There is currently no regulation or monitoring in place to ensure that administrators do not misappropriate the estate assets. There are significant risks involved in allowing unqualified and unregulated will writers to have full control of the estate's assets. The administrator is responsible for important tasks which can be easily open to abuse and safeguards need to be put in place to protect the testator's estate from unscrupulous behaviour.

We believe that regulation is the only appropriate means of protecting the consumer in this area and we support the Legal Services Board's Consumer Panel's recommendation for will writing to become a reserved activity. However, we also believe that the preparation and lodging of a power of attorney and estate administration services should also become a reserved activity to ensure consumers are adequately protected.

Call for evidence: investigation into will writing, estate administration and probate activities

Will writing

Question 1: Do you agree with the Panel's assessment of the problems in the will-writing market and resulting consumer detriments? Are you aware of any key problems and detriments that have not been identified or evidence that any problems and detriments identified are not as significant suggested or are worse?

We agree that the Panel's assessment identified the main problems currently being experienced in the will writing market and the consequential detriment faced by consumers when problems arise.

Will writing is unlike other legal activities in that most mistakes or defects are often not found until after the client has died, which makes rectification more difficult if not impossible in some cases. A significant number of individuals make a will long before their death, in some cases this could be 20 years or more. If problems are found there is unlikely to be any available redress from an unregulated will writer and there is no guarantee that the will writer will be still operating as a business.

We strongly believe that all the problems identified by the Consumer Panel cause significant detriment to consumers and this was evidenced by the nearly 400 case examples which the Panel received. We provided the Panel with 140 examples and we have continued to receive more examples from members of the profession detailing problems within the will writing market. We have included these new examples in Annex A.

In addition, we would like to highlight that our members are experiencing a large number of cases where consumers have been mis-sold a type of trust by a variety of service providers. The trust offered is often called an 'Asset Protection Trust', or 'Life Interest Trust', or 'Protective Property Trust', but it is also referred to under various other guises. The Consumer Panel report identified these trusts as a concern. This is an increasingly difficult area where consumers are paying thousands of pounds, which in many cases represents a significant portion of their savings, for a product that promises to protect a person's home against possible future care home fees but where the consumer may not have received adequate advice as to its applicability, its appropriateness for their circumstances and its possible ineffectiveness for the purpose for which it was sold. There are frequently errors and mistakes which render the use of the product unfit for its purpose and potentially void.

We are also very concerned about the lack of succession planning for unregulated providers who may become insolvent or close their business. At present, there is no safety net in place to protect a client's will and file if an unregulated business ceases trading. By contrast, if a law firm closes the Solicitors Regulation Authority (SRA) will intervene and ensure the safety of all wills and files.

Question 2: Do you agree with the Panel's assessment that will-writing should be a reserved legal activity? Do you agree with Panel's assessment that alternatives to statutory regulation - such as consumer information, enforcement of existing legislation and voluntary self-regulatory schemes are unlikely to protect against the identified problems and detriments? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?

Yes, the Law Society agrees with the Panel's assessment that will writing should be a reserved activity.

Will writing is a potentially complex activity which will often require knowledge of wide areas of the law and, in complex cases, significant experience in advising on difficult family and financial situations. The complexity of a situation or the options available will frequently not be obvious to a consumer. Problems that arise in the drafting of a will may have profound repercussions for the bereaved, who will have to pay significant costs to resolve problems and will face considerable delays and an uncertain and difficult process at a time when they may need access to funds, be prevented from benefiting from the wishes of the person as well as suffering great emotional difficulty. There is a clear need for effective regulatory provisions to be put in place to ensure that those writing wills for reward have the right level of experience and training, are subject to proper ethical rules and that, where mistakes occur, those affected can be recompensed and action taken to prevent the mistake from recurring.

We are also aware that the public places great value on regulatory protection, with the overwhelming majority (93%) of respondents to our 2010 survey¹ agreeing that 'it is important for anyone running a business making wills to be properly regulated'.

Professor Stephen Mayson in 'The Regulation of Legal Services: What is the Case of Reservation'² when discussing will writing stated:

'Our view is that reservation is justified on the basis that, as a result of unregulated provision, detriment to the consumer might be caused by incompetent, inadequate or biased advice or an invalid will or one that does not properly give effect to their intentions..... The advantage of reservation is to provide some assurance to the testator that such inappropriate action is less likely with regulated providers and that his or her executors and beneficiaries will have some recourse.'

Above all it needs to be remembered that this is not just a transaction between a consumer and a provider. The outcome affects beneficiaries, family members and others who have no control over who wrote the will in the first place. The cost to them and to the public interest generally needs to be considered in looking at this question.

We have considered the various alternative options to statutory regulation which would be available in this area, however we do not believe these will address the problems that arise as outlined in the Panel's report. We strongly believe that

¹ The Law Society research was conducted by ICM Research, 15-17 October 2010, using a random sample of 1001 adults over 18 in the UK (excluding Northern Ireland). The results of the survey were sent to the Consumer Panel.

² Legal Services Institute (2011) *The Regulation of Legal Services: What is the Case for Reservation?* London.

ensuring all will writers meet a set of compulsory standards which are enforced is the most appropriate way of protecting consumers.

Consumer education is in theory an attractive tool to enable consumers to make an informed decision when engaging the services of a will writer. However, we do not believe an effective consumer campaign could be put in place to ensure that every consumer is aware of the problems that may arise in relation to will writing. Any campaign likely to have a real impact on consumer understanding would require many years of work and be disproportionately expensive.

In particular, we are conscious that consumers are unaware that anyone can operate as a will writer and draft wills, and that will writers are not required to adhere to guidelines or provide consumer protections, such as insurance. Will writing is seen by many as being a legal transaction which only authorised individuals, such as solicitors, would be entitled to carry out. In our 2010 survey we found that 61% of respondents thought will drafting is always subject to regulation and 65% of respondents who used a will writing company incorrectly stated that the company was subject to regulation.

With the increasing use of the internet we believe that it is becoming more difficult to assist consumers to identify reputable service providers. Anyone, and in particular people looking to commit fraud, can create a website that looks professional and has many testimonial recommendations. We have recently received a number of complaints about misleading information being placed on websites and concerns around the use of terms such as 'lawyer' which are not protected.

For these reasons, we do not believe that consumer education would be the most effective means of addressing the problems caused by poor quality, unregulated will-writers.

We agree with the Panel's report which clearly identifies the issues around relying on the enforcement of existing legislation. The Panel's report states:

'The most relevant law is the Consumer Protection Regulation, but consumers do not have a private right of action.... This places a heavy reliance on public enforcement'.

