The Law Society

Investigation into Will writing
Call for Evidence by the
Legal Services Board

Response by the Law Society
of England and Wales
January 2011

Further Evidence

Example 1:

Outlined below are circumstances which gave rise to a formal complaint being made on behalf of Mr C and Mr P about the conduct of their Will writer's instructions to advise on the preparation of Wills.

On 1st September 2009 the Will writer called upon Mr C and Mr P to take instructions for new Wills. Their intentions were to create simple Wills. The Will writer left the appointment with payment by credit card of the sum of £3,500.25. Although Mr C and Mr P wanted simple Wills they took the Will writers advice and he left with instructions to prepare Wills at a cost of £735, Lasting Powers of Attorney costing £600 and a "total family care plan" costing a further £1,500. The last mentioned fee is particularly odious given that it is a payment in advance for services that might not ultimately be required. We cannot see any justification for asking a Client to pay in advance for probate services even before a Will has been executed.

All of the fees charged appear to us to be grossly exaggerated and none of them represent a fair fee for the work that Mr P and Mr C actually wished to have carried out.

Not surprisingly Mr P and Mr C had second thoughts about the huge expense and invoking their right to a cooling off period gave notice cancelling the contract and payment. The next event in this sequence is a further visit by the Will writer who then took payment from Mr C in the sum of £2,334.50. This payment is also dated 1st September 2009. This appeared to be £235 for a half protective property trust and £1,795 for a "premier package". There was no explanation as to what is included in this but it appears to include standard Wills with a protective property trust, Lasting Powers of Attorney, total family care plan and, not previously thought necessary, a disabled discretionary trust.

Following this, Mr C and Mr P received a letter from the Will writer dated the 12th November 2009 advising them that the Will writer had not received the signed documents. In fact at that time Mr C and Mr P had not even received draft documents for consideration, notwithstanding that it was more than two months since the first appointment. Those documents were not dispatched until the 15th November 2009.

In response to Mr C's complaint the Will writer issued a cheque for £50 payable to Mr C and Mr P. It was not possible to cash that cheque as they do not have a joint account. That cheque is on our file.

A number of documents appeared under cover of a letter from the Will writer of the 15th November 2009. He sent Wills, Powers of Attorney, Land Registry Notice of Severance and a blank memorandum of wishes. Whilst he enclosed comprehensive notes as to how the documents should be executed he gave no explanation as to the terms of any of the documents and no written advice of any kind has been given. The Wills are so complex, containing a life interest trust, a separate right for a third party to occupy the property and a gift of residue, it is highly unlikely that they would be understood by a layman without an explanation. The complexity of these Wills is such that no one should be expected to sign them without a full and clear explanation as to what the Wills are intended to achieve.

As to the Powers of Attorney, the charges made relate to the preparation of the Power of Attorney only. The documents are in the simplest possible form and would not, we suggest, justify a fee of £600. Once again there is little, if any, advice on the nature and effect of the Power of Attorney. There is no written advice as to the dangers which exist with a Power of Attorney.

The standard of service given to Mr C and Mr P falls well short of that which they might reasonably expect from any competent and diligent Will Writer (whether regulated or otherwise). In this case they have paid a significant sum for services which, largely, they did not wish to have. They responded to an advert indicating services from £49.95 plus vat for a standard Will and ended up paying significantly more.

There has been no follow up to find out why Mr C and Mr P have not executed the documents or as to the whereabouts of the documents. There has been no customer service whatsoever.

The absence of advice, the absence of client care and the exploitation of two vulnerable people to part them from a very substantial amount of money cannot be left unchecked.

The response of the Will writing company was to offer a full refund less the £50 already paid (despite the complaint advising that the cheque issued could not be cashed). No explanation or other response to the complaint was given.

Example 2:

We have come across a couple's Wills where on the husband's death it came to light that the Wills made no provision for the survivor, each Will left assets outright to a charity. Thankfully many, but not all, of the assets were in joint names. An order for rectification was arranged which took quite some time and had all assets been in the husband's name the widow, who was seriously ill and had to move immediately to expensive residential accommodation, would have had real problems.

Example 3:

A few years ago, I was approached by a lady who wanted to update her Will. It had been prepared by an unregulated firm. I looked it over and it had a glaring error which would have resulted in the house passing to the wrong beneficiary. It was fairly clear that she had intended to grant a right of occupation to A for life with the capital passing thereafter to B & C in equal shares. Sadly, by the time I was consulted, the lady had lost her mental capacity and I had to help B & C make an application for a statutory Will to correct the error.

It all went through on the nod because person A co-operated fully, agreeing that he should not have a capital interest in the house – only a right of occupation. It still cost a few thousand pounds in legal fees and court fees but the family was not interested in pursuing the Will draftsman as they were not confident of finding him again and decided to cut their losses and meet the cost themselves.

Example 4:

We are currently dealing with an application for rectification of a wrongly drafted Will. The Will was prepared by a Will writer. The testator wished to leave his estate to his two adult sons in equal shares. He instructed the Will writer that if either son were to die before him then the half share which the deceased son would have taken should pass equally to the testators' grandchildren.

The signed Will read:

"if either of my said sons shall die before me then *I give my estate* to my grandchildren.

In the events that happened one of the testators' sons died before him. We now act for the surviving adult son in seeking rectification of the Will. The situation is exacerbated by the fact that the grandchildren are minors and therefore have to be separately represented through a litigation friend.

Example 5:

A couple were visited in their home by a Will writer who drew up complex Wills for them at a cost of approximately £3,000 - 4,000. The contents of these Wills were not explained properly to the couple by the Will writer. As they did not understand the Wills that had been drawn up for them, the couple did not sign the Wills. They had no other Wills. The husband subsequently died intestate. We administered his estate.

Example 6:

I have come across discretionary trust Wills prepared by a Will writing company that were drafted well but did not in effect work simply because there was no severance of the joint tenancy of the property. Other than the property the only assets were £5000. This caused great distress to the clients when the property went straight to the spouse.

I contacted the Will writing company for an indication of whether a notice of severance had been produced and was met with scorn and confusion. They did not know the requirements to ensure funds went into the trust on death. I was promised phone calls from their lawyers to explain and this never happened. The clients decided to have me sort this out at the expense of the estate and tried to make a complaint themselves. There was no recourse for them.

Example 7:

In one case the Will drafted by a Will writer contained a substantial provision by way of trust which the family did not require and which might have been wound up by the beneficiaries joining in to bring the trust to an end, but which in fact was drafted so that the only way an uneconomic situation could be terminated was by way of deed of appointment involving the original Will writers as a party to the deed of appointment. The Will writers then charged the family very heavily for joining in to the deed and, indeed, for preparing it, as that was a

condition of their consent to the arrangement. The Will writers had this family in a grip from which it could not have escaped without going to Court.

Example 8:

We are acting for four daughters who are executors of their mother's estate. Their mother owned a property as tenant in common with her partner (they were unmarried) and the property split was set out in a declaration of trust. The property was mortgaged, with the mortgage liability being split 50:50. Although the Will writer who prepared the Will was aware of the existence of the declaration of trust and the position with the mortgage, the drafting of the Will is ambiguous as to whether the whole or just the deceased's share of the mortgage was to be settled from the residuary estate.

The Will writer is unable to produce any contemporaneous record of their instructions in regard to the preparation of the Will, so the testator's intentions cannot be ascertained. It is likely to cost in the region of approximately £12,500 to settle the dispute between the daughters (the residuary beneficiaries) and the partner (life tenant of a trust of the deceased's share of the house and co-mortgagor).

Example 9:

A Will was prepared by a Will writer which against the clients wishes gave a large cash gift on the 1st death rather than on the 2nd death and would have therefore left the surviving spouse short of money if I had not reviewed it in time.

Example 10:

I am dealing with a case where there is a serious amount of litigation that has been caused by a Will that was prepared by an unregulated and it now transpires uninsured firm of Will writers. Even a cursory inspection of the wording of the Will shows that it has been prepared by someone with little or no understanding of the law and is contradictory in its terms.

The discretionary trust has not done as was intended. There are now three firms of solicitors representing the interests of the executors and two sets of beneficiaries.

The administration of this estate has now been dragging on and consuming vast sums of money that should have passed to the beneficiaries.

Example 11:

We acted for a client concerning problems related to a Will writer who arranged for the Will to be witnessed by two of the beneficiaries. The Will writer was not insured.

Example 12:

A common problem for Will writers is failure to consider the way assets are held and how that might impact on the Will. For example, about 5 years ago I acted for a son by a first marriage who had inadvertently been disinherited by the incompetence of an unregulated Will drafter.

The father, upon remarriage, had carefully reordered his Will so that it created a life interest only for the second wife, remainder to child by the first marriage upon her death. This is a

fairly common means of protecting children in this situation. Unfortunately, the Will drafter did not discuss the way assets were held and it transpired the only significant asset, the father's house, was actually now held with the second wife as joint tenants. The father died, the house passed outside the Will to the widow and the son received no trust interest as there were no assets for the trust to bite upon. Attempts to sue the Will drafter came to nothing as they had no insurance and their house was already mortgaged.

Example 13:

We have seen Wills drafted by Will writers with abbreviated names of executors and beneficiaries, for example "Pete" not Peter, resulting in an Affidavit having to be drafted to prove the Executor; failure to establish if the Executor has a middle name; Wills signed by the Testator yet not witnessed; and Wills containing life interest trusts in property to lower potential Inheritance Tax but no provision for what should happen to the trust fund on the death of the life tenant meaning a partial intestacy. We are also aware of cases where companies have charged clients for storing Wills although the clients retained the Wills at home.

Example 14:

We were involved in a case where a Will writer prepared a Will and gave it to client's son to store. The client fell out with the son and then felt obliged to prepare a new Will on the same terms because it was impossible for her to retrieve her Will from her son. It was inappropriate to store the Will at a client's relative's home.

Example 15:

A Will writer who prepared a Will failed to oversee execution of the Will. On the client's death it came to light that the Will was undated, and various affidavits were needed to rectify this. The Will gave the whole estate to the daughter and yet appointed the son executor. The son was furious at being disinherited, and it was very difficult to administer the estate with him as executor.

Example 16:

A Will writer who had prepared a Will failed to check the execution of the Will and the witnesses and the testator were not all present at the same time when signing the Will. The witnesses had inserted the date that they had signed and the two witnesses had signed on different days.

