

Wednesday 13 February 2013

## LSB recommends regulation of will-writing activities

*Action is needed to restore confidence to the market and to prevent consumers of these essential services suffering continued detriment*

The Legal Services Board is today recommending to the Lord Chancellor that **will-writing activities** should be made subject to regulation, so that the significant risks consumers currently face when using these critical services is reduced.

This recommendation concludes a two year investigation by the LSB. The investigation, under sections 24 and 26 of the Legal Services Act 2007, also considered the regulation of **estate administration** and **probate activities**.

The LSB's main conclusions are:

- **Will-writing activities:** the LSB recommends that the Lord Chancellor amends the list of reserved legal activities to include will-writing activities.
- **Estate administration activities:** the LSB does not recommend that the Lord Chancellor amends the list of reserved activities to include estate administration activities. This is a change to the position set out in the LSB's provisional report
- **Probate activities:** the LSB does not recommend that the Lord Chancellor amends the list of reserved activities to remove probate activities. This confirms the position of the LSB in its provisional report.

In reaching these conclusions, the LSB considered a range of possible solutions in addition to statutory regulation and consulted widely.

### Will-writing activities

The LSB found comprehensive evidence that the market is working contrary to the statutory regulatory objectives outline in the Legal Services Act 2007 and to the detriment of consumers and providers alike. Alternatives to statutory regulation have been tried but have not been successful. The LSB's recommendation, if accepted, will:

- give consumers better protection and consistent access to redress by allowing access to the Legal Ombudsman for consumers of all will-writing providers
- increase competition by creating a level-playing field between traditional law firms and new forms of service provider, making both subject to equivalent regulation

- require regulators to develop proportionate and targeted approaches to supervising providers by identifying and targeting risks and taking swift enforcement action if things go wrong.

### **Estate administration activities**

The LSB considered carefully the reported risk of fraud in estate administration but has concluded based on the available evidence that statutory regulation would not be effective in preventing what amounts to criminal behaviour. The LSB is instead recommending a range of policy initiatives to raise standards and help the market work well for consumers including:

- major providers working together to produce voluntary schemes to promote standards and provide minimum protections for consumers
- improving the information available to consumers when they purchase these services to help them choose with confidence and understand potential risks

### **Probate activities**

Probate activities are currently subject to regulation and the LSB has concluded that no additional evidence has been presented to us to warrant changing this.

**Chairman of the Legal Services Board, David Edmonds**, said:

*“This is the first time that we have made a recommendation to bring new legal activities within the regulatory scope of the Act. It is not a step we take lightly. The Board believes new regulation is a proportionate response in the light of a compelling case underpinned by appropriate evidence.*

*We are confident that the evidence base for our proposal to add to the existing list of reserved legal activities is compelling. It is, of course, for the Lord Chancellor to decide whether to take this forward.”*

ENDS

For more information please contact our Communications Manager [Vincent McGovern](#) on 020 7271 0068 / 0795 622 6562 or our Corporate Director [Julie Myers](#) on 0794 136 8455.

## Notes for editors:

1. The LSB's final report including its recommendations to the Lord Chancellor can be found [here](#) and includes a number of supporting documents:
  - will-writing impact assessment
  - estate administration impact assessment
  - summary of feedback to *Provisional Report consultation* (launched 27 September 2012) and LSB response.
2. **Will-writing** activities are defined as including advice upon, and subsequent preparation and drafting of a will or codicil
3. **Estate administration** activities means the administration of an estate of a deceased person, with particular focus on realising, collecting and distributing estate assets.
4. **Probate** activities are defined as preparing any papers on which to found or oppose a grant of probate or letters of administration.
5. The Legal Services Act ("The Act") created the Legal Services Board as a new regulator with responsibility for overseeing the regulation of legal services in England and Wales. The new regulatory regime became active on 1 January 2010.
6. The LSB oversees eight approved regulators, which in turn regulate individual lawyers and organisations. The eight approved regulators, designated under Part 1 of Schedule 4 of the 2007 Act, are the Law Society, the Bar Council, the Master of the Faculties, the Chartered Institute of Legal Executives, the Council for Licensed Conveyancers, the Chartered Institute of Patent Attorneys, the Institute of Trade Mark Attorneys and the Association of Law Costs Draftsmen.
7. In addition, the Institute of Chartered Accountants in Scotland and the Association of Chartered Certified Accountants are listed as approved regulators in relation only to reserved probate activities.
8. The legal profession currently consists of 15,309 barristers, 119,641 solicitors and 12,145 individuals operating in other aspects of the legal profession such as conveyancing. The sector is currently valued at £25.49 billion per annum (total turnover in 2010). Around £1.07bn of the legal services market can be attributed to will-writing and estate administration services for the legal professionals - solicitors and these providers make up the majority of the supply-side of the market.

The sector also comprises non-lawyers such as independent will-writing and estate administration companies, banks and building societies, accountants, independent financial advisers, charities, trade unions and other membership organisations. Some focus on will-writing alone, some estate administration. Others offer a full range of connected services. Some providers undertake all work in-house; others work in partnership with lawyers.

9. **Will-writing, probate and estate administration** are the key stages of the process that ensures that a person's estate (property, money and possessions) is distributed correctly when he/she dies. The **will** is the document that sets out how and to whom a person wants their estate to be distributed. Where there is not a valid will the rules of intestacy will apply.
10. The grant of **probate** (where there is a valid will) or letters of administration (where there is not a valid will) provide the legal authority for a personal representative (executor where there is a valid will or administrator where there is not) to access and control the estate assets. Probate is not always needed for example where the estate is very small or when all property/bank accounts etc are held in joint names with the surviving spouse or civil partner. Each year there are around half as many grants of probate/letters of administration as there are registered deaths.
11. **Estate administration** involves administering the estate either in line with a will or the intestacy rules. Key steps include:
  - identifying all assets and liabilities in the estate and the intended beneficiaries
  - assessing the value of the estate and paying any inheritance tax

- applying for a grant of probate/letters of administration where necessary
  - realising, collecting and distributing estate assets against liabilities and then to beneficiaries.
12. Individuals may write their own will or may pay a professional to write it for them. Our research indicates that professionals write approximately 85% of all wills. A will normally specifies who will be the executor (s), who is eligible to be granted probate and who will be responsible for administering the estate. Where a professional executor (s) is named in a will, the fees, terms and conditions are determined by the testator (although usually paid from estate assets). This will often be the same provider who has written the will. An executor cannot be forced to renounce or retire their position. A lay person may administer the estate (as executor or administrator), and may seek professional help at any stage in the process or not at all.
  13. The LSB's announcement continues a process begun in summer 2010, when the Board asked the Legal Services Consumer Panel to provide it with advice on consumers' experiences of the will-writing market. Since then, it has worked alongside the Panel (including through generating original research co-sponsored by the Solicitors Regulation Authority and the Office for Fair Trading) to develop a greater understanding of the way the will-writing market operates and problems that consumers face, including a mystery shopping exercise on the quality of wills produced by different types of provider.
  14. The list of '**reserved legal activities**' (those that only qualified lawyers, such as a solicitor or barrister, can undertake) includes conveyancing, litigation, probate and advocacy. However, it does not include other common services such as will-writing, employment law or general legal advice.
  15. Information on all of the stages of the investigation can be found on the [LSB website](#).