We recognise that there have been some significant prosecutions in this area, but considering the number of complaints we have received and the volume of examples of problems uncovered, in reality the number of prosecutions is quite small.

One of the most significant problems with the enforcement of existing legislation is that action is taken through local resources. While one local trading standards body may see will writing as a priority in which to dedicate its resources, in another area priorities may be very different. Even if there is an opportunity in the future for a targeted national enforcement operation against rogue will writers there is no guarantee that that this would provide a long term solution. Above all, such action will not help those people who have already used the service and be unaware that their will may be defective.

While we recognise the efforts of those will writing companies which have introduced some means of voluntary self-regulation, we do not believe that this is the most appropriate means of preventing problems from arising in this area. One of the main concerns we have is that there are no restrictions as to who can undertake this work. Even if a will writer is expelled from a voluntary scheme or even if a solicitor is

removed from the roll there is nothing preventing that individual from continuing to act, and the reliance on voluntary schemes will not resolve this issue.

We are also concerned that voluntary regulation has not significantly progressed in this field. It is five years since the government called for voluntary regulation yet the problems with will writers have not subsided, and in this time we have been presented with more and more examples of consumer detriment as a result of unregulated will writers. It was not until June 2010 that a code of practice drawn up by the Institute of Professional Will writers (IPW) was approved by the Office of Fair Trading under its Consumer Codes Approval Scheme. This is the first and only recognised voluntary code of conduct for will writers. It is believed that IPW has approximately 200 members, which is only a small portion of the number of will writers we understand to be in practice.

There is also the concern that if a will writing company becomes insolvent there is no safety net in place for the security of documents, as opposed to a law firm where the SRA intervenes and ensures the safety of the wills and will files.

Voluntary regulation also re-enforces our concerns about consumer education. Consumers will need to know what voluntary regulation means and be able to easily identify a reputable will writer who is subject to regulatory rules. We have real concerns that this practice area does not easily lend itself to effective consumer education and have doubts that consumers will understand what is meant by voluntary self-regulation. Will certain bodies be recommended by the government or Legal Services Board? Will recommendations be limited to those who have a Code of Practice approved by the OFT? IPW has itself come out and stated that self-regulation is not a viable solution in this sector.

The Legal Services Act 2007 (LSA) introduced a move away from self-regulation which has resulted in organisations, such as the Law Society, separating out their regulatory and representative functions. We do not see the benefit in encouraging will writing organisations to become self-regulating which thereby negates the position taken in the LSA.

We also do not believe that accreditation schemes or quality marks would be an effective alternative to statutory regulation. Accreditation has a role to play in helping consumers identify specialists. The Law Society administers several accreditation and quality schemes under its representative function. We believe these types of schemes are of great benefit to consumers. However, accreditation by its nature should be non-mandatory and should not be seen as a substitute for regulation. It is important that only reputable organisations offer to run an accreditation/ quality scheme and we do not believe that this can be controlled without regulation in place. If there are no regulatory boundaries around who can offer these schemes then no benefit would be gained from going down this route.

Accreditation schemes run by unregulated providers can be misleading to consumers who have difficulty distinguishing between legitimate schemes and those set up to give a veneer of credibility to less competent or honest practitioners. Consumers often do not recognise (and cannot distinguish) the difference between voluntary accreditation and statutory regulation or understand the levels of protection that are available under different schemes.

However, we do see accreditation/ quality schemes as an effective supplement to regulation; as a way of distinguishing professionals in the area they practice and to

drive up standards. We believe such schemes are more appropriately set up by regulators who can tailor the scheme to the needs of their individual members.

Question 3: What do good providers of will-writing services currently do to protect against problems and ensure that consumers receive a quality service?

A good provider of will writing services:

- has strong legal knowledge and experience and therefore provides sound advice to their client;
- understands the client's financial and personal affairs and is able to provide properly tailored advice;
- ensures that the client understands the advice provided to them;
- will deliver a document that addresses the needs and personal circumstances of the consumer and achieves what the consumer wants;
- has in place adequate insurance to cover any mistakes which may occur;
- has consumer protections in place, such as being subject to a code of conduct, and providing access to a compensation fund, a complaint process and being subject to minimum training and updating requirements and disciplinary mechanisms;
- only takes on a matter that is within their expertise and experience;
- ensures that a good client relationship is established and the client feels comfortable to raise any concerns or questions they may have;
- has in place a mechanism to maintain business continuity to ensure that wills and old files are stored safely and are protected if the business closes; and
- considers issues such as testamentary competency and whether undue pressure has been brought to bear on the intending testator.

Question 4: If will-writing was to be a reserved activity what specific activities should be included within the scope of the reservation? The Panel has suggested that the scope of regulation should include the commission, sale and preparation of will-writing and related services for fee, gain or reward.

While the Panel's suggested scope for regulation would be appealing in the sense that it would capture all related work done in this area we are concerned that any definition should be specifically defined to avoid confusion and the potential for legal argument.

The Panel's definition which includes 'related services' raises a number of questions. What is meant by 'related services' could be contentious unless it is clearly defined to mean activities such as the preparation of a power of attorney.

Further, the term 'related services' is used by the Panel to mean services which are offered in connection with the will. However, this could become confusing if, for example, the preparation of a power of attorney falls within the remit of a reserved activity because it was offered to a client at the time they made their will, where it would not be a reserved activity if a client simply asked for a power of attorney to be prepared.

Professor Stephen Mayson in his report 'The Regulation of Legal Services: What is the case for reservation?'³ argues that a strong case can be made out for the current list of reserved activities to be extended to include:

³ Ibid.

- the preparation of a will or other testamentary instrument;
- the preparation or lodging of a power of attorney; and
- the administration of an estate following a grant of probate or letters of administration.

We support Professor Stephen Mayson's list of activities, however we would recommend a step further which would clearly express what is meant by 'the preparation of a will or other testamentary instrument'. It is not simply the drafting or signing of the will that needs to be reserved it is all the preparation work leading up to the execution of the will that also needs to be covered. We believe that the reserved work should start at the point where client contact is first made to the point where the will is duly executed. This would capture the taking of client instructions and background information, tax planning and any advice linked to the preparation of the will. It would also extend to the commission and sale of wills.

The preparation stages for making a will are vitally important. It is the collection of information, questions asked and tax planning which shapes the detail of the will. If the reserved activity only captured the execution of the will this would not protect the client as the vital preparation work could be undertaken by an unregulated person.

We have received many examples of problems (these were sent to the Consumer Panel) arising out of the commissioning and sale of wills by the unregulated sector which would justify this process falling within the scope of the reserved activity.

