



The Society of Will Writers

Response to CMA Investigation

As the largest self-regulatory body representing will writers and estate planners specifically, The Society of Will Writers and Estate Planning Practitioners (SWW) is compelled to respond to The Competition and Markets Authority's current investigation. Where meaningful investigation is proposed, it will be welcomed and the SWW, as it has already demonstrated since meeting with the CMA in June, offers its full cooperation with the project.

This response is submitted on behalf of the SWW, the members it represents and by extension a growing and diverse profession that the SWW has been proud to support for almost 30 years.

Ahead of drafting this response, SWW members were invited to contribute their own remarks to be included. Due to the volume, length, and complexity of some of the responses received, we have included these responses as a separate annex to this document, opposed to our original intention of incorporating the responses into the body of the main text. The SWW would like to take this opportunity to thank everyone who has contributed, and to those members who have responded directly to the CMA, in many cases holding the SWW in such high regard when doing so.

Background

The SWW began as an idea amongst five business owners who had a vision of creating a totally independent representative body for will writers. Launching the SWW in April 1994 played a vital role in kickstarting the estate planning profession at a time when there was no easily accessible guidance, ongoing training, or support for those entering the field.

The SWW also takes on additional functions including redress mechanisms for consumers, representation for its members amongst government and at a key industry stakeholder level as well as carrying out national marketing campaigns. Everything is done in the name of encouraging both the need for professional estate planning and the need to be a professional estate planner.

Growing to over 1,700 members across some 900 companies, the SWW and those members who elect to adhere to our requirements represent a hugely diverse, dedicated, and passionate professional body. The SWW wants only to ensure that consumers receive advice and documents that are specifically tailored to their requirements and we're proud to have championed these aims with great success since our beginnings.

Will Writing

As with every review, investigation, or consultation involving the unregulated sector, it falls to the likes of the SWW to have to put forward the positive aspects of the current regulatory structures in place. Much emphasis is placed on the alleged dangers and risks of using an unregulated provider, certainly within the marketing literature of regulated firms it must be said, whilst far less effort is poured into educating the consumer on precisely what their options are when choosing their legal services provider.

Whilst ventures such as Legal Choices and the LSB's Reshaping Legal Services blog have begun to make some inroads in this regard, much more needs to be done. This will require cross-sector collaboration which the SWW is already fully committed to.

Regulation, if that is what is considered necessary for the future of the profession needs to be proportionate to the problem. It also needs to ensure that it does not create any unnecessary additional barriers to entry, risk stifling innovation, decrease access or hamper affordability for consumers. Regulation takes many different forms, and the self-regulatory framework imposed by the SWW has proved more than sufficient.

The idea that the unregulated sector is full of rogues and miscreants is a falsehood, as the thousands of professionals across the firms within the SWW's and other self-regulatory bodies' memberships voluntarily signing themselves up to codes of conduct proves otherwise.

Much can be said for the good that the self-regulated profession does, and the SWW has continually reviewed and adapted its own framework to ensure that it meets the needs of its members and the consumers who so heavily rely on the services they provide.

One of the SWW's goals is to promote the need for a properly drafted Will to the public and we maintain the view that there is no replacement for bespoke, tailored advice delivered by someone who is an expert in their field. Yes, regulated firms can and do offer a will writing service, but with no guarantee they have ever studied succession law on their path to qualification, it is somewhat puzzling that an investigation is being conducted into the unregulated sector based on concerns of the quality of services being provided when for the most part, will writing is a specific service they've trained to provide.

SWW members see clients, take their instructions, give them the advice they need and draft their documents to match. They are bound by our Code of Practice to obtain a minimum of 24 hours CPD per year, broken down into 16 structured and 8 unstructured hours proved by way of their annual audit. No member is admitted to the SWW without providing proof of proficiency, attained either by way of highlighting extensive professional experience, prior qualifications or passing an entrance examination.

Dedicating themselves to an annual training programme is part of what makes SWW members 'Safe to do business with'. They ensure that their knowledge is constantly reviewed and updated so clients are receiving the most appropriate advice, with support from initiatives such as The College of Will Writing's Online CPD and other courses, the SWW Technical Advice Team and an extensive regional group network, as well as our annual conference.



It's not just about training though, as each member is also covered to a minimum of £2 million professional indemnity insurance to provide protection for the consumer in the unfortunate event that things do go wrong. The SWW also has a similar internal scheme called the SWW Public Indemnity Fund (PIF), colloquially known as the SWW Guarantee. The SWW undertakes to ensure that any client of a member who has paid for a service which through no fault of the member's own they're unable to deliver, still receives that service. Thankfully the PIF is used very little, a testament to the good succession planning the members put in place for themselves.