Example 17:

I have dealt with an estate where the Will was prepared by a Will Writer and the spouse of a beneficiary had witnessed the Will.

Example 18:

I have had the experience of meeting quite a few people this year, who have been distraught about receiving cold calls by people purporting to be Will writers. One elderly gentleman who came to see me sat through hours of conversation with a 'consultant' who would not leave

the property until he had a cheque for £700 for a Will and a Lasting Power of Attorney, even though the client had not asked for the Lasting Power of Attorney. There was also no compliance with the cancellation of contracts made in a consumer's home or place of work regulation 2008. Fortunately the elderly gentleman had the capacity to go down to the bank and cancel the cheque, then he received a barrage of calls for payment of the money and that is where we intervened.

Example 19:

We had a case of a Will where several of the clauses were ambiguous and contradictory, and where a beneficiary was used as a witness.

Example 20:

We are currently involved in litigation for a client concerning the circumstances of a Will made for a non-English speaker by a Will writing company.

The principal of the company is currently serving a prison sentence for taking funds intended for a charity. Press reports indicated that Wills were made with discretionary trusts appointing him as executor and trustee. However funds were not distributed to the charities chosen by the testators but taken by the executor for his use.

Example 21:

I had an occasion recently where the Will writers sent the Wills to the clients with instructions as to execution but did not ask the clients to return the Will so they could check it was properly executed. The clients deleted the original date on the Will with tippex and wrote another one on top which was virtually unreadable. The alteration of the date was not signed or witnessed.

After one of the testators died the Probate Registry insisted on an affidavit regarding the date. Fortunately on this occasion the witnesses were traceable but that may not always be the case. Moreover the witnesses, understandably, could not recall whether the date was changed before or after signature but the affidavit was nevertheless accepted.

Since most solicitors have a local clientele it is easier for them to supervise the Will's execution personally and since solicitors do not normally charge for storage of Wills, where the Will is not signed in the solicitor's office the signed Will will normally be returned to the solicitor for safe keeping when the execution can first be checked.

Example 22:

A husband and wife had made Wills with a Will writer but the Will writer did not spot that the husband had signed the wife's Will and vice versa. So when the husband died, his Will was invalid and we had to go back to an earlier Will and make a deed of variation to straighten things out for the family.

Example 23:

A client brought to us a Will which he had signed using a Will writer to ask us to confirm that it was valid. The Will looked very smart and ran to three or four pages of legal jargon mainly on the subject of Trustee's powers, apportionment and many other technical matters. It turned out however to contain absolutely no gifts or bequests. The Will writers were also appointed Executors. We quickly put matters right.

A learned judge in a case said in awarding damages against a Will writer that anyone who purported to make Wills for others for a fee should be expected to have the same degree of knowledge and skill as a qualified lawyer.

Example 24:

I was recently consulted by the daughter of a former client, now deceased. She was aware that my firm had made a Will for her late father some years ago, having found a copy. When we met she produced a recently made Will which had been prepared by a Will Writing organisation.

I was able to recall meeting the father a couple of years ago and found my notes about the new Will which he was being persuaded to make by his "new" wife who seemed intent on securing her future to the exclusion of the children of the first marriage. Due to the clear undue influence which the wife was putting on her husband (she would not allow me to interview him on his own, and insisted on coming in to my office and shouting about discrimination) I felt that I could not sanction the making of a new Will under which she would benefit absolutely.

The new Will was prepared by the Will Writing organisation in accordance with the wife's wishes, and I believe that it was signed at the Testator's home with his wife present at all times. I do not believe that a Solicitor, with skills in Will making, would have allowed this to happen.

Example 25:

I confirm that I have acted for several people who have come to see me after bad experiences with unregulated Will writers. Most had been asked to sign a direct debit mandate for monthly payments for "ongoing advice", and sometimes this mandate had been running for quite some time costing the client a considerable sum. Clients did not know what the ongoing advice was for, but many were under the impression that it covered probate, which it did not.

One or two clients who had been visited at home felt very pressurised into signing documentation instructing the Will writer. One elderly lady was so intimidated that she signed up for everything, and then contacted me because she had concerns. After finding out that the charges were going to be in the region of £1000 she managed to cancel the instructions, much to my relief as her husband had died relatively recently and I felt she was quite vulnerable.

I have also had clients who were told the charges were going to be very nominal (in the region of £35) but, at the appointment with the Will writer it became apparent that this only covered a few basic clauses and that additional charges were to be made for any additional clauses (for specific gifts and other provisions which the client wished to be included).

The charges for obtaining a Will to prove have also been high. Clients have had to pay around £300 to retrieve Wills. The charges were found hidden in the small print.

Example 26:

After the deceased died, our client and the deceased's family fell out. The family was pressuring our client and threatening her. Our client came to see us so that we could advise her of her rights.

Although a Trust was set up in the Will, only one executor had been appointed (our client) when there should have been two. Therefore, the estate had to incur additional expense of appointing a second trustee to act in connection with the trusts. Furthermore, a very unusual clause was included in the Will allowing at least two trustees to terminate the trust in favour of the life tenant (our client). Consequently, we acted in our client's favour, to appoint a co-trustee and terminate the Trust. The deceased's family was not happy about this. I do not think the deceased wanted this type of clause included in his Will since the whole purpose of a life interest trust is to safeguard the property, or the deceased's share of it for his family. On the one hand, the deceased was protecting his share of the property and on the other hand, he was giving the life tenant (as the executor) the right to terminate the trust in favour of herself. This is in my opinion, is a contradiction. I believe the Will was negligently drafted.

Example 27:

My example concerns a couple who had Wills drawn up by a Will writing company. They asked me to check them. When I looked at the Wills, each client had appointed the survivor of them as an Executor but additional wording was added to say that if the Will was not proved within 2 months of the date of death, then the appointment of the survivor as an Executor would lapse. The clients were shocked when I told them that it was impossible for the Will to be proved within this time limit due to the complexity of their assets and the size of their estate. The clients had set up nil rate band discretionary trusts in their Wills and it was very important that the survivor was one of the Trustees. Although the clients had paid for these Wills, they ended up paying us to revise their Wills. Further, although a Trust was set up in the Will, only one executor/Trustee had been appointed.

Example 28:

I have come across many cases where the Will writing company has gone out of business and the Will cannot be located. Therefore, the client has incurred additional expenditure in making a new Will.

There have also been examples of clients having the joint tenancy in their houses severed at a cost of £250 plus VAT (as opposed to our fee of £95 plus VAT) when in their Wills, they

have left everything to each other, and then to their children, and the severance was not required.

Example 29:

I have had a client recently who began to draft a Will back in 2004 with a Will writing organisation. My client tells me that although she did not execute the Will (despite paying the organisation for their services) she has tried contacting them to arrange a further copy of the Will to be forwarded to her for execution. This has been to no avail. She has called them and e-mailed them but has had no response. She was most concerned that if she had executed the Will and had returned it to them for storage, she might never have been able to get hold of the original Will.

Example 30:

A current case of mine involves a deceased married lady who had been widowed in her youth. She had one child from her first husband and two step-children acquired through her second marriage. The Will is a poorly put together discretionary trust, where the draftsman has become confused as to who is a child and who is a step-child. The deceased intended not to make any distinction between her blood child and her step-children, she wanted to treat them all equally but the step-children were pretty much cut out altogether. We are about to commence rectification proceedings in the Chancery Division and are waiting for the negligent draftsman's Professional Indemnity insurers to agree to underwrite the costs. The problem stemmed from two critical flaws in their procedures:

Firstly, the person taking the client's instructions was operating from a very poorly worded standard checklist provided by his company. It was all tick-box based and that is very dangerous even with a well designed form because clients' circumstances rarely fit within checkboxes but this was not even a well designed form. This method of taking instructions means that the person seeing the client face-to-face probably does not really understand what he is selling, he is really just following a flow chart and ticking boxes as he goes. There is also a tendency when using tick-boxes to stop thinking and assume that the form will do the work for you.

Secondly, I doubt very much whether the person who saw this client was the same person who drafted the Will. Had he been, he might well have remembered who was a step-child and who was not.

It is to the credit of this firm that, although their procedures are poor and their staff have insufficient technical expertise to deliver the service, they do at least have insurance. Having seen their file, though, it does not look as though the client received any written advice to back up whatever was said at that ill fated meeting.

Example 31:

We have had numerous instances of a company selling Wills to couples incorporating an interest in possession trust on the first death designed to cover an undivided half share in the family home to reduce the impact of nursing home fees if the survivor needed care. The

documentation was ultimately defective in that it did set up a life interest trust but then directed the capital to residue which was expressed as passing to the spouse absolutely.

We made representations to the company about this and at the time the member of the company who replied clearly did not understand why this was a defect and refused to do anything about it. This displayed a clear lack of any basic technical knowledge in terms of drafting trusts in Wills.

Example 32:

We are aware of a Will Writing Company who has disappeared along with the original Wills, and of more concern the original Enduring Power of Attorney Deeds. Whilst new Wills can be prepared obviously the absence of an Enduring Power of Attorney Deed means the client has had to prepare a Lasting Power of Attorney at more cost.

Example 33:

I have come across Wills where severance of the joint tenancy has taken place but the subsequent Will has been badly drafted with regard to the Testator's share in the property, for example where the Testator wanted to leave a life interest/right of occupation the Will did not provide for this.

Example 34:

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 35:

We were first alerted to a particular Will writing company around 10 years ago when they were advertising Wills for only £19. We started to learn of clients' experiences with the company when they came to us for advice as they were not happy about the service provided.

What tended to happen is that the company would advertise very cheap Wills, a sales representative would then see them in their own home and in the cases we have come across, elderly clients who may be ill and frail and otherwise vulnerable, would be persuaded, and indeed, feel pressured to purchase information that they did not necessarily need, and ultimately the bill turned out to be several hundred pounds, not the £19 advertised.

One particular elderly gentleman was attracted by the low fee advertised, as his assets and income were limited. However, he came to see us subsequently as he became somewhat frightened by the situation he found himself in. The sales representative sold him a Will and Power of Attorney, but also a large booklet relating to probate procedure, Inheritance Tax planning and all sorts of other information that were not relevant to him. The sales representative asked him for several hundred pounds when he took the documents round

and in fact wrote a cheque out for our client to sign. In this instance there was nothing necessarily wrong with the Will and Power of Attorney prepared however the information provided which was only photocopies of all sorts of information from HMRC was irrelevant to his circumstances, and he paid a hefty fee for it. He was too embarrassed to take matters further with the company as he did not want to deal with them.