We would also argue that the same definition of 'preparation' should also extend to the preparation of a power of attorney. In most situations, will writers do not just offer to draft wills, they will usually offer a variety of services including drafting a Lasting Power of Attorney.

The preparation of powers of attorney is so important that this service should be reserved and only undertaken by authorised people. Enabling a person to have full control of another person's financial and personal affairs is a very significant decision to make. It is important that consumers are provided with adequate advice when making this decision and are aware of the risks that such a decision entails. It is also vital to ensure that consumers are protected from unscrupulous will writers whose only intention is to defraud the consumer by pressuring the consumer to name them as their attorney.

There is also the significant concern around the quality of the preparation of the power of attorney document. Technical errors can result in the power of attorney document not being registered by the Office of the Public Guardian which results in a new document having to be prepared and a fresh fee paid on re-submission. This is a costly exercise as the fees for registering a power of attorney are not refunded when an application is rejected. It can also result in significant delays, which can cause considerable detriment if the consumer loses mental capacity and an application to the Court of Protection has to be made.

We note that the Panel's report specifically mentions that the appointment of providers as executors should fall within the regulatory scope. We agree that the appointment of an executor is a significant area of concern which should be reserved. In appointing an executor the consumer should be given adequate advice and information about the role of executor and the fact that the executors will control the money in their estate to ensure they make an informed decision as to an

appropriate executor. They should also be made aware of the cost implications when appointing a professional executor. We have issued a practice note 'Appointment of a professional executor'⁴ which provides clear guidance to our members about the advice that needs to be provided to their clients before they are appointed as an executor.

As with appointing an attorney under a power of attorney, it is vital to ensure that consumers are protected from unscrupulous will writers who may pressurise them into naming the will writer or members of the will writer's family as an executor. An executor is put in a very powerful position where they have control of the estate and many problems do arise in this area as detailed in our response to question 8.

In terms of detailing what should be a reserved activity, if the list of reserved activities is only extended to include will writing and not estate administration, then we agree that the appointment of executors should also be specifically reserved. However, if the administration of an estate following a grant of probate or letters of administration also becomes a reserved activity we do not believe that the appointment as an executor needs to be specifically defined as only authorised practitioners would be able to undertake this work for a fee, gain or reward.

It is obviously right that consumers should be able to prepare these documents themselves or rely on an individual to do this where there is no fee, gain or reward. However, where a will writer offers to prepare the will for free on the condition that they are named as the executor and able to administer the estate, as illustrated in the below example, we believe that both activities should be captured under the list of reserved activities.

I had a case where a Will was advertised as 'free' provided the Will Writer was appointed as the executor, and only when the client asked did the Will Writer provide information about the costs involved (a flat rate of 10% of the gross estate).

Alongside will writing, powers of attorney and the administration of the estate we believe that the preparation of probate papers should remain a reserved activity. We outline our views on probate in question 15 below.

Question 5: What specific protections are needed for each problem and detriment that has been identified? Do you agree with the "core elements" (as set out above) that the Panel believe are needed? Do you think that any of the "core elements" are not required on a mandatory basis or that there are other protections that are also required?

We believe that by reserving will writing, powers of attorney and estate administration services, consumer protections will be put in place to address the problems as identified in the Panel's report.

Will writers who choose not to undertake professional training or to protect themselves and their clients by obtaining adequate insurance place the general public at risk and in particular the elderly and vulnerable. The argument that consumers should be free to make choices about the level of regulation and protection that they wish to engage, with the proviso that they are sufficiently well informed to do so, sidesteps the issue of vulnerable members of society, such as

⁴ www.lawsociety.org.uk/productsandservices/practicenotes/executorships/5031.article

those who are recently bereaved or experiencing difficult emotional circumstances, who may not be in a position to make an informed choice.

There is a need to ensure that there are adequate regulatory protections in place to protect vulnerable, frail and elderly consumers when making a will or dealing with the estate of a relative or friend. It is these vulnerable consumers who will not be able to easily distinguish between the smart logo of an unregulated company offering 'qualified advice' (that is providing only a limited service with no specific tailoring to the individuals needs or circumstances, inadequate advice and no estate planning), and a regulated provider who is required by their code of conduct to act in the best interests of their client. We do not believe that in this area where a significant portion of consumers are vulnerable, the promotion of consumer choice should be endorsed at the expense of consumer protection.

However, to ensure adequate consumer protections are in place it is essential that there is a consistent standard of regulation for all authorised persons carrying out reserved activities. If lighter touch regulation is applied to will writers this will:

- lead to confusion for clients and the public about what to expect from different regulated providers and potentially a loss of confidence in the system; and
- encourage a 'race to the bottom' between competing regulators.

We feel that to ensure adequate consumer protections are in place the following core elements should be mandatory for all regulators of will writing services:

- training requirements and monitoring of training providers;
- compulsory indemnity insurance with a minimum level of cover;
- compulsory compensation fund;
- a code of conduct including requirements to meet the professional principles, follow an advertising code, foster equality and diversity and be transparent about costs;
- a system to ensure clients and their wills are protected should a will writer cease practising;
- a complaints management system; and
- a disciplinary mechanism including supervision, monitoring and sanctions.

Most of these elements were highlighted in the Panel's report.

Question 6: What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?

We believe that regulation is the only true form of consumer protection in this area of law. Without regulation, providers do, of course, have the freedom to market and deliver services without meeting any professional standards and detriment to consumers or, very frequently, their families or other third parties in areas of major significance to their lives will be the result.

Regulation would deter rogue will writers from practising in this area and would ensure that only genuine will writers who are trained and are interested in providing a dedicated and honest service to consumers will remain in practice. Regulation will put in place structures that would help identify problems and come up with solutions to avoid and assist with rectifying these problems when they arise. The safety nets

which come with regulation, such as having the support of the Legal Ombudsman, will enhance consumer protection.

We do not feel that regulation will restrict competition within this field. Many will writing organisations have openly supported the move to regulation and we believe that these organisations will continue to stay in the market even if will writing is regulated. At present solicitors are already working to meet high regulatory standards, and yet solicitors continue to have the largest portion of the market share in this area. This shows that having to meet high standards and compulsory requirements will not prevent organisations or individuals from competing in the market or reduce access to services.

We do not believe that any increase in cost of services outweighs the benefits of consumer protection through regulation. Further, in practice we do not believe that unregulated provision is always significantly cheaper, in fact hidden extras, such as storage costs for wills, may make such services more expensive in the long run.

