

Research Specification: Understanding the consumer experience of will writing services

Purpose

The purpose of this research is to develop an evidence base to support the LSB's decision whether to recommend an extension of reserved legal activities to will writing. This research will be essential to provide evidence of the types and scale of any consumer detriment from current practice in writing wills.

Background

The Consumer Panel is an independent arm of the Legal Services Board (LSB) created to provide high quality, evidenced-based advice to the LSB and others on the consumer interest in the regulation of legal services. The LSB has been set up to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its regulatory objectives¹ and providing regulatory oversight for the eight approved frontline regulators². This project is being commissioned jointly by the LSB and Consumer Panel together with the Office of Fair Trading to support the LSB's policy analysis on reserved activities and the Consumer Panel's advice to the LSB on will-writing.

The legal framework

Existing regulation of legal services consists of a number of branches of the profession, some with reserved titles, other branches do not have reserved titles but are allowed to practice one or more of the six *reserved legal activities* set out in the Legal Services Act 2007:

- The exercise of a right of audience
- The conduct of litigation
- Reserved instrument activities
- Probate activities
- Notarial activities
- The administration of oaths.

Other reserved activities include immigration work (Immigration Act 1999) and claims management services (Compensation Act 2006). The reserved legal activities all have roots that are more than a hundred years old. Although will writing is not a reserved activity in England and Wales; recently the Scottish Parliament has started the process of making will-writing a reserved activity in Scotland. Further concerns were raised in a recent BBC Panorama programme focusing on problems experienced by people who had bought wills. This has placed an additional pressure on the LSB to

¹ http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_2#pt1

² The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties.

consider whether an extension to reserved activities should be introduced in England and Wales to bring will-writing within the scope of regulation.

In England and Wales following parliamentary debate in the run up to the Legal Services Act 2007 the decision was taken not to include will writing within the reserved activities at that time. Parliament considered that evidence had not shown statutory regulation in this area to be necessary, and favoured voluntary regulation instead. The issue was also considered by Lord Hunt in his report³ on the regulation of legal services.

Under Schedule 6 of the Legal Services Act 2007, the LSB has the right to recommend an increase or reduction in the number of reserved legal activities. Before recommending to the Lord Chancellor to make any change to the reserved activities, it is first necessary to investigate the market and produce a report outlining the evidence for the proposed change. This evidence must be considered by both the LSB's Consumer Panel and the Office of Fair Trading for both consumer and market implications. The head of the Judiciary, the Lord Chief Justice, must also be consulted. At this stage we are simply gathering evidence to help us consider whether to conduct such an investigation.

The LSB has asked the Consumer Panel to look at the will-writing market following concerns raised by number of professional bodies representing will writers, anecdotal evidence of consumer detriment and recent developments in Scotland. In particular the Consumer Panel has been asked to consider:

- Wills are of poor quality because they are either invalid or do not reflect the testator's wishes after taking account of their circumstances
- Unfair commercial practices, such as pressure selling tactics or when consumers are deliberately drawn in by a low advertised price but the final price turns out to be much higher, i.e. "bait advertising"
- Cross-selling of related services, which may be unnecessary, unsuitable or expensive; one area of focus is naming the will provider as executor of the estate
- A lack of transparency on price and other issues so that consumers do not make informed choices or do not realise the consequences of their purchase decisions
- Problems related to storage of wills, charges for such storage, and their location by beneficiaries
- Consumers fail to make a will because of barriers to access, for example cost, lack of awareness and unnecessary jargon or complex English
- Fraudulent activity linked to wills or related services

The LSB is also carrying out wider research separately to this project on the basis of reserved activities and the types of outcomes consumers would like to see from legal services. This research will be used, along with the advice received from the Consumer Panel to help develop the LSB's

³ <http://www.legalregulationreview.com/files/Legal%20Regulation%20Report%20FINAL.pdf>

specific conclusions on the need for reserved activities in the area of will-writing. This will then be followed by a period of consultation before the LSB can conclude its study.