Example 36:

I am aware of a case where a Will writer saw a lady probably about 8 years ago who was a local Magistrate. She had responded to an advertisement from a firm of Will writers and a representative of that firm visited her and her husband at her home. All her credit card details were taken at the initial meeting but there was no discussion relating to fees. This lady subsequently received a very lengthy draft Will which was unnecessarily complicated and not appropriate to deal with this lady's own particular financial and personal circumstances. Indeed, a much more straight forward Will would have been appropriate.

A point of very grave concern is that the very day after the visit by the representative of the firm of Will writers a sum of almost £1,000 was taken off the lady's credit card without her prior knowledge or approval. This lady terminated her instructions with the organisation of Will writers and our firm was then instructed.

Example 37:

I have a client who came to see me when her husband died. They made mirror Wills together using a Will writing company who visited her work and gave a seminar on Wills. They advised everyone to make Wills including discretionary trusts for tax planning purposes and apparently almost everyone in the firm had the same Will drafted for them.

When I looked at the Will it became apparent that it did not include a nil rate band trust but rather left the entire estate into a discretionary trust. As my client's husband's assets exceed the nil rate band the Will has given rise to an Inheritance Tax liability. In order to get around paying the tax we have had to delay the administration of the estate for three months so that assets can be appointed out to the spouse to avoid the tax liability.

It does not appear that the Will was ever properly explained to the client as she was under the impression that it left her husband's half of the house to her daughter and the rest of the estate to her absolutely.

Whilst the problems are rectifiable, it has complicated the administration of the estate unnecessarily, as well as increasing our costs for dealing with matters. It has also caused her considerable distress to find out that things are not as she had thought.

Having looked up the Will writing firm online it appears that they were closed down some years ago. It also appears however that the gentleman who ran the company has subsequently started another firm using a different name.

Example 38:

Will writers acted for a client who wished to leave her estate in equal shares between her niece and a charity. The estate was a substantial one of almost £1,500,000. The niece is treated for Inheritance Tax purposes as being a non-exempt beneficiary (any gift left to her is subject to tax). The charity is, however, an exempt beneficiary and should not pay any tax on its share of the estate. It is fundamental when preparing a Will which contains a gift of the residuary estate between exempt beneficiaries and non-exempt beneficiaries that the Will specifies the responsibility for payment of tax. If this is not done, then an uncertainly arises as to who should pay the tax.

The Will writers in this case made no mention in the Will as to who should be responsible for the tax. It is probable, therefore, that the niece inheriting under the Will may receive approximately £150,000 less than she might otherwise have expected to have received. There are unavoidably going to be extra costs incurred in sorting matters out. It is impossible to say what those costs might be, but potentially a court declaration will be required and in which case the costs are likely to be several thousand pounds. It is almost certainly the case that the testator would have wished her niece and the charity to have received equal amounts after payment of tax. I say this with confidence because on every other occasion that the issue has arisen with our own clients they state that is their wish. The potential loss to the niece is as yet unclear, but it may be as much as £150,000.

Example 39:

We were instructed by an unmarried, co-habiting middle-aged couple to prepare Wills. Their home is in the lady's sole name but beneficially owned in unequal shares based upon contribution, with a supporting Declaration of Trust. They each have adult non-dependent children and both are widowed. Their combined assets fall well below the basic nil rate band. Mrs G has reasonable pension income, Mr B does not. They mentioned that they had previously tried to make Wills using a Will writing organisation.

Whilst leaving a supermarket they were approached by someone asking if they had a Will (which they did not) and whether they therefore wanted to make one, in which case the person would organise for a representative to visit them at home. No cost was mentioned and they confirm that although they did not fall for a cheap headline price flyer, they were given the residual impression that they were going to do it more cheaply than by using a solicitor. They have previously used solicitors for their affairs so were 'turned' by this approach.

The young lady that visited them was 21 years old, and they were apparently her first case. They think she was a graduate and she mentioned that she had only just finished "her training", but they do not believe that this was anything other than the training provided by Will writing organisation.

The girl appeared to them to be fairly unsure of her territory and her approach was what they would now regard as "formulaic", she had to fit them in to one of a few pre-defined categories of Wills. They were told that they needed a nil rate band discretionary trust. However, the girl did realise that as they were not married this might be important and apparently rang the

office for instructions, but the call was made out of their earshot. She then nonetheless proceeded with the original approach. They were required to pay the £500 fee upfront.

They confirmed that whilst the appointing of the Will writers as Executors was mentioned, it was not pushed. They say the girl was pleasant enough but they lost confidence in her fairly early on and realised following a meeting with me, how little she actually knew or what important and relevant issues were simply not raised.

They finally decided they did not want to take matters further when the draft took a long time to appear and was then full of basic errors in names, and addresses. Of course, they were unable to comment on the accuracy of the legal element of the draft but I did see it and would say the Wills as drafted were not a disaster but they did not meet the clients' specific wishes in respect of ongoing occupation of the property or the ultimate division of their wealth between the two different sets of children. They dealt with Inheritance Tax which was not an issue. The cost was high for the clients' actual needs although not perhaps excessive for nil rate band Wills, which were unnecessary.

Even having decided to take it no further, they were bombarded by the firm with emails, and telephone conversations, selling associated products and services. Having been paid, the firm did not seem particularly concerned that they were not finishing their Wills. The clients have not tried to get their money back.

When they finally came to see us, they were astonished at the completely different approach and line of questioning I took to ascertain their situation and needs, and secondly that my charge was considerably less.

The clients confirmed that they were completely unaware that the provider would be unregulated, and not necessarily legally qualified. They feel very disappointed at themselves for being taken in and bitter about the whole experience and financial loss. They feel the difference between the two systems of providers is not well known.

Example 40:

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.

Example 41:

I know of at least two instances where, as a result of failing to adequately enquire into the client's background and family circumstances, the client's children were entirely disinherited.

Example 42:

I am aware of a number of cases where the Will writer has failed to make clear to clients that, although the headline cost of preparing the Will was very competitive, that storage and/or provision of copies would be the subject of separate and quite substantial charges.

I am also aware of other cases where there have been misleading indications given about the costs of executorship and again misrepresentations concerning the costs of solicitors administering estates.

Example 43:

I know of clients being left without any effective remedy for negligence due to the Will writers disappearing and/or their companies being liquidated or struck off by Companies Registry.

Example 44:

I have seen paperwork from a particular Will writing organisation which advised clients to place all their assets, including their house and cash into a discretionary trust, as the clients were aged 70, in an attempt to avoid Nursing Home Fees. The standard charge for this organisation is £3,000 and in addition you a pay a lawyer £1,000 to do some of the paperwork

This organisation was the only company in our area who would do a death bed Will last month and then subsequently said they could not provide an affidavit that the testatrix understood the Will.

Example 45:

I am aware of Wills that have been drafted by standard clauses and have not taken into consideration how the investments are held (particularly property) for husband and wife, or no consideration has been given to life assurance policies and pensions. Further, no consideration has been given to whom can make a claim from the deceased's estate or any knowledge of trusts and tax consequence.

Example 46:

I have seen, on at least half a dozen occasions in the past eighteen months, Wills prepared by Will Writers in which they deal with the severance of a joint tenancy (I believe they commonly term it a “Protective Property Trust”). The Will leaves a right to occupy in favour of the surviving spouse but the clause fails to dispose of the half share of the property held by the deceased. The result is that the half share falls into the residuary estate which invariably falls to the spouse thereby defeating the original object of the exercise.

Until fairly recently, a particular Will writing site (in their section on legal services) had their terms and conditions relating to Will writing. In the same, they stated that they could not accept responsibility for ascertaining “age, sex or mental capacity” of the person providing the instructions. The terms are, so far as I can see, not now accessible on the site but I presume they remain. How can this be acceptable? If solicitors did the same and the matter came before the Court, solicitors would be punished.

Example 47:

I worked for a Will writing probate and trust company as a locum for two months. Once I realised how unprofessional they were I quickly got out. I was the only token solicitor there. The staff writing Wills were very poorly trained and asked me questions which quite frankly I

found absurd. I also had to spend a lot of time correcting errors made on probates they were handling. There was one particular probate concerning an ambiguous Will where I had prepared an application to the probate court to deal with the ambiguity but I left before the application was processed.

Also the managers of the 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. Also the senior manager there boasted to me one day that they made £100,000 per annum purely out of storage fees.

I know of Wills being prepared for spouses with life interests in joint property but not checking the title to the property to ensure it is tenants in common and not joint tenants.

Example 48:

There have been numerous occasions when clients have instructed me after previously having used a Will writer and it is not uncommon to learn of problems in the drafting or horrific stories of excessive charging.

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 49:

As a solicitor specialising in the field of contentious probate, I have a current case where the a Will writing company drew a Will for a woman who was dying from a brain tumour at the beginning of this year, without even going to see her, let alone obtaining a medical report before proceeding.

Example 50:

We have seen a Will drafted by a Will writer where the witnesses were the residuary beneficiary and his wife.

As it happens, the same firm had prepared an Enduring Power of Attorney, which appointed two attorneys but the Power did not state whether they were to act jointly or jointly and severally, and did not say whether they could act generally or subject to specific authority or whether they could act in relation of all properly and affairs or just limited property and affairs. In other words, no thought had been addressed to the various options at all. In addition, only one of the attorneys had executed the Power.

Example 51:

There have been two cases in which a non regulated Will writer has purported to prepare an Enduring Power of Attorney (EPA) for a client but it has not been in the requisite standard form. In both instances, the Will writer has tried to transpose the wording from the standard EPA form and/or changed some of the wording, resulting in the EPA not being valid. The clients were not aware of this.

In another case, the EPA was in the standard form, but the Part A front cover was not attached to the form, again resulting in the EPA being invalid. Further, the Will writer had not checked that the elderly clients in this case had properly executed and signed both their Wills and EPAs correctly. The clients had simply been left to deal with this themselves.

Example 52:

I am conducting a case where a Will was prepared by an unqualified Will writer. The family of the deceased are challenging the Will on the basis that its provisions cannot be reconciled with the deceased's previously expressed intentions towards his family and there is an allegation of undue influence by one of the appointed executors.