We also do not believe that consumers will be deterred from making a will by what is likely to be in reality minimal increases in service costs. In our 2010 survey only 3% of respondents cited costs as a reason for not having a will, further only 11% of respondents named low cost as the most important qualities when considering using a will writer. We feel that our survey results demonstrate that most consumers prioritise protection above price. The vast majority (82%) of respondents to our survey agreed that they 'would pay more to have a will drafted by a regulated provider with a formal complaints procedure and compensation scheme'.

Regulation would enhance the administration of justice in this area and protect the public interest. Problems with wills lead to the will being contested and, potentially, a testator's last wishes not being met. This is a public interest issue as there is a cost to the public purse of such cases being pursued. The perception that the testator's last wishes may not be carried out, due to the poor drafting of a will may also damage the public's confidence in the rule of law. Consumers would be provided with a variety of means to seek compensation and rectification where problems arise and will have the support of the regulators and the Legal ombudsman. It will also ensure that will writers who are expelled from practising in this area are prevented from providing these services.

Probate and estate administration

Question 7: What are the key outcomes for consumers that we should aim to achieve?

Consumers should have confidence and trust in their advisers and be able to rely on professionals to administer an effective and efficient legal service which has protections in place to prevent or rectify problems when they arise. It is vital that when an individual passes away that their estate is administered according to their wishes and that their beneficiaries receive the assets that they are entitled to in a timely fashion within the law and at a reasonable cost.

Question 8: What are the existing problems experienced by consumers of probate and estate administration services (testators, executors and beneficiaries)? What are the causes? What are the consequences? What evidence is there of consumer harm?

We believe that the Legal Services Board's call for evidence document identifies the main problems within this area, namely:

- fraudulent activity linked to administering an estate;
- failure to properly protect and preserve the will;
- errors in the will document leading to difficulties with probate and administering the estate;
- service issues such as unnecessary delays, failure to keep beneficiaries informed of progress and providing deficient costs information;
- overcharging and/or tying in an expensive estate administration package at the time that the will is written; and
- errors in the process of handling of a person's estate after death.

Problems also arise where unnecessary delays diminish the value of assets, where there is a conflict of interest on the part of the executor, or where improper valuation of assets takes place.

We are particularly concerned with the protection of the client's assets during the estate administration process. There is currently no regulation or monitoring in place to ensure that administrators do not misappropriate the estate's assets. There are significant risks involved in allowing unqualified and unregulated will writers to have full control of the estate's assets. The administrator is responsible for important tasks which can be easily open to abuse, such as collecting the assets due to the estate, selling assets in the estate, releasing monies to pay debts and preparing estate accounts.

Unregulated individuals administering an estate are given, in reality, autonomy to handle the assets of an estate as they please. In most cases the beneficiaries will not know the exact assets held by the estate or know the contents of the testator's will and therefore would not be in position to question the actions of an administrator with any good authority.

Professor Stephen Mayson in his report 'The Regulation of Legal Services: What is the case for reservation?'⁵ stated:

'The strongest reason for any probate reservation lies, in our view, in the protection of the estate's assets from maladministration or misappropriation by someone carrying out estate administration for reward. It is a consumer protection justification'.

We note that the below example has already been provided to the Consumer Panel, however it clearly illustrates the problems that can arise:

'The will that we have been dealing with left the residue of a widow's estate upon discretionary trusts. The will writer argued that as executor, the law allowed him to invest estate monies as he saw fit - including investing in his children's school fees, foreign property and cars. He argued that he was intending to pay a share of the profits to the estate. The jury was not convinced and he was convicted of theft from the estate. We are dealing with this and several others.'

⁵ Legal Services Institute (2011) *The Regulation of Legal Services: What is the Case for Reservation?* London.

In this example a successful prosecution was made, however there will be cases where the beneficiaries do not realise that assets are missing or should be available to them or they trust the administrator who tells them that he or she can lawfully use the funds for his or her own benefit. Further, even if a conviction of theft is handed down there is no guarantee that the beneficiaries will be able to reclaim the assets that they were entitled to, the fraudulent operator having already disposed of the assets and spent the money.

We are also concerned about the practice of some will writers who charge clients for estate administration services or a discounted future service fee at the time of making the will. There is no way for a will writer to determine an appropriate fee for probate at the time the will is prepared as there is no guarantee as to what assets will be in the estate when the testator passes away and therefore the simplicity or complexity of the administration. Further, there is no guarantee that the individual or a will writing company will still be operating when the testator passes away. Below is an example which was presented to the Consumer Panel but illustrates this problem:

A client instructed a will writer who had advertised his services at £49 plus VAT. The client ended up issuing a cheque for £3,000 to the will writing company as they had taken an advance on their probate fees.'

The main cause for all these problems is the lack of regulation in place to ensure that only those with the appropriate knowledge and skill are able to handle an individual's estate. The concept of administering an estate naturally lends itself to be an ideal target for fraudulent individuals to work in. There are no structures in place to monitor the activities of administrators and it is up to the individual beneficiaries, who usually do not understand the process or do not know what they are entitled to, to raise any concerns.

Problems with the administration of the estate have very serious consequences for all the parties involved. For the testator it is that his or her wishes are not fulfilled, for executors who are not directly involved in fraudulent activity it may be that they are held liable for the actions undertaken by an unregulated provider. For the beneficiaries where mistakes take place this usually results in significant delays and costs which reduce their share of the estate, but ultimately it is where the beneficiaries receive none of the assets that they are entitled to which leads to the greatest detriment.

Question 9: To what extent are avoidable problems with the process of probate and dealing with a person's estate after death a consequence of a poorly drafted will or there not being a will? To what extent are problems a direct result of actions taken while administering the estate?

We are not convinced that a large number of problems are caused by there not being a will. According to the Judicial and Court Statistics 2010 report, in 84% of all cases where a grant was issued the deceased had left a will and in the Judicial and Court Statistics 2009 report, in 83% of cases the deceased had left a will. These statistics suggest that the deceased not having a will is not a significant problem during the probate process.

We realise that some of the problems that arise during probate are a result of a poorly drafted will. Where the will is ambiguous or incorrectly prepared measures for rectification may have to be taken, if at all possible or the will may be invalid and proceedings may be issued. However, poorly drafted wills do not account for all the problems that arise during the probate process.

As discussed above, it is the protection of assets that we are concerned about and this is directly related to actions taken while administering the estate which cannot be resolved through having the preparation of the will as the sole reserved activity. We received a number of examples from our members concerning estate administration practices, which we presented to the Consumer Panel and have included them in Annex B for ease of reference. However, we do not believe that these examples reflect the full extent of the problems that arise during the administration of an estate.