The will writing market

Currently there are five main routes to write a will in England and Wales, solicitors, specialised will-writers, banks, affiliate groups such as unions, or by self completion using an online or published will-writing pack. Of these routes, only wills written by solicitors are subject to regulation with complaints procedures leading to the Legal Complaints Service (from 6 October 2010, the Legal Ombudsman). Will-writing is regulated for solicitors as while the reserved activities formally impose boundaries on the scope of regulation, in practice the SRA regulates solicitors for all legal activities. The focus of concerns of stakeholders has been on unregulated will writing firms, although there is no evidence on quality of wills produced via any of the five routes.

There is no reliable data source on the cost of wills or the total size of the market for wills. A quick internet search reveals costs of wills starting from £9.99 for paper based self completion, £29.99 online to around £100 for a will written by a solicitor (wills from the Which? cost £89 for a single person). A National Consumer Council survey of 20 solicitors suggested an average cost of £75-£100 and only 36% of adults had a will⁴. The cost of wills are known to vary significantly depending on the complexity of the individuals' needs. Individuals with simple circumstances, such as those who have not been divorced, have no children from previous partners and have assets worth less than the inheritance tax threshold are likely to be able to get a will at relatively low cost. Those who have divorced partners, children from previous relationships, properties abroad, business interests and assets above the inheritance tax threshold are likely to have much more complex needs and so will be charged much more for their will.

The will-writing market is further complicated by its close connection to other services such as estate administration and probate. Executors are required as when a person dies it is necessary for somebody to deal with their estate (the money, property and possessions left) - a will can identify the executor(s), which may be an individual or corporate body. Their role is to collect in all monies, pay any debts and distribute what is left to those people legally entitled to it - as set out in the will. In order for an executor (or executors) to get the required authority to do this, they usually need to obtain a legal document called a Grant of Representation (either a Grant of Probate or a Grant of Letters of Administration) from the Probate Registry⁵ - this process is referred to as probate and is a reserved legal activity.

Often a person buying a will will be offered executor and/or probate services at the same time, in some circumstances the will-writer may make such additional services compulsory. While the cost of the will may be fairly low, probate or execution services can be significantly more expensive and often charged as a percentage of total assets included in the will. There are concerns that in some cases a will is advertised at a low basic cost as a means of securing lucrative estate administration work that beneficiaries will pay for, without the testator necessarily realising this. We do not wish to cover execution and probate services specifically within this study, but the interaction and cross

⁴http://collections.europarchive.org/tna/20080804145057/http://www.ncc.org.uk/nccpdf/poldocs/NCC174rr_finding_the_will.pdf

⁵ Further information on the Probate Registry can be found on the Court Service website at <http://www.courtservice.gov.uk/cms/3800.htm>

selling between will writing and execution/probate activities will be significant in understanding customer experience of will-writing.

Aims and Objectives

We would like to develop a robust evidence base to support an assessment of the current treatment of customers of will writing services. We would like to consider in particular how consumers select will writing services, challenges they face finding a suitable service, the quality of the wills produced, how they feel about the service they receive, whether the costs matched their expectations and whether they felt subject to any sales pressures. We believe that to explore all of these issues, in particular including the quality of wills written, is likely to require a variety of research techniques, including mystery shopping or shadow shopping.

As a secondary consideration the research should also seek to improve our understanding of the approach taken by firms to selling wills from their perspective. Do they have standardised procedures? Do they aim to cross sell services? How do they market themselves etc.?

The project should improve our understanding and, when possible, provide quantitative evidence of the following

- Main factors playing a role in consumer decisions in the will writing market (including bundling)
- Levels of consumer satisfaction (and main problems) and how these may differ by type of provider
Level and sources of consumer detriment
- Business behaviour, particular with reference to bundling of will-writing and other services, information provision and complaint handling

Issues and scope

Key to this project is the central need for the LSB to be able to take a judgement based on the results about the need for greater regulatory intervention in the market. In particular we need to understand whether consumers actually suffer from any of the potential sources of harm that occur in the market, not least whether the will written actually meets the needs of the consumer, reflects their wishes and is likely to deliver the intended inheritance to the beneficiaries with a minimum of further work. Failure to draft a will to meet these objectives may occur either as a result of failing to take account of the consumers' circumstances, their wishes or simply poor drafting of the will. Other potential sources of harm may come from overcharging; unnecessary cross selling of executor or probate services, pressure selling, low transparency and inadequate storage of wills.

