

Regulating Non-Lawyer Will Writers

The Scottish Legal Action Group argues against regulation for its own sake and calls for policy on legislation to be based on evidence that it is necessary

At the end of last year the Scottish Government issued a consultation paper seeking views on the possible regulation of non-lawyer will writers in Scotland. According to the results of that process, amendments to Legal Services (Scotland) Bill may be introduced at Stage 2 to introduce a system of statutory regulation. Readers should note that at the time of publication the consultation window is still open, with written and electronic responses being by 19 February 2010 (See: www.scotland.gov.uk/Publications/2009/12/18095315/0). Presented below is the response of the Scottish Legal Action Group to the consultation.

1. Do we consider that non-lawyer Will writers who provide a service for a fee should be regulated?

No.

1.1 Lack of evidence of consumer detriment

1.1.1 The evidence that there is a problem in Scotland in this regard appears to be scarce. We are not given any indication of the number of active will writers operating in Scotland, nor of the number of those who have no indemnity insurance and belong to no will writers' society or association.

1.1.2 Until such time as it can be shown that there is a significant number of Will writers who are deficient in what they do, rather than just taking business from solicitors, the case has not been made out for regulation.

1.1.3 There is probably more mischief in members of the public attempting to complete will forms purchased over the counter, but the proposals do not seek to regulate their sale.

1.2 Relative quality of work

No doubt examples of poor work can be produced, as indeed can examples of bad Will writing by solicitors. *Which?* magazine, some years ago, enlisted an expert to analyse Wills drawn up by High Street solicitors in Scotland as well as England and found defects in a number of them.

1.3 The solution of more public legal education

1.3.1 If it is not within public knowledge that a qualified solicitor is generally better equipped to write a Will than a non-solicitor Will writer, then it ought to be. The solution is to improve public legal education.

1.3.2 Less well-off members of the community also need to be educated as to the availability of Legal Aid. How many people realise that, even if you own your own house, you may be eligible for legal advice and assistance without a contribution towards the cost of a Will if you receive pension credit?

1.3.3 Lawyers are not expensive when it comes to making a Will. For many solicitors, the cost of the Will is a "loss leader" provided at minimal - and sometimes at no - cost to encourage people to deposit their Wills with a solicitor, who regards the Will as a future source of business. If the profession have concerns, it could spend some money on advertising just as it did to counteract estate agents' encroachment on the selling of houses in the 1980s

1.4 Over-regulation

We are now seeing examples of unnecessary regulation throughout society. Landlord Registration has been introduced without noticeable benefit. Health and safety rules are being interpreted more to safeguard officialdom than the public interest. There should be a presumption against regulation unless it is shown to be necessary and proportionate.

2. If non-lawyer will writers are regulated, do you agree with the model proposed in option 2?

No.

If not, what model do you propose?

2.1 The framework proposed would appear likely to regulate Will writers out of existence. In a small jurisdiction such as Scotland, the regulatory framework would probably entail licensing fees beyond those which could be afforded by a small group of practitioners who earn what we suspect is a fairly modest income from their work.

2.2 The alternative of any state-financed regulation is not favoured. Such a framework might end up having a history not dissimilar to that of the Conveyancing and Executry Services Board which, until it was disbanded in 2003, cost a lot of public money for the regulation of very few practitioners.

2.3 A consumer with a complaint can seek damages through the courts and enforce any court award in the usual way. The courts could be given the power to ban a practitioner from writing wills if an award could not be satisfied due to sequestration caused by lack of indemnity insurance. This means that the Scottish Legal Complaints Commission need not become involved (and charge a levy, registration dues etc), and there is no requirement for entrance qualifications, CPD, a code of conduct, and above all a suffocating regulator.

3. Are you aware of any poor practices by will writers in Scotland?

No.

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