

Not to be used before 00:01 hours, 14 July 2011

REGULATE WILL-WRITING, CONSUMER PANEL TELLS LSB

Today, the Legal Services Consumer Panel recommends that will-writing services should be regulated. Currently, there are no restrictions on who may draft wills for consumers for payment. Under the Panel's proposals, all providers would have to demonstrate they are competent to write wills, follow a code of conduct and allow complaints to the Legal Ombudsman.

The report uncovers evidence of poor quality wills, sharp sales practices and lost wills where companies disappear without trace. Worryingly, about one in every five wills prepared by both unregulated will-writing companies and solicitors were failed by expert assessors in a mystery shopping exercise.

The report calls for training standards for solicitors to be raised and for the Office of Fair Trading to lead an enforcement campaign targeted at the minority of will-writing companies responsible for the worst sales practices such as pressure selling and exorbitant prices.

Commenting on the Report, Dr Dianne Hayter, Chair of the Legal Services Consumer Panel, said:

“A will may have huge personal and financial consequences for those who we care about most. It’s vital that advisors do a competent job, especially since any defects are unlikely to be discovered until it’s too late to fix them.”

“The Panel was shocked by the poor quality of wills in the mystery shopping. Although the sample was small, will-writing companies and solicitors were equally culpable, pointing to the need for tighter controls across the sector. Only by requiring all providers to be regulated and to demonstrate their competence can consumers enjoy peace of mind that their final wishes will be respected whoever prepares their will.”

“Most people were happy with the service they got from will-writers, but there is evidence that a rogue minority is pressuring people to buy services they do not need and charging excessive prices. The Panel calls on the OFT to coordinate enforcement action with trading standards against these firms.”

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For more information, contact Steve Brooker, Consumer Panel Manager, on 020 7271 0077.

Notes to editors

1. The Legal Services Consumer Panel was established under the Legal Services Act 2007 to provide independent advice to the Legal Services Board about the interests of consumers of legal services in England and Wales. We investigate issues that affect consumers and use this information to influence decisions about the regulation of legal services.
2. The Panel's report can be found here http://www.legalservicesconsumerpanel.org.uk/publications/research_and_report_s/documents/ConsumerPanel_WillwritingReport_Final.pdf
3. There are no restrictions on providing will-writing services to consumers. Unregulated will-writing companies are thought to prepare about 10% of wills – about 180,000 each year.
4. The Legal Services Board wrote to the Panel on 9 September 2010 asking for its advice. A copy of the commissioning letter is here http://www.legalservicesconsumerpanel.org.uk/ourwork/will_writing/documents/20100909_LSBcommissioningletter.pdf.
5. An independent research report by IFF Research incorporating the results of the shadow shopping exercise (a form of mystery shopping), consumer survey and business interviews will be published on the LSB's website: http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/publications.htm
6. Unfortunately, it is not possible to put journalists in touch with individuals who provided case studies. Some anonymous case studies are provided below and further examples are available here. http://www.legalservicesconsumerpanel.org.uk/ourwork/will_writing/Willwritingsubmissions.html
7. The Legal Services Board is due to consider the Panel's advice at its meeting on 13 July 2011. For enquiries about the LSB's next steps, contact Craig Jones: 020 7271 0068; craig.jones@legalservicesboard.org.uk
8. For consumer advice on making a will visit <http://www.direct.gov.uk/en/Governmentcitizensandrights/Death/Preparation/DG10029800>

Case studies

Poor quality wills

I saw married clients whose will purported to leave life insurance policies in trust. It was only discovered after the husband's death that the trust in the will was invalid as it failed to provide for any beneficiaries. This may end up costing the widow or her estate many thousands of pounds in inheritance tax. Upon pursuing this with the will-writing company, they denied responsibility by saying the will was prepared by their franchisee, for which they had no current address.

(Source: Individual lawyer)

I have dealt with two instances of will-writers purporting to create life interest trusts 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. 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 needed to be sold to pay for care fees, thereby defeating the clients' original objectives.

(Source: The Law Society)

Poor sales practices

Hampshire CAB clients were pressure sold will-writing services in their home, following an approach in a shopping centre. Initially, they were told wills would cost £35 each. The cost became £3,000 which the sales person advised them to pay then so that it would not be deducted from the estate. The agreement included the firm having a right to 1% of the estate, storage and an annual check of the wills, monthly payments and counselling for family members...

(Source: Citizens Advice)

My clients were initially told a will would be £49.99 plus VAT. At the end of the home visit they were advised that the charge would be more like £1000. Their instructions were for a simple will 'all to each other and then to kids'. When the clients pointed out the drafts were unacceptable, they were sent another bill for £300 before changes were made. They never received a completed will.

(Source: The Law Society)

Mrs F was recommended to an estate planning company for making her will by the financial adviser who was managing her pension. She was told the will would cost £50 and understood this would include storage and lifetime updates. She signed up, only to find that after an initial lump sum, she had to pay over £50 per month for two years, totally nearly £1,500. However, she was led to believe this was worth every penny as solicitors would charge very much more. Later, when she wanted to change her will, she accepted advice from the estate planning company that her husband should be added to the policy, thinking this would cost just a small amount.

However, they ended up paying a further £2,375 – this fee includes storage, updates, executor fees, half price other will related services and 10% off funeral arrangements. They felt frightened into taking this as they were told executors often have to pay the deceased's bills out of their own money, if they came to light after probate had been decided. On reading the details, it transpired that the company would also take 1% of the value of the estate.

(Source: Member of public)

A will was advertised for £23 but ended up costing several hundred pounds and the will writer refused to leave the client's house without payment, demanding the clients pay £800 after the first meeting by credit card before the will writer would leave and then the drafts sent were not as per their instructions.

(Source: STEP)

Poor storage practices

A firm offered to store client wills at the national wills depository at Somerset House. In reality they were stored in a barn in Wincanton – in Somerset! When the business closed, the wills were rescued by another will-writing firm, but further anguish was caused when they demanded payment from clients for their wills to be returned to them or payment from them for ongoing storage of the wills to be arranged.

(Source: Institute of Professional Willwriters)