It took two months to track down the Will writer, with post returned marked "Not known"; contact was finally made. There is no file or attendance note relating to the deceased's instructions and the Will writer states that it is "not his practice" to be present at the execution of the Wills prepared by him, in other words, it was simply sent to him. A handwriting expert has opined that the signature on the Will is not that of the testator, notwithstanding that affidavits of due execution have been obtained by the executor's solicitors. The Will is incompetently drawn, using bullet points instead of numbered paragraphs and the attestation clause refers to "her presence" and not "his".

Example 53:

A client showed us the Will drafted for him by a Will writer. The Will gave an absolute (no conditions attached) gift of a house to a spouse. It then went on to state that if she remarried, the house should pass as to half to her and half to the children – these conditions would not have been enforceable as it was an outright gift of the house to the spouse. The proper way to deal with this would have been to include a life interest trust of the house in the Will.

Example 54:

A firm of Will writers prepared a Will for Mrs G which contained a nil rate band discretionary trust, and a life interest trust over the property. The property formed the majority of the estate and, being a specific gift, took precedence over the nil rate band trust. Therefore there were insufficient assets to constitute the nil rate band trust. Mr G (whose Will mirrored that of his wife's) did not understand the terms of the Will and was not aware that it contained a life interest trust. This would have significantly affected the Inheritance Tax saving, giving rise to a large claim against the Will writer had it not been for the change in the law relating to transferable nil rate bands which thankfully came in within two years of Mrs G's death. Mr G incurred additional legal costs for the time we spent in advising him as to the error in the Wills and preparing the appropriate documentation to rectify it.

Example 55:

We have had a very bad experience with a Will writing company. They have made two major mistakes with a Will, which had to be rectified. They have refused to give us details of their insurers and have paid neither costs of the rectification nor the costs of pursuing them for costs. They asked us why they were not given the opportunity to rectify the mistake in the Will themselves.

Example 56:

My clients (husband and wife) were sold Wills for a large sum and were then told that the joint tenancy would be severed at HM Land Registry in order to avoid paying Nursing Home Fees, the only problem was it was unregistered land and in the Husband's sole name.

Example 57:

We saw clients who had had Wills containing "nil rate band discretionary trusts" prepared by Will writers. The drafting of the nil rate band discretionary trust was defective in that the trust only applied to a particular investment bond, rather than being a gift of assets to the value of the nil rate band amount. On the death of the first spouse, the investment bond was worth considerably less than the nil rate band amount, meaning that very little Inheritance Tax saving was achieved.

Example 58:

Mr and Mrs K had Wills prepared by Will writers. When we checked the Wills, we asked them why they contained life interest trusts for the surviving spouse rather than outright gifts. The clients did not know that the Wills contained these trusts and said they had not asked for them and did not want them. We drew up replacement Wills for the clients containing outright gifts. The clients had to pay for the replacement Wills.

Example 59:

My client had a Will drawn by a Will writer which was ineffective/negligent as it incorporated a list of personal chattels prepared by the client (and bound up in the Will) which also included significant gifts of freehold property. Further, although the client was worth well over

£1million and was not benefiting her husband by the Will, no Inheritance Tax advice was given, nor was consideration given to whether specific gifts would bear their own tax (the residue being insufficient to cover Inheritance Tax in any event).

Example 60:

A Will writer had prepared a Will for a client which purported to include trusts for the client's infant children. The trusts were wholly ineffective. When I told this to the client she went back to the Will writer and the Will writer sent me an email asking what to do to put the Wills right.

Example 61:

About 18 months ago a Will writer prepared and circulated a leaflet in the area informing people that unless their Wills were signed and numbered on each and every page the Wills would be invalid. This he claimed was a new rule introduced by the Probate registry meaning that anyone whose Will did not comply would be invalid and had to be re done. Several clients asked us about this and having double checked with the Probate registry we put an item on our Website warning clients that this was untrue.

Example 62:

My client was approached two years ago whilst walking through a shopping centre. He is separated, but not divorced, from his wife. The former matrimonial home continues to be in joint names but only his wife resides there.

The Will writer made a Will for my client. There is no problem with the Will but the Will writer advised my client that it would be appropriate for him to sever the Joint Tenancy of the jointly owned property. However, the Will writer entirely failed to pick up that, in fact, the Joint Tenancy had been severed some 20 years before (the parties having been separated for almost 30 years).

Accordingly, the Will writer abstracted from my client a fee, including a Land Registry fee, for entirely unnecessary work; and the Land Registry Office Copies now show not one, but two, severance endorsements.

Example 63:

I am a solicitor specialising in Private Client. I have come across a number of cases where clients have been ill informed about the contents of their Wills or been misled as to what can/cannot be done in a Will.

The most common problems arise for those clients who have nil rate band discretionary trust Wills and absolutely no idea what the purpose of those trusts are. Rather worryingly I have also had a client who was in the process of divorcing her husband and the Will Writer explained that for an additional £15 they could put a clause in her Will preventing her husband making any claim on her estate.

I have had another issue where rather wealthy clients were advised to give a set sum to their daughter upon their death. In that case they were going to leave £100,000 to her at 18

because they did not think any funds could be used for her benefit whilst being held within a trust structure.

Example 64:

I currently have a case where I was instructed to amend a Will drawn up by a Will writer and when I asked to see the original Will was advised that it had been placed in store for which the client had paid a significant fee.

On a subsequent visit to the client's home I was shown two Wills one of which was the original Will. This means that the client paid for a service that was not delivered and the Will writer is no longer in business and so the fee cannot be recovered. The client was only charged £50 for the Will but when aggregated with the storage fee was considerably more than my firm would charge.

From speaking to the client about this it was quite clear that the client had not appreciated the total aggregate costs involved.

Example 65:

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 66:

I write regarding an incident in which I was instructed about 5 years ago. I am now retired from private practice and work from memory without a file.

A deceased had no wife or issue. He had siblings and some of those had predeceased, leaving issue. Thus, on intestacy, there were many beneficiaries and a complicated set of tracing to undertake.

He was approached by a Will writing company. He agreed to a home visit and, at the visit, signed written instructions that would give his (not inconsiderable) estate primarily to a nephew to whom he was close. He said that he had been told that, in the event that he died before signing the Will, the signed instructions would take effect as a testamentary disposition. In the event, delays occurred and he died before execution of any Will.

The nephew approached me. There were attempts made to encourage the beneficiaries on intestacy to acquiesce in the expressed wish of the deceased but to no avail. All but one would agree but insisted on unanimity. There was no unanimity.

My client had little funds but I concluded this was a case that I would run on a conditional fee agreement. I took statements and made enquiries, and wrote a letter of demand. At this distance my recollection is failing but I believe that there were noises of concession. Incredibly, it seems that it was accepted that the assertion of instructions standing as a valid testamentary disposition was made by the agent on the ground.

The agent was employed by a Will Writing Limited company. That company was insured but the insurer went into liquidation. I made enquiries and found that the liquidator would honour professional indemnity claims but not professional negligence claims.

Thus I could not usefully bring the claim and the client could not recover. Although of lesser importance, I had to write off my fees. There were substantial losses to the client and, of course, the estate incurred additional costs, not least in tracing.

The failing was that the insurer was not backed up by any scheme and I could not attack the principals of the Will writing company. This could not occur in a claim against a solicitor.

Example 67:

A company prepared Wills for Mr and Mrs W containing nil rate band discretionary trusts. The first issue to mention is that the name is very similar to a well known firm of accountants before it merged with another company.

Secondly, the nil rate band discretionary trusts were probably unnecessary in order to save Inheritance Tax because Mr and Mrs W's combined estate was below the nil rate band threshold.

Thirdly, there were drafting errors in the executorship clause:

"I appoint my wife [Mrs W] and [Will writing company] or such other company or firm who shall have succeeded them to be appointed as executors and trustees of my Will but if the appointment fails then I appoint my daughter [Miss W] as executors and trustees in substitution."

Problems:

Did Miss W's appointment take effect if the appointment of both Mrs W's and the Will writing company, or either appointments failed? After conducting research and corresponding with the Probate Registry, it was decided that Miss W's appointment took effect if either appointment failed.

Did any other company succeed the Will writing company? After researching into the numerous companies, it turns out that the Will writing company was not succeeded by another Will writing company.

Costs in rectifying this error and researching the history of the Will writing company were charged to the client, who could not recover the costs from the dissolved company.

Example 68:

I am dealing with the administration of an estate on behalf of the executrix, who is the sole beneficiary and wife of the deceased. The Will was drawn up by a Will writing company in 1995.

I submitted the original Will to the probate registry with the sworn oath by my client. The Will was returned to me by the probate registry stating that the attestation clause was defective and a sworn affidavit of due execution was required, by one of the attesting witnesses.

The attestation clause was as follows: “Signed by the said Testator in the presence of us at the same time who at his request and in the presence of each other, have subscribed our names as witnesses”. The probate registry explained that it did not state that the witnesses signed the Will in the presence of the Testator.

The additional costs to my client are in the region of £130 +vat. My client had her own Will drawn up by the same company and I believe the attestation clause is the same as above.

Example 69:

Our clients were advised by a Will writer to make nil rate band Wills (this was a few years ago) even though it was clearly inappropriate in their case. The husband died and the wife had to pay for a deed of appointment as there were insufficient assets in his estate to constitute the trust.

Example 70:

We had a case where the correct signing formalities were not adhered to when signing the Wills. I was instructed following a client's death and needed to obtain an affidavit of execution from the Will writer. However, they were no longer at the address stated on the Will and it took some detective work to track them down.

Example 71:

I saw a client whose partner had died. A Will writer came out to see him within a very short period of time and agreed to deal with the administration. They took £500 cash from him at that meeting and then did very little.

The partner’s Will, which they had drafted, was complete non-sense, and included issues such as:

- A legacy to be given only if X survived and then only if X died beforehand.
- A life interest to Y and then remainder to Y outright.
- There was a gift of certain items which appeared (although this was not corroborated) to be to the Will writers daughter.

Although there is no hard evidence, the deceased appeared to have paid the Will writer excessive fees for the Will drafting (£3,000).

Example 72:

I recently dealt with a matter where a Will writing firm had simply sent out Wills for signature and not asked for them back. This led to the executors being unable to find the original Will. As the Will writing firm did not the store Wills and did not even have a copy of the executed

Will, we have had to apply to prove a draft of the Will. Even obtaining the draft Will from the Will writers took a long time and there were no attendance notes kept of the matter.

Example 73:

We have come across two examples of Will writers not checking the Wills are validly executed. On one occasion it was only witnessed by one person. On the other, one of the beneficiaries was a witness. As solicitors, we understand that ensuring that Wills are validly executed (by non beneficiaries) is an essential part of our duties.