Question 10: How and at what stages of the process are problems normally discovered? How and how easily can problems be put right and detriments reversed?

Problems involving the preparation of a will are usually discovered when the testator dies and the executor applies for a grant of probate or letters of administration. In some cases the issues can be rectified, however this usually involves cost and time, and in other cases the will will be invalid and the testator is declared to have died intestate.

We believe that problems that arise during the administration of an estate are more difficult to detect. As there is no regulation in this area, fraudulent activity or errors in the process of handling of the estate would in most cases have to be detected by the beneficiaries or any lay executors which may have also been appointed alongside a professional executor. If the beneficiaries are not kept informed of how the administration is progressing there is no central organisation where they can ask for assistance in rectifying any concerns they may have.

Beneficiaries may become suspicious of problems arising if the administration of the estate takes an extremely long time to settle. However, by this stage there may be no way of getting back any assets which may have been misappropriated. Further, where there is no long time delay and the beneficiaries do receive some assets, if they do not know the exact details of what the estate should consist of or the content of the will then they may not be aware that they have not received everything they are entitled to receive.

Once the grant of probate or grant of letters of administration has been obtained there is no compulsory regulation for the supervision of those acting in the administration of the estate and no monitoring or support bodies in place for services provided by unregulated providers to ensure that the estate has been correctly administered.

Problems that arise during the administration of the estate are not easily rectified and do cause considerable detriment to the beneficiaries and to the testator where his or her wishes have not been fulfilled.

Where a will writer misappropriates funds and is caught and found guilty of theft or fraud there is no guarantee that the funds will be returned to the beneficiaries as they may no longer be in the will writer's possession. The beneficiaries can sue the will writer, however this can be a costly exercise for the beneficiaries and not a viable solution if the will writer has no assets to pay out any order made. Where a solicitor is convicted of fraud beneficiaries can make a claim through the compensation fund. There is at present no similar provision for unregulated providers, so the beneficiaries may suffer significant detriment as they will not receive the assets they are entitled to or even any money in lieu.

The Bristol Evening Post, on 21 October 2011, ran a story about an independent financial adviser who had misappropriated an estate and spent the estate's assets on 'extravagant living, including buying an apartment, designer watches and funding a public school education for his children'. While the offender was sentenced to eight years in prison, only a portion of the estate could be recovered which has meant that the beneficiaries made up of charities and a church only received a fraction of what they were originally entitled to⁶.

Where errors are made in the handling of an estate it will, at least, cost money to rectify any mistakes. Once again the beneficiaries can issue court proceedings against the administrator for any errors that occur but, as stated above, this is usually an expensive exercise and only viable if the administrator has assets to pay any compensation ordered.

In cases where unnecessary delays occur or mistakes are made during the administration of the estate, beneficiaries tend to turn to other professionals to assist. We have received a number of examples from our members where beneficiaries have turned to solicitors to help rectify the problems of unregulated will writers. While solicitors can in most cases assist, the result is additional expense to the estate. The example below was provided to the Consumer Panel but helps to illustrate the problems in this area:

Presently I am assisting a client in the estate of her late husband. Really, I should not be acting on behalf of the estate as my client had instructed a firm of will writers (who had prepared the will) to deal with the estate administration. However, my client was extremely dissatisfied with the level of service and, in particular, the level of charging. She was charged several thousand pounds for "tax efficient wills", lifetime trusts and powers of attorney and also for what was understood to be the costs of the estate administration. This is still being disputed.

There have been gaps in the estate administration itself, one of which was the source of my instruction. The deceased had established in his will a nil rate band discretionary trust. My client had told the will writers that she wanted to appoint out the trust assets in her favour. They did this but without asking the other trustees (there are three in all) as to whether they agreed to this or preparing any legal documentation to effect the appointment out. Fortunately, all the trustees were in agreement and it has been my job to deal with all the necessary legal paperwork to ensure there are no repercussions on the wife's estate.

However, where the beneficiaries do not know how or where to seek assistance in rectifying the problems there is no oversight body upon which they can rely. We believe the Legal Ombudsman plays an important function in this respect and provides consumers of solicitor services with an avenue they can explore if they have concerns about the services that are being provided.

Question 11: What do good providers of probate and estate administration services currently do to protect against problems and ensure that consumers receive a quality service?

Good providers of probate and estate administration services will:

⁶ <http://www.thisisbristol.co.uk/Church-loses-pound-40-000-legacy-money/story-13620517-detail/story.html>

- be trained and have the knowledge and experience to deal with the consumer's individual matter and provide a thorough service;
- be insured;
- have consumer protections in place, such as be subject to a code of conduct and have accounts rules for the protection of client money, access to a compensation fund, a complaint process available and be subject to disciplinary mechanisms;
- provide transparent and up-to-date costs information;
- inform the relevant parties of the steps they can take if they have concerns with the service being provided;
- keep the relevant parties informed, account for all actions taken and ensure they understand the process;
- ensure that they adhere to the wishes of the testator;
- provide a timely and legally sound service; and
- ensure that the client's best interests are paramount.

Question 12: Are self-regulation and general consumer and criminal law capable of addressing consumer harm? Do you think that assessed accreditation schemes and quality marks specific to this field would benefit consumers either as a supplement or alternative to statutory regulation?

As discussed in question 2 above we do not believe that self-regulation and existing legislation is capable of addressing consumer harm in this area. As we have already highlighted where fraudulent activity takes place and the will writer is prosecuted for theft or fraud there is no guarantee that the estate's assets will be recovered.

Further, based on the arguments we have already made in question 2 we do not think that accreditation schemes or quality marks are a suitable alternative to regulation.

Question 13: If providers of probate and estate administration services were regulated, what form of regulation should this take, and what are the core elements that should be included within the regulatory system? What specific harm would each core element protect against?

We believe that estate administration should become a reserved activity and that the preparation of probate papers should remain a reserved activity. We strongly believe that the most appropriate way to ensure consumers are protected in this area is to regulate all the key services provided by will writers. We believe the key services which should be reserved include the:

- preparation of a will or other testamentary instrument;
- preparation or lodging of a power of attorney;
- preparation of probate papers (already a reserved activity); and
- the administration of an estate following a grant of probate or letters of administration.

If only some of the key services are reserved we would be concerned that this would not prevent rogue will writers from operating in this area and would allow those who do not offer any consumer protections to exploit this area. In our answer to question 15 below we highlight the current problems that are arising out of the preparation of probate papers being the only key service to be reserved.

We also believe that if will writing is to become a reserved activity that it would be confusing if estate administration services were regulated through a different means. Most will writers prepare wills and administer estates and we expect those organisations who want to become a regulator in this area to cover will writing, probate and estate administration.

