

Regulating Will Writers

The Legal Services Board (which oversees the regulation of legal services in England and Wales) has announced that will writing and estate administration services are now to be brought within the scope of legal services regulation. This is a long overdue development.

Many consumers are probably unaware of the fact that anyone can draft a will or administer an estate and that several do without the benefit of training, regulation or insurance protection.

There are serious risks involved in allowing unqualified and uninsured individuals to draft wills disposing of a person's entire estate. In a world with an increasingly mobile and ageing population and ever more complicated tax considerations, every care should be taken to ensure that a will takes account of all relevant issues. These could range from tax advice to consideration of foreign elements of law that may apply.

Likewise allowing a person with no training or insurance protection to take control of and administer an estate, is extremely risky. Aside from the possibility of an inefficient and possibly over-expensive administration, there is also the risk of misappropriation of assets.

In the summer of 2010 the LSB began an investigation into will writing, estate administration and probate services. The investigation now complete, the LSB states that it found "*consistent patterns of sloppiness, simple errors and poor communication. This often resulted in an unacceptable service for customers*".

David Edmunds, Chairman of the LSB, stated that "*making a will is something everyone should do. It is one of the most important actions that individuals take. We should be able to have confidence in those who advise and draft documents for us.*"

Earlier this year we placed a briefing on our website, "[Why should I make a Will?](#)" This set out how important it is to make plans for the future in the event of your death. It is all the more stressful for the bereaved family of the deceased to have to deal with an inadequate, badly drafted or even invalid will at a time when they are grieving and possibly urgently needing access to funds. Resolving uncertainties in a will can be time-consuming and costly.

Our Trust and Estate Disputes team regularly deal with situations where a will has been badly drafted or where an administration of an estate has been badly handled. These situations often lead to expensive court proceedings to rectify the situation, the costs of which often come out of the estate.

In some situations there may be a negligence claim against the draftsman of the will (or the administrator of the estate), but where the draftsman either has no insurance or has ceased to exist, then there is often little point in progressing the claim which means that the loss to the estate cannot be recovered.

Regulation can only lead to increased consumer protection in that the consumer can have confidence that the will draftsman has had sufficient training, is insured and is subject to both conduct and accounts rules for the protection of client money.

At Russell-Cooke all our will-draftsmen are regulated by either the Solicitors Regulation Authority (in the case of solicitors) or the ILEX Professional Standards Limited (in the case of legal executives). In addition several are members of STEP (Society for Trust and Estate Practitioners) and/or ACTAPS (Association of Contentious Trust and Probate Specialists).

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