Example 74:

Often a low upfront fee will encourage a client in only for them to be charged large fees for small items likes Notices of Severance of a joint tenancy. Fees of £100 plus for this simple exercise have been seen. Also, Will storage charges are often hidden and the highest I have seen is a one off £750.

There is also often a problem on death with Wills either being released to the wrong person and then subsequently destroyed as 'inconvenient', or release fees being demanded against the persons properly entitled.

Example 75:

We have dealt with numerous instances of Wills being lost when a Will drafter goes bust or simply shuts up shop.

Example 76:

I have seen problems with Will writers putting themselves in as an executor. This happens rarely but when it does the consequences can be catastrophic. It is hard to persuade a Probate Registrar to pass over such a person as at that stage the probate is in its infancy so the Will writer executor has had little chance yet to give the Registrar cause.

The Chancery Division procedure for removing executors can only be safely put into action after much damage and delay has been caused and the cost of such an application is rarely under £10,000. This cost often deters applicants and I have seen instances of problem executors denying co-executors access to funds to take independent advice with a view to removing them.

Example 77:

Recently I came across someone trying to sell for a fee of £3,000 - 4,000 a 'lifetime trust' scheme to 'beat care home fees' which would simply not have worked. The Capital Gains Tax and Inheritance Tax consequences of making a mistake in this area are often very large and the Will drafters invariably have no insurance.

Example 78:

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 79:

Mr and Mrs S were referred to a Will writer by their financial advisor; the Wills that were produced contained highly complex nil rate band discretionary trust clauses followed by highly complex clauses relating to the distribution of the residue, none of which were accurate or relevant. When Mr and Mrs S consulted us they could not explain in simple terms what the Wills meant.

Example 80:

An existing client was made contact with a local Will writing firm. A Will writer came to see him and duly made a Will. Subsequently the client came to me to say that he had made this Will, and insisted that I be an Executor despite pressure to the contrary. The client also brought the documentation to me to keep on his behalf. He also admitted it had cost him some £450 and said that he knew that he had been a fool but he just got "carried away with it". Our charges for a similar Will would have been £80 plus VAT.

Example 81:

We were consulted by another client who had originally made a Will through a local Will writing firm but was not happy with the way it was written and wanted us to do a new Will. She was quite reticent about the whole incident but the indication was she had paid something in the order of £650 for her Will. Our charges for her new Will were £75 plus VAT.

Example 82:

I met up with a couple recently who had had Wills drafted by a Will Writing company in 2006. The couple were both married before and both had children from their first marriages. There are no children of the second marriage.

The Will company had drawn up nil rate band (NRB) discretionary trust Wills as follows:

1. There is a gift of the nil rate band sum to trustees to hold on discretionary trust
2. There are then further pecuniary legacies (amounting to over £200,000 in the husband's case)
3. They then leave their residuary estates to their respective children.

These Wills are nonsensical and ambiguous for the following reasons:

1. The Inheritance Tax saving advantage of a NRB discretionary trust Will is only effective if the residue is left to the spouse

2. It is inappropriate to leave additional legacies after the NRB trust - this can cause confusion as to how much is to be paid to the trustees - the entire NRB or the NRB less legacies.

The clients had no idea what their Wills meant or why there was a NRB discretionary trust. Couples in second marriages have complex needs and I felt that this couple had been very poorly served by someone who probably produces the same Will for all situations.

Example 83:

A husband and wife were in their mid-forties when the Will writer called to see them. The Wills themselves do not appear to be deficient, but they are actually invalid. Our client mentioned to us in passing that he and his wife had signed the Wills then his wife took them to work with her and one of her colleagues acted as a witness. That colleague then took the Wills home and her husband acted as the second witness.

Our client's wife died at the age of 46. The value of the estate meant that intestacy was not going to be a problem for our client as it happened, but this could have been a substantial problem if the value of the estate had been higher. The Will writer clearly failed to ensure that execution of the Will was carried out in accordance with legal requirements.

As a firm, we have come across numerous experiences of badly drafted Wills, defective Wills, and hidden costs.

Example 84:

A Will Writer drafted the client's Will on 13th May 2008. The client died on 1st December 2009. On reviewing the Will we found the following errors:

Clause 2 – appoints a single executor to be executors and trustees and defines him as "my trustees".

Clause 4 – leaves only 40% of the matrimonial home to the young widow. You will readily appreciate that this has caused her and her 12 year old son much distress and is resulting in it having to be sold.

The first line of this clause describes the gift as being of "pecuniary legacies" when clearly it is intended to be a specific devise of the property. This is causing the executor and the solicitors dealing with the estate constructional difficulties and constraining an interim distribution of residue.

Clause 10 - Refers to 'C' and 'D' as being the trustees, even though they have not been appointed as such. It also refers to the children's discretionary trust fund, whereas no such trust has been created.

Example 85:

A Will writer drafted a Will for a client but there was only one witness and so it was not valid. The client was in the early stages of Alzheimer's and fortunately I reviewed the Will when doing other work for her and so spotted the error and did a valid Will whilst she was still mentally capable of doing one. The Will writer also lost important deeds of the clients.

On the Will writer's notepapers it said she was a doctor of laws and a member of the Society of Lawyers. I reported her as holding herself out as being a solicitor. The Will writer was later arrested for stealing client money.

Example 86:

I am a family lawyer and have a client who returned to me recently having divorced last year, but remained living in the same house as his ex wife, and now wishes to address the finances. He and his ex-wife's solicitors told me that recently the divorced couple visited a Will writing company. They were advised to have mirror Wills and open a joint account - despite them making it clear they were divorced.

They were invoiced £100 for the Wills, £895 for what was a described as a 'lifetime 'service' but appears to be a storage fee, £550 for 'householder protection' which the other solicitor and I concluded is just a severance of the joint tenancy.

In my view the storage fees are extortionate as is the severance fee, not to mention the negligent advice (or lack of any advice) given about the suitability of mirror Wills.

Both parties did not seem to have a clear understanding of the implications of severing the joint tenancy, nor did they know why they were asked to open a joint account.

The company seemed to have no regard for the possible conflict and the potential unsuitability of mirror Wills. Thankfully, before my client came to see me he contacted the company and said he did not wish to proceed.

Example 87:

A client contacted us about her mother who had lost mental capacity as a result of an operation which had gone wrong. The mother had made a Will with a firm of Will writers. The Will left her estate to her three children in equal shares. The Will was witnessed by the Will writer and the spouse of one of the three children. As a result, that child's gift under the Will failed. It must have been obvious to the Will writer that the other witness was married to one of the children (she had the same name as him and lived at the same address), presumably the Will writer did not know that having the spouse witness the Will would cause a problem. As the lady had lost capacity she could not re-do the Will, the only way to rectify matters was through an application to the Court of Protection for a statutory Will, which is an expensive and slow process.

Example 88:

We were consulted by Mr and Mrs R who had had Wills prepared by Will writers and were not happy that the Wills properly reflected their instructions. The Will writers had charged them about the same as we would do for this work – they were certainly no less expensive. There were a number of problems with the Wills:

- A clause containing a trust over three houses was poorly worded. It was not clear when the trust would end. The clause had obviously been taken from a precedent intended to deal with a single house and had not been properly adapted to cover the client's situation.
- The use of survivorship clauses was not consistent throughout the Will.
- The Will set up a number of discretionary trusts. Each trust had only one named trustee who was also a beneficiary of the trust meaning there would be problems making appointments out of the trusts. Some trusts only had one beneficiary, meaning they would not take effect as discretionary trusts but as outright gifts to that beneficiary. No information had been given to the client about the ongoing costs that would be incurred through administering the numerous trusts established by the Will.
- The residuary clause said the estate was to be divided into four equal parts but after the residuary gift there were then two further specific legacies of two properties. It was not clear how these legacies were meant to be read in conjunction with the residuary gift.

We drew up new Wills for the clients that properly reflected their instructions. We also gave them appropriate Inheritance Tax advice regarding their businesses as this had not been covered by the Will writers. The clients therefore had to pay for our time in putting matters right

Example 89:

I am aware of a number of instances where a Will writer, called in by a family member with a power of attorney over an elderly person who allegedly wants to make a new Will, ignores or turns a blind eye to the capacity (or otherwise) of a testator to make a Will.

Example 90:

Having met a local Will writer he advises that although he takes instructions for Wills from clients in their homes, he then sends the instructions to somebody in Wales to prepare the Will. I am not sure whether that person in Wales is actually qualified to do so.

I have also spoken to other solicitors who have come across Will Writing individuals on courses who have no knowledge of trusts.

Example 91:

I have had clients who have advised me that they have had Wills prepared by Will writers. However, when they tried to contact them to change their Wills they were no longer at the

address given and the clients could not locate their original Wills. They also told me that they felt pressured into appointing the Will writers as Executors.

Example 92:

The clients responded to a press advertisement in a local free delivery newspaper under the banner 'Will Awareness Campaign'. Make your Will from only £29.95 + vat includes a free visit to offer help, give advice and arrange your Will.

They made contact and arranged a home visit for 6 July 2010. A man came to see them and spent approximately 30 minutes telling them he would prepare their Wills, protect their property from care fees with a trust and make Lasting Powers of Attorney. Once the clients had agreed to pay him £600 for this service, handed him a cheque for that amount and received a receipt of payment he asked them to sign a number of pages revealing only the part where they were to sign.

They have no recollection of any information being given about their right to cancel the contract or to disclaim the right to cancel.

The receipt was itemised as follows:-

Instructions for preparing mirror Wills	£70
Instructions for preparing a property trust	£340
Instructions for preparing LPA x 2	£190

Two weeks later they were sent the following documents:-

1. A letter extolling the benefits of 'X' Storage facilities and free probate helpline
2. A Standing Order Mandate for payment of £40 for 4 months payable to 'Y' – lifetime storage
3. A Standing Order Mandate for payment of £2.50 monthly until cancelled by the customer in writing – alternative special offer for storage
4. Mirror Wills containing a life interest trust over the matrimonial home leaving residue on second death to 4 charities
5. Detailed instructions for signing and witnessing the Wills
6. Attestation record in duplicate to be signed by the testator and witnesses
7. Cursory explanation for attestation validity/storage of the Wills encouraging Wills to be returned for checking and storage
8. Notice of Severance in quadruplet – no explanation given
9. Typed Lasting Powers of Attorney already signed by Donors, witnessed by the man who visited them who acted as Certificate provider on 6 July 2010 to be signed by the Attorneys

Alarmed by the amount of documents they were expected to sign without understanding the content the clients requested another visit or assistance. No one came. On 30 July they received a letter informing them the HM Land Registry had confirmed that their property was unregistered so they needed sight of a copy of the last conveyance.