Professor Stephen Mayson in his report 'The Regulation of Legal Services: What is the case for reservation?'⁷ stated:

'Our view is that the current reservation is too narrow.... we think that a strong case can be made for the extension of probate activities and that, in the public interest of consumer protection, the broader process of the administration of an estate following a grant of probate or letters of administration should be included within the reserved legal activity.

As with will writing we believe that the reservation of administering an estate should only include activities done for fee, gain or reward.

We believe that it will be key that regulation should have the same features as are currently provided by approved regulators under the Legal Services Act and that that equivalent duties and powers should exist.

We believe that the same core elements for will writing also apply to estate administration, these include:

- training requirements and monitoring of training providers;
- compulsory indemnity insurance cover;
- compulsory compensation fund;
- a code of conduct including requirements to meet the professional principles, follow an advertising code, foster equality and diversity and be transparent about costs;
- a system to ensure clients and their assets are protected should a will writer cease practising;
- a complaints management system; and
- a disciplinary mechanism including supervision, monitoring and sanctions.

We would however like to highlight that for estate administration it is imperative that regulators also have appropriate finance rules in place, similar to those placed on solicitors in the SRA Accounts Rules 2011 to ensure client money is kept separate from the assets of the business. As we have stated above one of our greatest concerns in this area is the protection of client assets.

Question 14: What impacts do you think regulation might have on consumer protection, competition, access to services, the cost of services and the administration of justice?

As discussed in detail in question 6 above we do not feel that regulation will have any significant negative impacts on consumer protection, competition, access to services, the cost of services and the administration of justice.

⁷ Legal Services Institute (2011) *The Regulation of Legal Services: What is the Case for Reservation?* London.

In terms of the costs associated with estate administration we are not aware of anything that suggests solicitors charge significantly more than will writers. We are aware that firms do charge differing fees for administering an estate and this means that consumers can shop around for a service that best supports their needs. There are also strict rules for solicitors around transparency of cost of services and mechanisms in place to protect client assets.

Question 15 : How effective is the regulation of the existing reserved activity of preparing papers on which to found or oppose a grant of probate or letters of administration? How does this regulation work in practice, what benefits does it bring for consumers and how does it impact on the way that providers organise themselves to deliver services?

Probate is currently a reserved activity and is narrowly defined as 'preparing any probate papers...' and probate papers include 'papers on which to found or oppose grant of probate or a grant of letters of administration'. We strongly believe that probate should remain a reserved activity. However, we do recognise that the current system undermines the benefits of this reserved activity. There is anecdotal evidence to suggest that some people may be exploiting this system.

We have heard from our members on quite a number of occasions anecdotal evidence to suggest that in practice unregulated will writers are preparing the probate papers and then getting the executors to give them a power of attorney so that the unregulated practitioner can lodge the forms with the probate registry as part of a personal application. This practice undermines the protections afforded by having this activity reserved.

Losing a family member or close friend can be a profoundly emotional and vulnerable time for many people which makes dealing with the preparation of probate papers followed the administration of the estate a difficult task. It is during this time that consumers should be able to rely on qualified and regulated professionals who will be able to offer them the advice and support they need and ensure that their best interests are paramount. It is at the initial stages of dealing with probate that consumers are most vulnerable and need to be protected from unscrupulous will writers and other providers of estate administration services.

We believe that the only way to guarantee protection for consumers is to ensure that all the key services within the will writing, probate and estate administration markets are reserved for those who are authorised to carry out this work. Where these activities are not protected rogue will writers and others will make every attempt to exploit the activities not covered, as appears to be the case currently with the preparation of probate papers.

Further examples

The below examples were sent to the Law Society by members of the profession between March and October 2011.

Example 1: I have seen instances of many poorly drafted wills where there has been precedent clauses used inappropriately, many of which are irrelevant and often conflicting such as creating a life interest in property in one clause and then stating that subject to that clause the property is to be held absolutely for the life tenant provided they survive by 28 days. Also the inclusion of clauses giving trustees various powers which are irrelevant.

Example 2: Will writers targeting older clients with leaflets through the door stating that they can have a “free, no obligation” 2 hour appointment to discuss their wills and clients ending up paying £430 for mirror image wills and £430 for Lasting Powers of Attorney (without registration or advice on registration).

Example 3: Failure on the part of the will writer to comply with the Regulations concerning contracts made in a consumers home.

Example 4: Misleading information about what the client is paying for. In receipts I have seen that wills are stated to be free but that the client is paying £430 for “Protective Property Trusts” where no separate legal document exists incorporating such trusts. The wills which are drawn up are invariably those which contain life interest trusts.

Example 5: Feedback from the client that what they understood they were doing by making wills to incorporate life interest trust was to protect their property in the event of either or both owners having to go into residential care. This is a very common misunderstanding, people simply do not understand what they are being told and believe that their property will not be taken into account on a financial assessment by the local authority by virtue of the wills they have made. They do not appreciate the Changing for Residential Accommodation Guide and do not realise that the surviving spouse’s share in the estate will not be protected should they require care after the death of the first.

Example 6: Incorrect advice regarding Lasting Powers of Attorney; informing the client by letter that they should sign and that their attorney should then sign and then the client should return the form to them to sign as certificate providers. The regulations in fact require the certificate provider to sign after the donor and before the attorney and in the presence of the donor.

Example 7: The client only sees the salesman once. After that everything is dealt with by post and the instructions given by post are not always clear and are sometimes misleading. The client is, in effect, abandoned in the middle of the transaction. It would seem that once they have the clients’ money they are not prepared to make any further effort to visit the client for them to complete and sign. Any attempt to contact the will writer afterwards is unsuccessful whether by post, telephone or email.

Example 8: I have never come across a will made for a client by a will writer which doesn’t contain life interest trusts. I would suggest that they lure clients into giving

them an appointment on the basis that it is free and then the client gets charged over the top for something which they don't understand and which they don't necessarily need.

Example 9: I have just helped some clients who had wills prepared by a will writing company. They paid the company over £1200 for 'house protection' wills, i.e. severing joint tenancy and then leaving individual half shares of the property in a life interest trust with residue going to surviving spouse.

The clients saw the will writing companies stand in our local shopping mall. They booked an appointment and the will writer duly attended at their home. The will writer advised them about 'house protection' wills and severing the joint tenancy, at which point my clients specifically told the will writer that their home was registered in husband's sole name. The will writer assured them this could easily be changed into joint names and took information to enable the appropriate land registry paperwork to be completed.

