



LEGAL SERVICES
BOARD

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Dr Dianne Hayter
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Dear Dianne

Will writing

My Team recently asked the Consumer Panel if they would respond positively to a request from the Board to provide us with advice about the consumer interest in relation to the provision of will writing services. The Panel indicated that they would welcome the opportunity to do so. Since then, the Consumer Panel Manager, with the assistance of Panel members and members of my Team, has already begun planning this exercise. Steve also spoke on behalf of the Panel at the LSB's workshop of 26 July that brought together a range of organisations with different interests and experiences of the will writing industry. I am therefore now writing on behalf of the Board to formally request the Consumer Panel's advice and suggest some parameters for the investigation.

The LSB would like the Panel to provide a broad and cohesive evidential base of all of the different problems, both current and potential, experienced by consumers wishing to write a will. We would like to understand how widespread each problem is, or could be, why it happens and what the impacts are on the testator and their executors and beneficiaries. We would also like to understand whether existing consumer protections are capable of addressing any consumer harm or whether new solutions are needed, including what the advantages and disadvantages of various ways of regulating will writing may be for consumers.

The note annexed to this letter provides some broad context. Additionally, our joint scoping work has identified many actual or potential problems that the Consumer Panel will want to look at. These may include:

- 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

It is obviously for the Panel to decide how it undertakes its work and determine the different evidence sources that you will explore. However, I know that you think, as does the Board, that original consumer research is needed to obtain a clear picture of what is currently happening in practice and therefore what the most appropriate protections might be. This would include a mystery or shadow shopping exercise looking at issues such as:

- How consumers shop around for wills
- What the consumer experience is like buying a will
- How the quality of wills produced varies between distribution channels
- How common cross-selling of other services is when buying a will
- How firms selling wills approach the service and their marketing and selling techniques

The results of this research will provide an important springboard for the Panel's investigation and you will be eager for this research to be commissioned as soon as possible. We estimate that the cost of the research is likely to be in the region of £150,000. The LSB is committing £40,000 towards the cost but we need to secure further financial support from partners who share our enthusiasm to make this happen - we do not have the budget to fund the research alone. We have approached several organisations and will keep you informed of progress.

The Panel will want to consider its timetable for reporting to the Board, I recommend that you talk to Chris Handford as you do so.

Yours sincerely



Chris Kenny
Chief Executive

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Annex 1: Context to the request for Consumer Panel advice on will-writing

Will writing is not currently a reserved legal activity and the writing of wills is not restricted to authorised lawyers - although many lawyers such as solicitors and barristers are bound by rules that mean that they are regulated even when carrying out legal activity that is not reserved. New legal services legislation in Scotland will shortly change this position north of the border by making will writing a reserved legal activity that only authorised lawyers will be able to undertake. There are increasing calls from some parties to introduce similar restrictions in England and Wales.

This is not a new issue and Parliament debated whether or not to add writing wills to the list of activities reserved to lawyers when introducing the Legal Services Act in 2007. They determined not to do so in the absence of any serious evidence of systemic failure. However, Parliament also suggested that this is an area that the LSB might want to look at again once established. In light of the developments in Scotland, concerns reported by a number of professional and trade bodies and anecdotal evidence of current consumer detriment the LSB has begun looking at the need for regulation in this area.

The LSB will not jump into recommending regulation that would restrict the type of providers that may deliver will writing services. We will only do so if there is compelling evidence of systemic failure and that existing tools cannot provide adequate protection for consumers in light of these failures. To recommend reservation, or other forms of regulation, we must also be sure that this is the most appropriate solution to the problems that are identified and that the benefits of reservation outweigh the disbenefits. This includes the potential for creating price or delivery barriers to individuals writing a will at all. It is in this context that we seek the Panel's advice.