This unnerved the clients even more so again they requested a visit or advice – none was forthcoming. They went to get advice from a community service where they learned about the right to cancel contracts made at home and were referred to a law firm for advice. They were seen on 23 August for proper legal advice about the documents that had been prepared for them. They disclosed that they had 3 adult children and on reflection did not wish to exclude them from inheriting, no advice had been given about the risks of doing so.

On the 24 August the man who initially visited them finally contacted the client who simply told him that everything was being sorted.

Thus far the Will writing company have denied any wrong doing or lack of professional service by their representative. They were able to produce a Notice of right to cancel the contract with the disclaimer signed at the foot of the page and dated 6 July 2010.

They have agreed as a gesture of good will to refund the charge for invalid Lasting Powers of Attorney on receipt of the documents but are adamant their representative acted appropriately and are now relying on what was said to the client on 24 August as evidence of the clients satisfaction with his service.

Example 93:

Our clients, Mr & Mrs K passed a stall in the town centre around July this year and took a leaflet from a Will writing company. Having made a Will with the organisation, he subsequently emailed them to indicate we would be handling his personal affairs, and requesting repayment of the £897 for storage of the Will he would no longer be requiring. The estate consists of a jointly owned house valued at £180,000 and savings and life policies of about £100,000 some of it jointly owned.

Example 94:

Mrs S was a widow who moved into our area. On writing to the Will Writer who prepared her Will asking for the original to be sent to her she discovered that they had ceased business, left no forwarding address and the whereabouts of her original Will was unknown. We prepared an urgent replacement Will.

Example 95:

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).

Example 96:

The deceased had the original Will in her possession but when I needed an affidavit of due execution and wrote to the Will writer’s address, I was told that the Police Fraud Department were "looking into" the Will writers who had disappeared. The Will itself was largely alright,

but one poorly drafted clause caused a lot of bother. It related to a property, and the Will maker had clearly not taken into consideration:

- There was a mortgage secured with a life policy clearly intended to be used for its repayment but not mentioned this which meant that the proceeds fell into residue which was a different direction;
- There was a field on the title, but the way the Will was drafted did not make clear whether it formed part of the gift of the residence or not.

Example 97:

I have dealt with a client who a Will writer wished to charge £1600 for a very simple Will, he did not proceed with that and I did the Will for him for £100 plus VAT.

Example 98:

A firm of Will writers called at the door of an elderly couple's house (at Christmas) and proposed a tax-efficient Will for each of them, revoking much simpler Wills prepared some years before by us. The clients were of modest means. The new Wills cost the couple in the region of ten times what we would have charged and made provision for an entirely misconceived nil rate band trust aimed at saving Inheritance Tax which would not have been chargeable anyway.

In fact, the husband's entire estate would have fallen into the trust, leaving nothing for any specific gifts or any residue. There would have been substantial administration costs associated with the trust. The family came back to us after having made an application to the District Probate Registry for a grant to issue for the Will writers' Will, but we managed to stop this after some effort and have the previous Will, which we had in our safe still, proved so the estate could be wound up. We made a new Will for the widow largely following the lines of her earlier, simpler Will, revoking the inappropriate one. We understand that the family was charged something in the region of seven hundred pounds to prepare two inappropriate mirror Wills. The replacement Will for the wife was done here for less than one hundred pounds and to charge her anything more would have been quite wrong. There were substantial costs associated with the work at the Probate Registry, but these were kept as low as we could.

Example 99:

I have been told directly by someone of being charged about £150 to make a Will but then a standing order of £149 per year for storage.

Example 100:

A client called into our offices to ask to us how much it would cost for an "Estate Protection Trust". She told us her mother had been quoted £2500 for it. I did not understand what she was talking about and therefore, she agreed to return to see us with the relevant paperwork she had been given by a "Solicitor". The lady called in the next day with some documents

drawn up by a Will writing company whom she had wrongly thought, were solicitors. She was shocked when I told her they were not solicitors.

The literature advised the client's mother to set up an "Estate Protection Trust" in her Will in order to safeguard her property against care home fees and this would cost her £2,500. The lady was a widow and the sole owner of her property. Solicitors refer to this type of Trust as a life interest Trust and we would prepare this for a client in their Will at a cost of £175 plus VAT as opposed to £2,500. In addition, this type of trust was not suitable for the client since she was a widow and the sole owner of her house. Thus, if she went into a home, the house would have to be sold and the trust set up in her Will would not prevent that from happening. This is a clear example of the client being badly advised and overcharged.

Example 101:

Our clients engaged the services of a company selling Wills in the local Tesco store. The clients were initially quoted a very small sum for completion of their Wills. The clients were sold additional extras to the initial quoted price and paid to the Will writer the sum of £849.38 before receiving any documentation.

On attending the clients at home, initial instructions were taken for the drafting of the Wills and when documents were forwarded to the clients they only included details as to the division of the property on the death of the first spouse, no other detail had been included and the draft documentation had not arrived with the customers in a timely fashion. Having complained the clients are now attempting to obtain a refund for the cost of the Wills and have as yet received no satisfactory response.

Example 102:

Our firm undertakes a monthly free legal clinic for a national charity offering a service to the elderly to obtain legal advice on many different areas. I hear many stories from them regarding Will writing companies which vary quite dramatically.

The ever present theme though is that the cost seemed reasonable when the first contact was made with them but appeared to escalate when they discussed the various clauses and arrangements that the Will writer felt would be necessary. The majority of those clients were seeking a relatively simple Will as their estate is not large and they were merely seeking peace of mind that their family would not be left with a headache when they die.

However, often the Wills produced ran for pages and pages and the testator/rix simply does not understand the wording or content of the Will and is left feeling confused and worried, quite the opposite to what they were seeking in the first place. When, in turn, they realise how much it is likely to cost to make a Will with a qualified solicitor/legal executive they are often amazed as they have been lead to believe that we are incredibly expensive.

The last example I had in relation to fees was that they had originally been quoted £150 or thereabouts for a Will and it ended with the couple paying in excess of £500. Their estate consisted of a modest property and a few small savings accounts with their wish that they benefit on first death and the estate then passes to their children.

Example 103:

I was approached by a young, professional couple who were cold called and coaxed into signing new Wills which purported to include a nil rate band discretionary trust. The definition of “discretionary beneficiaries” in the trust did not include certain close relatives and they did not appreciate, until I explained this to them, the significance of this omission. They were also charged up front fees and then were required to pay ongoing fees by direct debit annually thereafter.

It was not clear at all from the documentation they were given by the Will writing company what these subsequent fees would cover, for example whether it covered the administration of the estate of the first to die or the administration of the estate of the second spouse to die or whether indeed the fees covered the administration of the discretionary trust on the death of the first spouse. The Will writing company in this case concerned a company that was associated with a solicitor who was subsequently struck off as a result of the tactics used by the Will writing company. I have noted however that the Law Society had no powers to stop the actual company itself carrying on preparing Wills in this manner.

Example 104:

I was recently instructed by a client in connection with his Will, and to advise on planning to protect the value of his home for the benefit of his family.

The client told me that he had been contacted by Will writers and they informed him that he should renew his Will. I inspected the Will, reviewed his instructions and advised that this was an unnecessary expense.

The Will writing firm also advised that if he wished to protect his house the fee would be £2,500. My fee for a simple trust was quoted at £325 plus vat and small search fee.

Example 105:

A client contacted a Will writing company about long term care fees. He was told that for the cost of £3,500, he and his wife could put their house into trust and that would avoid the payment of care fees, he was assured that this would mean he did not have to pay for long term care. The cost quoted is at least three times what we would charge for setting up a lifetime trust.

We would also have explained to the client that the arrangement would probably fall foul of the “deliberate deprivation of capital” rules and so would not solve the care fees issue. We would have suggested using life interest trusts in the clients’ Wills instead as this is a less risky option and is not caught by the deprivation of capital rules. Our charges for two Wills of this sort would be around £500.

Example 106:

We had a case of wholly inappropriate Wills that were prepared for clients who were both in a second marriage and which ignored the need to preserve assets for the appropriate branch of the family. The clients had been charged £750 for the Wills.

Example 107:

I am currently acting on a professional negligence claim against a Will writer who prepared a Will bequesting the client's share of jointly owned property to a nephew. No severance was served, the Will writer claims he provided a severance notice to the deceased for her to serve which is not accepted. The Will writer is unable to provide any written evidence, whether by way of draft, letter of advice or even attendance note. The Will writer has refused to correspond further. He does not appear to have passed the claim onto his insurers, if indeed he has any.

I am investigating another claim involving a disputed Will, where an earlier Will was prepared by a Will writer. The business went bust and there is little prospect now of finding a copy of the earlier Will.

Example 108:

A Will was drawn up by a Will writer stating that the estate was to be divided into 14 parts but then went on to list the distribution to 15 people. An application for rectification was made.

Example 109:

A Will writer incorporated in the Will a life interest trust but there is uncertainty as to what is to happen in relation to the property on the death of the life tenant (the wife). No outcome has been achieved on this as yet.

Example 110:

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.

Example 111:

I am dealing with an estate where a Will was drawn up by a Will writing company. The deceased had an estate of £164,500. His Will purports to create a life interest of real property valued at £178,475 with a mortgage of £25,000. It then gives the interest in remainder absolutely to the wife which means she has an interest in any event. There is also a nil rate band discretionary trust which relates only to income which can be paid out at the trustees discretion to the wife, daughter etc but the capital is held absolutely for the wife. The Will makes absolutely no sense at all. These clients did not even come into the Inheritance Tax bracket. The widow has very little money of her own.

It is costing the clients more to put matters right than what it would have cost them to draw up a properly drafted document. We have had to draw up two documents to enable the estate to be dealt with properly.

Example 112:

Will writers drew up Wills for a couple, however these were complete nonsense in that they create a nil rate band and then add that to the Trust Fund which gives the survivor an absolute interest. The husband and wife died within about 3 months of each other so in this case it was easy to resolve.

Example 113:

A Will I am dealing with creates a nil rate band then a life interest of the property. However the Will then goes on to state that the life interest is then left to the widow absolutely. We have had to draw up a Deed of Family Arrangement to correct the position.