The wills were prepared and signed; there are typographical errors throughout the documents and an important clause was omitted from the 'house protection' trust. The clients, being laymen, didn't realise the errors; they paid for the wills and put them away. A year after the wills were completed, the will writing company wrote to the clients and said they had realised that the property had never been transferred into joint names. They sent the clients the appropriate paperwork and told them to go along to their local land registry to attend to the formalities.

At this point the clients contacted me and asked what they should do. After some consultation, I prepared new, correct, 'house protection' wills and Lasting Powers of Attorney (the will writing company had started this process but had never advised the clients about the need to register them at the OPG in order for them to be valid).

I reported the will writing company to their 'professional' organisation, the Society of Will Writers. The Society of Will Writers were so concerned at the conduct, that they removed the company from their register.

Example 10: I helped a widow deal with a probate when her husband died. Some years ago, her husband attended a seminar given by a will writing company. He was concerned about Inheritance Tax but was obviously given some very dubious advice as the couple had no liability to Inheritance Tax. The company were paid over £2000 to prepare completely unnecessary Nil Rate Band discretionary trust wills. When I went to see her, the widow said "I hope we have very simple wills" and then produced lengthy, complex documents which she clearly didn't understand. She now has a simple will and we have done a Deed of Appointment appointing the trust assets (husband's share of the matrimonial home worth about £160,000) to the widow.

I don't believe the general public understand the usually very technical concepts that are not being properly explained and there's no comeback for their disappointed beneficiaries. This must be corrected.

Example 11: Please be advised of a badly drawn will by an unregulated will writer. They included a nil rate band discretionary trust clause in a will. The category of beneficiaries did not represent the testator's true wishes. A boiler plate clause has been used and the testator's separate instructions had not been adhered to. In this case only his biological children were included (whom his relationship had broken down many years ago) and not his stepchildren whom his intention was to benefit. A

case of bad drafting presumably a result of not asking the right questions or knowing the consequences of clauses and their wording.

Example 12: We are acting in the winding up of an Estate. Our client made a will with a will writing company. One or more of the directors of the company went to prison. Subsequently our client received a letter, dated 18 August 2008, from a different will writing company to say they had been appointed to deal with the previous will writing company's clients and to assess the will made by them, but at a cost of £15 plus VAT. I do not believe that a Solicitor would have made any charge in these circumstances.

Example 13: Some clients of mine recently bought pre-paid funeral plans from a will writing company. They then received a letter from the company asking if an estate planning consultant could come to see them.

Briefly – the company suggested they put their assets into what he called a Family Protection Trust. The cost of this was quoted at about £3,800. He told them that solicitor's costs for obtaining probate would be about £5,500. He also said he could get back from our firm the cost of preparing their wills – presumably because he was implying they had been negligently prepared. The current wills leave each spouse's interest as tenant in common in their house into trust for their son, residue to each other.

I explained to my client that if he transferred property into a trust it would no longer be in his name but in the name of the trustees. I asked how the consultant had said he would obtain money if he needed it. Apparently he needed to ring up and it would be arranged that he could collect money from the bank.

I am always reluctant to say anything derogatory about other professionals, but I felt that this consultant was taking advantage of an elderly couple and scaring them unnecessarily into making potentially expensive decisions.

Example 14: I have recently attended the mother of a client of ours. The mother has had dealings with a will writing company.

The client's mother, I'll call her Mrs H, received a cold call from this company, offering care home fee protection services. Mrs H explained she did not experience a hard sell and was happy to invite the representative of the organisation to her home. During the meeting, the representative explained he could draw up a trust – he referred to it as a 'Family Prosperity Trust' into which Mrs H could gift her house and subsequently protect it from the Local Authority means test.

At no point did the representative discuss the deprivation of capital rules for means testing nor any implications concerning Mrs H's estate for Inheritance tax purposes. As far as Mrs H was concerned the transaction would be totally risk free. She then handed over a cheque for £2,000 in relation to the fee. A day later Mrs H was unsure and spoke with her daughter who contacted me. I advised them to stop the cheque immediately and to make an appointment to see me which they did. Following my advice Mrs H, who is elderly and in moderate health decided against the trust.

Example 15: I recently acted for clients (husband and wife) who used a will writing company. The company stored both their wills and the deeds to their property which had an unregistered title. On the death of the first spouse the survivor was, after an extensive search, unable to find the company, their wills or deeds. We had to reconstitute the title to the property and apply for first registration, in which the

surviving spouse was only able to have possessory title. The family had to apply for a grant of probate of a copy will.

Example 16: "A warning! My mum was taken in yesterday by a con which seems to be focused on Doncaster. I spent most of the night investigating it. In brief – she was called by a "legal firm" to sell her a will writing service. At breakneck speed somebody was round at the house took details to complete the will and a cheque for £970. I found out about this about 5 hours after their visit to the house by which time the cheque was already cashed. It seems if a cheque is presented to the same branch as the payee's account then it can be cashed immediately – I suspect this "law firm" has accounts in all the major banks in Doncaster so they get their hands on the cash immediately.

There is no trained lawyer although they frequently call themselves lawyers. They are unknown to the Law Society. They claim a long history and to be nationwide – the company was set up on 10 August 2010 and they focus on Doncaster and Lincolnshire".

Example 17: I have come across instances where a will writing company have told people that our costs would run into many thousands of pounds before getting them to sign an agreement for them to carry out the work. In one instance a client signed the agreement but was left feeling uneasy and came to me for advice and I have taken on the work and estimate that our costs will be around two thirds of what the company would have charged. On looking at their estimate, it bore very little resemblance to the amount of work that is actually necessary. They misrepresented that solicitor's estimates are open ended whilst they would carry out the work for a fixed fee. However, on closer inspection their agreement's small print shows what work is not covered and that extra charges could be made.

Example 18: In one case a will writer telephoned a client who had already instructed me. I had given the client a costs estimate of £400-600 plus VAT for the work that was required but that our charges were likely to fall at the lower end of the estimate. The client was advised by the will writing representative that our costs may be £3,000-4,000 and understandably this caused a great deal of concern to a bereaved elderly client and her family who worried about this overnight until the following day when I was able to put their minds at rest.

There have been such a number of instances to concern me that this will writing company is making misrepresentations to people who are bereaved and often elderly and vulnerable and are able to do so by means of referrals from their funeral arm. What we don't know of course are the number of cases where potential clients are persuaded to instruct this company as a result of information given which, at best, is misleading.

Example 19: We recently were instructed by a client who had been appointed Executor and sole beneficiary of the will of an elderly neighbour. The neighbour had informed the client that upon his death he would inherit the neighbour's share of the house. The neighbour was anxious to ensure that his wife who was then resident in a nursing home, did not inherit.

