



# SWW Professional Standards Board's Response to CMA Investigation

On behalf of the Professional Standards Board of the Society of Will Writers I write to submit our response to the Competition and Markets Authority (CMA) investigation into Will Writing and Pre Paid Probate.

**Background:** The Society of Will Writers (SWW) is the largest membership organisation in the unregulated Estate Planning Sector a representative body for some 2000 practitioners. The Society is unique in the sector as it has a Professional Standards Board (PSB), elected from its membership, who act as an independent advisor to the SWW and its management with a particular remit to drive up the standards of professionalism within the sector as a whole and the SWW membership in particular.

The PSB was initially formed in response to the Legal Services Board Consultation in late 2012 which concluded that there was a demand for regulation within the sector. As such the PSB stands as a regulator in waiting for the currently unregulated sector, should we ever be called upon to take such a step.

After a prolonged period of drift where the PSB was frustrated in fulfilling its functions by the then management of the SWW the PSB was reconstituted in its current format in late 2019. A new constitution which clearly defined its purpose as driving up standards within the profession. The SWW also restated its support for the PSB and the current fruitful relationship between the two bodies was established. The SWW is aware that the PSB is submitting its own response and has advised that it will be submitting a separate response on behalf of the membership.

**PSB Response:** The PSB welcomes the CMA investigation and views it as an opportunity to revisit the overall structure of legal regulation and reserved activities in England & Wales. Professionalism within the sector is of paramount importance. We welcome any moves to reduce consumer harm.

In line with its remit the PSB has been undertaking a number of workstreams designed to increase professionalism within the sector. The main workstreams that will give the enquiry confidence are detailed below –

**Oversight and Governance** – The PSB has developed new standards of oversight and governance which the SWW will be introducing into its Code of Practice for members from 2024. You will see from this single document that the PSB and SWW share your concerns and are working to eradicate sharp practice, misleading advertising and consumer detriment. This is the first time that SWW under guidance from the PSB have taken powers to sanction members and require them to take remedial actions under the supervision of SWW. Again, for the first time, failure to comply or

persistent breaches of the code will lead to public sanctions. We as a PSB believe that this can only strengthen consumer protection and will give consumers additional reassurance that an SWW member is truly safe to do business with.

Our ultimate sanction is to expel a member. Unfortunately, as things stand this will not stop them from trading, but a public notice that they have been expelled will bolster consumer protection.

**Mentoring Programme** – The PSB has set up a mentoring programme whereby new entrants into the profession can be mentored by experienced members of SWW. This is a part of our remit to drive up standards of professionalism in the sector. It is fully supported by SWW and has been well received amongst our initial cohort of mentees. It is anticipated that this programme will roll out and grow over the coming months and years.

**Best Practice Guides** - The PSB has produced a series of best practice guides for SWW members to enable them to run their businesses to the highest standards. These guides are available for download from the members section of the SWW website and whilst not totally prescriptive they give members quick and easy access to high quality resources.

**Membership Grades** - The PSB has undertaken a project to streamline and simplify the grades of membership within SWW. This will give the public clarity and confidence when dealing with a member as to their level of experience and skill. Membership grades are Affiliate, Member and Fellow. In line with other comparable organisations such as CILEx.

**Affiliate Audit** – Affiliate members fall under the responsibility of full members of the SWW, as such they are somewhat at arm's length from the SWW and the PSB. Over the years this disconnect has raised concerns that the standards of training and CPD for affiliates was not at the same level of that for full members. As such the PSB took on an audit of affiliates, the results of which gave both the PSB and the SWW confidence that this membership grade is functioning correctly and that consumers can have the same level of confidence in an affiliate as they do in a full member.

You will see that these workstreams address all of the concerns that you raise in the investigation and that each of them shows the proactive way that the PSB is working with the SWW to address the consumer detriment and harm that exists in the Will Writing Sector. As such we trust that the enquiry will take comfort and confidence that the largest representative group in the unregulated sector is alive to the challenges that we face.

**Regulation:** We have said that we stand ready to be a regulator if necessary, however our position at the moment is that there is insufficient evidence of consumer detriment within our market for regulation to become a necessity. Complaints against SWW members by members of the public are low, with only 15 complaints being escalated by the SWW to the PSB for adjudication in the past three years. Of these complaints 2 were found in favour of the member concerned, 13 found against members with two firms expelled from the SWW and a further two choosing to resign their membership of the SWW. When compared with other sectors of the legal market, and particularly the disciplinary records of the SRA the SWW can be viewed favourably.

Should regulation be incoming the PSB are absolutely against the extension of the current reserved activities rules to include Will Writing. Reservation of this sort would stifle innovation, lead to less consumer choice, increase costs and ultimately cause further consumer detriment in the marketplace as people chose to do nothing, increasing the number of intestate deaths in England and Wales which is already at a shocking level. Any move to regulation should be part of a wider review of reserved activities and should look to remove the barriers to entry that exist to allow more

firms and more diverse firms to become part of the regulated landscape. There should also be the ability for new regulatory bodies to become accredited to support this wider regulatory framework.

**Education and qualifications:** The PSB and the SWW are advocates of continuing professional development (16 hours a year is a requirement of membership) and positively encourage the members to develop themselves and their practice. The College of Will Writing runs a number of high quality courses from its highly regarded 4 day introduction to the profession - SWWEPP Wills and Estate Planning Certificate to its latest Advanced Trusts course, from Assessing Mental Capacity to Taking Instructions from clients in the correct manner it covers all the bases. These courses are all run by experienced and qualified tutors, with a number of PSB members taking on the role of tutor.

It is somewhat ironic that many of the calls for regulation come from the SRA regulated solicitor sector when the majority of solicitors will never have taken any formal qualification in Private Client work as it was not a compulsory part of their route to qualification, merely an option.

Turning to the specifics of the investigation. The SWW code of practice prohibits members from using unfair contractual terms, requiring members to ensure that cancellation rights are offered in accordance with the law, and preventing them from making exclusions of liability for advice given. It goes further, requiring members to hold professional indemnity insurance of at least £2 million adding to consumer confidence.

Our oversight and governance package gives the SWW and the PSB the right to investigate unfair and misleading advertising, allegations of pressure selling and other allegations of misselling. This package also gives us the right to sanction members and require them to take remedial action or to desist from the wrongful practices. As such this offers significant new levels of consumer protection and holds the SWW and its members to the highest standards.

**Pre-Paid Probate:** The PSB was instrumental in persuading the SWW to ban the sale of Pre-Paid Probate products when they first started to emerge. We have not seen any developments in the market that would give us confidence that pre-paid probate is a viable product, nor that any of the firms bringing such products to market has any sort of long term plan to ensure consumers are protected. As such the PSB will retain its position and advice to the SWW that members should be prohibited from selling pre-paid probate. The SWW currently maintains the ban and it is unlikely to be lifted.

We would note that it is of interest that many of the entrants to the pre-paid market have recently exited the pre-paid funeral plan market as it came under the regulation of the FCA. This in itself is a telling fact and should the CMA choose to ban the sale of Pre Paid Probate no tears would be shed by the PSB or SWW.

The only way to bring forward credible pre-paid probate plans in the future is under the auspices of the FCA using the model of the pre-paid funeral market. At this point, the PSB would review its standpoint on the issue.

We make no comment on the subject of divorce as this falls well outside our remit.

We trust that you have found this response useful and informative. The PSB stands ready to assist you in your investigation and we would be happy to provide you with any further information on any of the points raised in this response.