Example 114

We have a copy of a Will we received from a new client in November 2010. We immediately advised that client that this Will was completely invalid because there was only one witness on it. The client informed us that he had paid for that alleged Will from his financial consultant in 2000 but the client was unaware that the Will was invalid until 2010. The same client has given us instructions to make a valid Will for him.

Example 115:

We are currently dealing with a matter where a Will writer had advised a client that by leaving her estranged daughter a small specific legacy (a canteen of cutlery in this case) in her Will, the daughter would have no right to make an Inheritance (Provision for Family & Dependants) Act 1975 claim as she was already 'getting something'.

Example 116:

I have an example of a Will prepared by Will writers who have closed their office subsequent to completion of the Will for the client.

The Will is poorly drafted and would not carry out the wishes of the client were it to remain unrevoked.

Example 117:

Recently I saw an article suggesting perhaps that the current law is adequate in that negative issues with Will writers will be dealt with by trading standards departments. In my dealings with a vulnerable elderly lady I was told that the trading standards department in the local area where the lady lived would not be interested in pursuing the Will writers in this particular case.

Example 118:

I have been instructed by a client who received a cold call and then a visit from a representative of a Will writing company. Despite having been initially told that the cost of

Wills for my client and his wife would be £20 each my client was eventually persuaded that he and his wife would benefit from a "Protective Property Trust" and £800 was paid by my client in cash for what is described on the agreement he signed as "Last Will + Testament x 2, Protective Property Trust".

Following the visit my client received a letter stating that he and his wife would receive their documentation in the next 4-6 weeks.

3 weeks later my client received draft Wills and notices of severance of the joint tenancy, together with a leaflet regarding Trustee Powers. The letter requested that my client and his wife sign all 4 copies of the notice of severance and the Form SEV and return the Form SEV and 2 copies of the notice to the company, following which the company would submit the documents to the Land Registry.

My client signed & returned the Notices and Form as soon as they were received, together with his confirmation that the Wills were approved. Having heard nothing further for 2 months despite a phone call to the company the client approached me.

Upon considering the agreement and documents provided it was apparent that there was a breach of The Cancellation of Contracts made in a Customer's Home or Place of Work etc Regulations 2008 and that the contract was unenforceable.

Furthermore the Wills, which purported to have been drafted to provide a protective property trust inline with a leaflet that was provided to my client entitled "Care costs – Don't let them grab your house: Safeguard your home from possible future care costs", were ineffective for our client's purpose as the combined effect of the clauses was for the property to go in its entirety to the surviving spouse. This would not have been clear to my elderly, lay client.

Our own enquiries have shown that the severance of the joint tenancy was not registered with the Land Registry.

Engrossed Wills were provided by the company some 14 weeks after our client's payment and those engrossed Wills were as per the defective drafts.

My client therefore derived no benefit from the services of the company and they have refused to refund his money.

Example 119:

Will writers drafted a Will for a client. The client went to them thinking the price would be a certain amount but was then charged extra for things a solicitor would normally include in the basic price and charged for storage at the "X archives" which the client thought was an official government archive. The price overall was higher than a solicitor would normally charge.

Example 120:

We were administering the estate of a deceased husband. A bank had drawn up his Will, however a Will writer drew up a codicil. The codicil purported to remove the bank as executor but was incorrectly drafted and therefore ineffective. It cost approximately £800 of our time to rectify this, and fortunately the bank agreed to renounce as executor (although they were entitled to act, even though the family did not want this, and could have insisted). We tried to recover the cost of rectification from the Will writer, but by that time they had gone out of

business. In addition, if the codicil had been effective, it would have removed the testator's daughter as an executor in addition to removing the bank, which was not the testator's intention.

Example 121:

A client showed me a Will drawn up by a Will writer which was long and worded in a very formal way but there was no residuary gift and therefore there would have been a partial intestacy.

Example 122:

We have encountered three Will writers who have subsequently gone out of business.

We have also encountered many examples of Enduring Powers of Attorney which have been incorrectly completed by Will writers, something which generally only comes to light when it is too late and the donor has lost capacity.

Example 123:

I saw a client recently who had been cold called by a Will writing company and had had a visit from their 'Area Manager'. The Company were endeavouring to persuade the client to place his home into trust and also to make a Lasting Power of Attorney. The client had already told them that he had an existing Will. They quoted him £495.00 for a Lasting Power of Attorney and £1995 for placing his property into a trust. They said that that would protect the property from Residential Care Home fees.

I spent some time with the client going through the relevant factors and in particular I took details of his capital and income and the result of that is that using his pension income (occupational and state) of £15399 per annum and adding assumed attendance allowance in the event of him going into care I arrived at an income of £19039. He has capital including house value of £220,000 and taking a 5% return that would give him £11,000 per annum and therefore a total income of £30,000 plus per annum which would be sufficient to meet Care Home fees. I therefore said that this was not a case where he should be overly worried about losing all his capital in the event of him going into care for a long period of time.

I also explained to him that placing the property in trust (e.g a life interest to him and remainder to his children) was no guarantee of protecting the capital from the Local Authority because the Local Authority would no doubt investigate why he was not the absolute owner of the house in which he lived and might want to see the Trust Deed and enquire as to why the property was placed into trust in the first place.

Apart from the fact that his retention of capital over and above the value of his house would mean that the capital would be eaten away fairly quickly if it was his only capital and therefore in terms of retaining capital he may well be better off in the long term retaining both the house and the savings.

The client had not had all the implications explained to him. He had also been confused by the fees referred to. He was told that of the £1995 for placing the house into trust that the company would receive £170 only and the rest would be paid to the Government who had set up a Government sponsored scheme to pay Care Home fees. I queried whether this was some sort of insurance arrangement. The position is entirely unclear as to whether they

were talking about some insurance cover or whether this was a simple con to justify an exorbitant fee.

Example 124:

I am acting for an elderly couple who lost a daughter to cancer a couple of years ago. I understand from them that their daughter instructed a Will writing company to prepare a Will for her. She had already been diagnosed with terminal cancer when she instructed them.

She was required to pay an initial £120 upfront and then additional payments totalling £300 and no Will was forthcoming. She died before the company had produced a Will for her. I do not know the length of time between instruction and death, but her parents think that it was at least a few weeks. After her death, the company refused to refund the £300 paid on account and said that they were unaware that she was as ill as she was, although her parents believe that she did tell them of her terminal diagnosis.

Although this is not a case of bad Will drafting per se, it is an example of how bad practice by unregulated Will drafters can cause stress to individuals at already difficult times. It is interesting that the company claims to act in accordance with a Code of Practice. The Code does not make any reference to the need to act quickly where a client is very elderly or suffering from a terminal illness.

Example 125:

I was recently instructed by our client to prepare a new Will for her, replacing one she made in 2003. She and her husband (since deceased) instructed a firm of Will Writers to make Wills which were effectively mirror-images.

The client had three children by a prior marriage and two further children with her second husband. In order to protect the interests of the children, therefore, each Will gave the surviving spouse a life interest only in the jointly held home, with the remainder to go to all five children in equal shares. I understand this arrangement was also considered desirable in order to protect at least some inheritance for the children against the risks of (a) possible re-marriage of the surviving spouse and/or (b) the impact of long-term care costs if the survivor had to go into care in old age.

The husband died approximately a year ago, but it was only recently that the client consulted me (I had not acted for the family before). In the course of advising her I ascertained that she had taken no steps to obtain a grant of probate to her husband's Will, which I explained would have been necessary in order to deal with the life interest in his half-share of the house. However, on obtaining a copy of the registered title I found that the property was actually held by the couple as beneficial joint tenants – in other words, there was no Restriction on the Proprietorship Register to protect a tenancy-in-common in equal shares. As a result, the life interest provisions in the Wills were of no effect and, on her husband's death, the client became the sole owner of the property automatically, by survivorship.

When the Wills were signed the clients should have severed their joint tenancy and registered a Restriction on the title, but this was clearly overlooked. Either the Will Writers should have dealt with this on the clients' behalf or alternatively they should have advised

them as to the steps to be taken and followed up that advice to obtain confirmation this had been dealt with.

Fortunately, it was the husband who died first, leaving the client in a position to be able to benefit all five of her children on her own death, as she obviously wishes to do. However, if it was the client who had pre-deceased her husband, he would have been left as the sole owner of the property and there would have been no guarantee of any inheritance for his three step-children (by the client's first marriage). In the event of any estrangement from them, he would have been able (if he so wished) to make a new Will leaving everything to his two children by the client exclusively, thus disinheriting the step-children. This was clearly not what was intended when the Wills were made.

In that situation, it might have been open to the step-children to contest a new Will, on the grounds that the Wills made in 2003 were intended to be "mutual Wills", but their chances of success would have been severely hampered by the fact that the joint tenancy had not been severed. Even if successful, any such action would have been expensive and would undoubtedly create a serious rift between them and the other two children.

The Will Writers were therefore clearly negligent in failing to advise the couple properly and ensuring that a tenancy-in-common had been created, but thankfully (in this instance) no damage has actually been done.

For good measure, there was also a typing error in the Will prepared for the husband, which referred to his daughter by the client as his "step-daughter". The client states that when this error was pointed out to the Will Writers they advised her simply to delete the word "step" by hand. The Will was duly amended accordingly, but the correction was not initialled by the husband and his two witnesses, as is normally necessary, as the Will Writers did not advise the clients that this was required. Fortunately (again) this omission has not had any harmful effect, but in other circumstances the Will (or the relevant provision containing the amendment) might well have been invalidated, to someone's disadvantage.

Example 126:

I have dealt with two instances of Will writers purporting to create life interest trusts in clients' Wills in order to safeguard assets for mainly care home fee purposes. In neither case did the Will writer ensure that the necessary Deed of Severance was executed concerning the Deceased's property. This therefore meant that there was no property to fall into the trust created by the Will of the first spouse to die.

In one of these cases, we had to do a Deed of Variation, retrospectively severing the tenancy and it was particularly important in this case as the surviving spouse was likely to need care in the near future. There was a good possibility that had we not rectified this error, the whole of the property would have had to have been sold to pay for the care fees, thereby defeating the clients' original objectives.

Example 127:

A team of freelance market researchers are being used by Will writing businesses to approach members of the public in shopping centres asking them if they have Wills and taking their contact details if they reveal themselves to be home owners. The shoppers are then telephoned a few days later and subjected to pressurised sales techniques.