Following the neighbour's death, it transpired that the joint tenancy on the property had not been severed and accordingly there was no estate for the neighbour to inherit. We endeavoured to contact the will writing company to see what advice had been given but correspondence was returned "not known at this address"

Example 20: The following link is an article which details how abandoned wills were found on a street: <http://www.legalfutures.co.uk/news-in-brief/news-in-brief-top-aim-adviser-wills-found-in-street-firms-look-to-diversify-and-much-more>

Example 21: About a month ago I was completing wills for a couple. They agreed the terms of the engrossed wills and I said I would ask my secretary to join us so we would have two people to witness the wills.

This surprised the clients who had previously been to a firm of local will writers. In their case the will writers had sent them the wills and asked them to sign them and return them. They would then arrange for the wills to be witnessed in their office. A clear breach of the requirements. How many invalid wills are there in this area?

Example 22: A will writer drafting a will leaving a property (which was held as joint tenants with the Testator's daughter) to the surviving spouse.

The property passed by survivorship, and the surviving spouse now has a legal battle with her step-daughter (the step-daughter being from the Testator's first marriage) to stay in the house.

Any solicitor would have severed the joint tenancy in the property when drafting the will.

Example 23: The deceased's will was prepared by a will writing company. The deceased's intention was to leave her half share of her property to her daughter, subject to a right of occupation in favour of the surviving spouse. Unfortunately, the will is drafted incorrectly and its effect leaves the entire estate to the surviving spouse.

I am writing to the company, asking for confirmation that they will indemnify my client, the surviving spouse/executor, against the increased costs associated in correcting this error. If I do not receive a reply within the next 14 days I have instructions to issue proceedings for professional negligence.

Example 24: I have recently had a case where an elderly client living on her own has been taken advantage of by a will writing company which made an unsolicited personal approach to my client at her home. A well trained and highly effective young salesman persuaded my client to instruct that company for a "family prosperity trust in regard to care fees, grant of probate and tax benefits". They took a cheque for £4,450.00 on the spot. She prepared a letter two days later to revoke her instructions without response and when her Attorney (her daughter) checked with the bank the cheque had been presented and cleared.

The matter has been reported to the Police and Trading Standards. We have written to the will writing company for the return of the money but needless to say there has been no response. This firm also trades under another company name, operating from the same premises.

Example 25: I have recently been instructed by a lady to draft a will on her behalf. She had a terrible experience with a will drafting company.

She was widowed and had inherited the entire property from her late husband's estate. She had one child from this marriage. After she remarried, she and her new husband saw an advert for a will writing company to make wills for £29.

When the representative from the firm turned up, he said that they would have to transfer the property into joint names. My Client definitely did not want this as she wanted to preserve the house for her son. The firm quoted £700 for the transfer and wills, and would not draft the straight forward will my Client wanted for £29.

They insisted on half the money at the meeting (£350) and then would not proceed until she sent in her deeds for the transfer. My Client kept telling them that she did not want this, but they would not proceed. She eventually came to me, but was £350 poorer for no work done.

Example 26: A client of ours who is in her late seventies and living alone has been cold called on the telephone by a representative from a will writing company. They took £2,605 for an order for a Family Prosperity Trust Document, Lasting Power of Attorney and will. The client was given 7 days to cancel the order.

The draft documents arrived outside this time. The Trust document is clearly not adapted to meet our client's circumstances and the company was purporting to draft and witness the Lasting Power of Attorney in a manner which is against the law.

Annex B

Estate Administration examples

Example 1: We are aware of delays occurring in administering estates as will writers seem to put in place an arrangement whereby family members of the deceased Testator are Executors but the will writers arrange for the Executors to execute Powers of Attorney in favour of someone else to obtain Probate. This naturally delays the administration of the estate particularly where there is a sale of property involved. Costs also increase as a result.

Example 2: The managers of a trust company were at one point considering using other client's money to finance a loan for Inheritance Tax on one particular estate until members of staff who had legal training stopped them and told them this was illegal. Some of their failings are due to pure ignorance of the law.

Example 3: Presently I am assisting a client in the estate of her late husband. Really, I should not be acting on behalf of the estate as my client had instructed a firm of will writers (who had prepared the will) to deal with the estate administration. However, my client was extremely dissatisfied with the level of service and, in particular, the level of charging. She was charged several thousand pounds for "tax efficient wills", lifetime trusts and powers of attorney and also for what was understood to be the costs of the estate administration. This is still being disputed.

There have been gaps in the estate administration itself, one of which was the source of my instruction. The deceased had established in his will a nil rate band discretionary trust. My client had told the will writers that she wanted to appoint out the trust assets in her favour. They did this but without asking the other trustees (there are three in all) as to whether they agreed to this or preparing any legal documentation to effect the appointment out. Fortunately, all the trustees were in agreement and it has been my job to deal with all the necessary legal paperwork to ensure there are no repercussions on the wife's estate.

Example 4: We had some clients who paid a considerable sum to a will writer to have their wills prepared. They were led to believe that the costs also covered the administration of the estate when in fact they did not.

Example 5: In April 2009 will writers were accused of stealing £400,000 from six estates which they were dealing with between November 2004 and March 2006.

Further, in the Daily Telegraph on 22 March 2006 a complainant wrote "I am the sole executor and principal beneficiary of my brother's will. A man from a company called 'X' turned up at his funeral and offered to sort out the probate for me. I heard nothing for months and finally in November I asked a solicitor to take over the case. But X will not return my brother's will until I have paid them £881.25. Can you help?".

Example 6: Two of my clients were visited around 6 months ago from a firm of will writers who sold them a "probate package". The lure was the usual £20 will advertised in the paper. By the time the will writer had left, my clients had signed up for the probate package, storage, severance of the joint tenancy and two wills at a cost of nearly £2,000.

The gentleman had advised my clients that based upon their circumstances (a total estate worth around £160,000 including the property) that "solicitors would charge upwards of £4,000 for dealing with the estate". Their "offer" in the probate package

was less and came in at around the £2,500 mark. When I actually took the trouble to apply my own charging scale including the value element charge, the total bill would have been in the region of around £1,500. Thankfully, they were able to cancel instructions and we have done the work for them.

Example 7: A will was drawn up including the will writer's company as the executors. They went to the family before the wife was even buried and advised that it would cost over £3,000 just to apply for probate. The clients met with our firm, and the will writers agreed to renounce their appointment, and our costs for the whole of the administration came to under the £3,000 they would have charged just for the application for probate.