We would like to both understand whether any of these potential sources of harm occur but also their relative prevalence among the different types of will provider – solicitors, will-writers, banks, unions, charities and self completion. We are not looking to develop a statistically robust market picture of the quality of wills – for a start we do not know the proportions of wills written by each of the main will providers. We are looking for a robust sample that allows us to judge the nature of harm affecting consumers and the quality of wills produced in each of the market segments across England and Wales.

As a key test is likely to be the quality of the wills produced in each market segments, and the wills' ability to deliver the desired outcomes, we will recruit an expert panel made up of volunteer solicitors and will writers to assess the wills produced. They will first need to agree key criteria for a good, average and inadequate will, and then receive key information that would enable them to judge its quality – the source of this information may differ depending on the methodology adopted.

In order to test both the technical quality of wills and to find evidence of poor commercial practices, we wish to replicate the shopping experience, but without the will provider knowing their work is being evaluated. The research should consider ease of finding a suitable source of a will, problems with assessing the quality pre-purchase, understanding of costs, pressure selling alongside the quality of the will and shopping experience. Two alternative approaches might be considered:

- Shadow shopping – real consumers with a mix of simple and complex needs would be recruited, from different socio-economic groups and geographic locations based on their preferred type of will provider. We would pay for the cost of the will as an incentive to participate – tenders would have to address how they would tackle any potential issues for bias
- Mystery shopping – researchers adopting identities based on pre-defined simple and complex needs would find will providers across the range of distribution channels from different geographic locations. For the avoidance of doubt, once again we would pay for the will

Each different has advantages and disadvantages. Tenders should discuss the merits and challenges of each option, cost implications and scope for complementarity of approaches for example consumer surveys. Ideally, tenders will outline a 'menu of options' and, if considered relevant, advice on a recommended approach.

Judging the quality of wills, will be very challenging. We are keen to produce a fairly simple test of good/average/bad for wills and avoid testing for the added value services that may be offered by some will providers. When looking at the quality of the will itself, we would simply like to test whether it achieves its stated outcomes that were agreed with the client. Developing a panel of solicitors/will writers may hold risks that they will judge the quality of the will by too high a standard, a risk that we would welcome the views of the researcher on avoiding.

We would also like the researchers to consider how the specific challenges faced by vulnerable and minority consumers could be addressed within the project. In particular we are interested in the challenges faced by BME and older consumers and consumers with learning disabilities.

Following the consumer study, we believe that it would be desirable, if feasible, to interview a sample of the companies who wrote the wills to discuss their approach to writing the wills. This can help us understand more about the motivations of those writing wills, who within the business writes the wills, their relative importance to their business, policies on cross-selling etc.

Tender Evaluation Criteria

All projects commissioned by the LSB are subject to our standard terms of contract. Tenders will be evaluated on best value for money and will be assessed on the basis of:

1. Overall cost. Please include appropriate breakdowns
2. The extent to which tenders are clearly written and meet the specified objectives, present a sound methodology, identifying any potential problems, and proposing suitable solutions
3. Address outputs and ensure these are in line with requirements and the required timing of the project
4. Proposed team composition, expertise and management and the organisation's diversity policy
5. How diversity issues would be addressed in the research.

Deliverables

The project will be managed by a joint team of the funding organisations led by the LSB who would provide oversight and decisions on key issues arising.

Output

The output for this research should be an executive summary together with a report. The report should be suitable for publication, although any decision to publish will remain with the LSB. It is essential that the report and underlying research is sufficiently robust so that the LSB can use this in discussions with external stakeholders and can underpin the work of the LSB.

The LSB will retain ownership of the report and underlying data, but all data should be suitable for publication.

Project plan

Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task. We would also expect the tenders to include a clear analysis of the potential risks and how they propose to mitigate them during the project.

Duration

The research should commence in November 2010. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. An initial interim report on a pilot must be submitted to the LSB by 7 January 2011, with the draft final report completed by the 18 March 2011. A final agreed report should be completed by 7 April 2011.

Legal Services Board Contact Details

Tenders with any queries about the research specification should contact:

Policy team: Chris Handford, Legal Services Board, 020 7271 0074

Research: Alex Roy 020 7271 0060

Tenders must be submitted by 5pm on Thursday 28 October 2010