Apparently members of the public are not made aware that the Will writing firms involved are not solicitors and some of them have proceeded to use the service because they were under the impression they were dealing with qualified lawyers.

Example 128:

Our example concerns a Will writing company who prepared a Will on behalf of our client's father. I will call the father " Mr A". We have seen correspondence from the Will writer in which he states that he believes Mr A's second wife was 'the most difficult client he had ever encountered'. He failed to take proper notes of conversations with Mr A and his wife. On reading the correspondence, it would be impossible to conclude that Mr A was adequately advised as to how best to protect his estate and the interests of his two daughters by his first marriage. Indeed there is an email we have seen which the will writer sent to a third party and which freely confesses that he does not know what he is doing. Counsel's advice has been taken. Counsel advises that she is appalled by the service that has been provided, but thinks there are difficulties in proving the real intentions of Mr A. It is impossible to calculate precisely how much might have been lost by our client and her sister as a consequence of the will writer's incompetence. It is probably going to be in the region of £150,000.

In the case of the same deceased, Mr A's Will appointed his wife, his daughter (our client) and his stepson to be executors. Following the death the Will writer himself took no further action but the matter appears to have been referred to another company. It is presumed that there is some referral arrangement between the Will writers and that other company, but no details have been provided. The second company wrote to our client following her father's death and saying that they had been approached by the deceased's wife. At this time our client was not aware of the terms of her father's Will. The letter sent by that company did not enclose a copy of the Will. The first letter sent to our client was dated 11th August 2009. Our comments on that letter are as follows:-

- No copy of the Will was provided;
- There seems to be an assumption that as our client was appointed executor, she therefore had to sign a renunciation and consent form and so as to allow the trust corporation to act in her place. This is a total misrepresentation of the function of an executor;
- No mention is made of the likely costs which should be charged.

A copy of the Will was subsequently produced as well as details being provided of the costs which would be charged. However, those details would not have been provided unless prompted.

Example 129:

We had two cases where the client's paid in advance once the Will instructions were taken, but the clients do not recall signing a Will and do not have a copy of the Will.

We also had a case of a Will being advertised as 'cheap' and ending up costing the client significantly more than the advertised price as a result of unnecessary trust provisions being advised as 'essential'.

Example 130:

I am aware that Will writers employed by a certain company are given a billing target of £750 per client. I'm not sure if this business is still trading but the tactic was to advertise cheap Wills and then charge extra for pecuniary legacies, specific legacies, severance of joint tenancies, storage.

Example 131:

A Will writing company prepared Wills for my client's parents in 1999. I do not know how much they paid. The Wills contained what the Will writer called a Protective Trust. It was not a Protective Trust, but an Interest in Possession Trust for the surviving spouse for life in the family home. The wording of the Trust was difficult to interpret, there was no actual gift of anything to "my Property Trustees".

At the end of the Trust period, the father's Will left "his share" of the property to be divided unequally between his 3 sons; and the mother's Will left her share to her only son, my client.

The Will writers may have prepared a document purporting to sever a joint tenancy of the property, but I had never seen one. Unfortunately the property was registered only in the father's name and no-one at Will writers seemed to have bothered to check, or to advise them that there was no property that they owned jointly.

So when he died in 2006 his executors could not say for certain whether or not the Trust was effective as a gift of the property to the trustees. Was it conditional on his severing a joint tenancy? If so the gift had failed and the property fell into residue - passed to the mother, who, with a history of mental illness needed residential care, and whose Will left her estate to her only son, omitting the father's other two sons; or was it a gift of the whole house on an Interest in Possession trust? If so, it would pass to his three sons when the mother died.

In either case, my client, who is vulnerable, was threatened with losing the only home he had known. He found the whole process so distressing he had a breakdown and was admitted to a psychiatric hospital – all caused by a failure to check the Land Registry.

Example 132:

We have come across a Will writer appointing himself/his company as executor and then purporting to make a charge of about £500 for renouncing when the family objected to his charges.

Example 133:

The main issue for which we have been approached on a number of occasions has been a certain firm advising clients that the planning that they are doing cannot be done by solicitors.

We have reviewed the paperwork and have also discussed the issues with other solicitors practices in the town, all of whom have come to the same conclusion that the planning (to avoid nursing home fees) does not work. The fees that are being charged are hugely expensive. Clients are being targeted with “cold calls” (by telephone) and scared into making a Will by stories of all assets going to the local authority.

We have encountered a case where the client had her personal matter discussed with a family member and confidentiality broken. The family member worked in the same building as the Will writing company.

From information that we have obtained from our returning clients it appears to be standard practice to claim that solicitors fees will be higher. This is usually not the case.

Instructions are taken in the client’s home and a contract signed and the work paid up front. It seems that no work is carried out for two weeks, presumably so that the “cooling off period” does not apply. If the client upon receiving the draft wishes to cancel they do not receive any refund.

Example 134:

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 135:

A client has also shown me correspondence he received from Will writers. The correspondence is littered with statements which are designed to frighten off consumers using solicitors by over inflating the charges of solicitors in an attempt to encourage people to stay with the Will writing company.

For example, one piece of correspondence stated that solicitors are charging “on average” over £1,200 for each Power of Attorney document, my firm certainly does not charge anywhere near that amount for one Power of Attorney and I doubt that this statement is based on any independent research. The documentation received by the client also referred to the company having a “professional indemnity policy” in place, but it is not clear what this covers: at one stage the documentation refers to insurance for the ‘replacement value’ of the documents and ‘for the value of your estate in the event that there is a problem’. This insurance ends if the client takes away their documents. This is of course not the case with solicitors, whether we hold the documents or not, we have professional indemnity insurance in place to cover any work we have done for a client.

Example 136:

A Will writer had drafted a will for our client and his late wife. The couple moved house and lost their copy Wills. After the wife’s death, the client went back to the Will writing company to get hold of his wife’s original Will and they had gone out of business, vanishing without trace.

So we were faced with reconstructing the Will and admitting the reconstructed Will to proof. We were ultimately blocked from doing this by the wife’s son from her first marriage. In the end, all I was able to do for the client was a deed of variation of his wife’s half share of their home, held as joint tenants. We severed the tenancy retrospectively and created a discretionary trust for her half share.

Example 137:

I am instructed to deal with an estate where the Will has been written by a Will writing company. The deceased when she made the Will was in her 40's and diagnosed with terminal cancer (she died shortly after making the Will).

Her Will purports to give a life interest in her share of her property (a half share of the matrimonial home) to the husband and then thereafter to the children (this is a second marriage situation). The Will writer failed to sever the Joint tenancy and the clause fails, which has occasioned loss to the remainder man who are minor beneficiaries.

The couple were charged £300 each for the Wills (£600) which is certainly triple the amount any solicitor would charge, that I know of, in this town.

Unfortunately, it would appear that achieving any form of financial recompense for the disappointed minor beneficiaries is difficult if not impossible. The couple were approached by the Will writer from a stall in the local shopping centre. The Will writers are uninsured and in administration.

Example 138:

We had a case where the Deed of Severance was not completed, the wording of the trust was also insufficient, to the point where the life interest trust did not make sense and was thereby arguably invalid. Certainly, the surviving spouse did not understand the Will and told me that she and her husband had been cold called by the Will writing company and coaxed into doing these type of Wills. The clients in question were elderly and vulnerable people and were under the impression that the Will writers were legally qualified to prepare such Wills and had the necessary legal qualifications which, clearly, they did not.

My experiences with clients who have used Will writers reveals that they all assume that the people they have been approached by have the necessary legal qualifications to carry out such work.

Example 139:

I became self-employed in 2008 and noticed an “Estate Administration” position was being advertised. I followed up this advertisement to see if I could assist on a consultancy basis. I was advised that the organisation were not seeking anyone with experience in this area. They required people countrywide, with their own transport to visit people who had expressed an interest in making a Will and complete a form by ticking boxes. They were paying around £5 per hour but said they would pay a bonus. It was stated that the £49 estimate given to customers for the Will was rarely the final cost and a bonus would be given to the employee based on the added cost. Apparently when the form was completed with the tick boxes this was sent to the office and the Will was then drafted from there, there would be no direct contact with the person drafting and the testator. I do remember the person saying that the clients would be sourced by handing out flyers in shopping malls.

Example 140:

We are currently receiving a large volume of enquiries from existing clients who have been telephoned by a local Will writing firm and who have felt pressured to going ahead with various types of planning.

The typical scenario is that the client will receive a telephone call at home out of the blue from this firm pointing out that if they go into care their assets will be dissipated and the caller goes on to say there are ways this can be mitigated. The phone call is usually followed up by a visit to the client’s home, in some cases we have found if the client is reluctant to make an appointment, a further call is made. A sales representative then goes to the person’s home, who tries to sell the client a trust to save on nursing home fees, but any detail as to the potential implications of such planning in terms of possible pitfalls is severely lacking, as is any informed discussion as to whether or not it is appropriate in this particular client’s circumstances. These clients are invariably elderly and sometimes ill and frail, and this can be a very emotive issue for them. Coupled with the pressure of the sales person, they often find it difficult to say no.

We have come across several cases where the sales person requests a large cheque up front, sometimes in the region of £1500 before any work has gone ahead. The client

therefore has absolutely no opportunity before making the contract with the firm to consider the wisdom of what they are doing, to discuss it with their family or otherwise consider what is a major step.

In terms of giving the client a cooling off period, as required by regulation, this is included in the small print on the firm's order firm. That said, we have come across clients who have handed over cheques without being handed the form, the cooling off period is not mentioned in conversation, and they do not realise they can cancel the contract within that period. Indeed, we have had two clients who simply cannot read the small print due to eyesight problems, and in one case a client thought she was signing a cheque for £17.95 which was actually a cheque for £1795.

We recently have come into the possession of two specimen trust documents prepared by this firm. We are, on the clients instructions, dealing with the individual issues directly with the company. However not only is the documentation technically deficient, it is inconsistent, illogical and our view is that it is not sufficient to either protect the client's interests should they not be funding their own care, or, if they were, chances are the drafting is so defective it would not stand up to scrutiny in terms of any Social Services means test. The clients have therefore purchased a product at great expense, under pressure, and without any opportunity to consider the position, which chances are does not have the intended effect anyway.

In addition, two people associated with the Will writing firm, are automatically included as replacement trustees in certain circumstances, which is not pointed out to the client and which in most cases would be inappropriate.