Members are guided from the moment they join, provided with a range of suitable template documentation, such as terms of business, privacy policy, and a fully comprehensive set of instruction forms, very recently reviewed and revamped by the SWW Professional Standards Board (PSB).

It is hard therefore to argue that the unregulated sector affords the consumers little to no protection, or that they're only able to provide a basic service. Whilst those who elect not to join the SWW or indeed any other professional body fall outside of what protections are in place, the SWW in such the size it is presents consumers with a perfectly viable and safe option to cater to their estate planning needs. SWW members present the consumer with choice, and a very good one at that. They're not to be feared, looked down upon or otherwise berated as in the eyes of the SWW, our members are the absolute best at what they do.

Complaints

The SWW's complaints figures remain exceptionally low, and, in our view are not representative of a need for the regulatory landscape to change currently. Whilst the SWW, along with its PSB stands ready to become a regulator should it one day be decided, as things remain, we do not see any major crises within the will writing sector that demands a review.

Opening the legal ombudsman to investigate consumer complaints against unregulated providers could potentially prove a viable option however our understanding is that it is still suffering from a backlog of complaints which would make it difficult to add more to the pile. Currently consumers are sent over to us however with no mandate to investigate complaints against non-members it can at times leave consumers stuck.

Therefore, and to reiterate the point made earlier, more needs to be done to educate the public about where they should be turning for their legal services. They should be encouraged to seek alternatives out and learn about what protections bodies like the SWW do provide so that they can make an informed decision over who to engage, rather than checking their will writer's credentials after they've engaged and potentially handed any money over.

Telling consumers that nobody can help them if something goes wrong is unacceptable, when the SWW has been handling complaints against its members from consumers since its inception. This also stands to say that where a complaint is unfounded, the SWW will stand by its members and ensure that they are equally given support.

A complaint will only be investigated by the SWW where the member's own complaints procedure has already been exhausted, and this can at times mean it is the member themselves bringing the complaint to the SWW, ahead of the consumer. The SWW's complaints procedure is a two-stage process, beginning with an internal investigation which often quickly finds a suitable resolution for all parties. The second stage is a referral to the SWW PSB who as one of their roles investigate the

more serious complaints, working with the SWW, the member and the consumer to find a suitable resolution. The SWW PSB will investigate and then make their recommendations to the SWW and the member to be carried out.

Where a member is found in the wrong, they are reprimanded, as well as given advice and support on how to prevent such an issue arising in the future. This may be delivered through mandatory further training, careful explanations of their failings or stricter auditing procedures, as a few examples.

At the absolute extreme the SWW has the power to expel any member for failing to comply with its Code of Practice, of which the complaints procedures are incorporated. It brings us no satisfaction to expel a member, and thankfully such action is taken infrequently, however the SWW takes a firm stance against those members who do not adhere to our requirements and recommendations in a complaints investigation and is currently in the process of updating its procedures to introduce a series of public sanctions to help protect consumers further.

Marketing

Concern has rightly been raised against the marketing tactics of some firms. As the CMA has outlined, the promise of low-cost wills is something which the SWW has historically advised its members against, and warned consumers about what ulterior motives might lie behind them. It's quite evident that the promise of a will for £19.99 will undoubtedly lead to upselling of additional products and services, or even just not being suitable for the consumer's circumstances and quickly escalating to a higher cost for a more complex document. The phrase "there is no such thing as a free breakfast" springs to mind. It should be pointed out however that a not insignificant number of firms pushing offers through the likes of Groupon and Wowcher are in fact regulated.

Likewise, the rise in popularity of DIY wills in recent years gives further cause for concern. Their popularity increased greatly due to recent COVID-19 restrictions and whilst that is understandable given the circumstances at the time, such wills are only suitable in the smallest of cases, and the rate that these are now being promoted as a viable option for the masses, even by the likes of independent consumer advice services, is worrying. The SWW understands that during the ongoing cost of living crisis not everybody feels they can afford to engage a professional to write their will for them, however we stand by our earlier statement that there can be no replacement for professional advice and attention needs to be given to those pushing DIY wills kits onto unsuspecting consumers as a solution. Will writing firms often present a more affordable alternative to other professionals, and cheaper doesn't always necessarily mean poorer in quality.

Sometimes it's not during the creation of the DIY will itself where the problems lie, rather it's the amount of work to be done unpicking the damage they can cause when it reaches the estate administration stage if they have not been properly drafted or executed. Online will writing companies are verging dangerously on the edge of falling further into this category, certainly those who do not offer any kind of checking service or provide any advice up front. It should be pointed out as well that the appointment of a professional executor can easily be missed or mistaken for something that is required, leading to an appointment of a firm at alarmingly high fees. The SWW has seen appointments north of 6% of the gross estate value, sometimes buried deep in the terms and conditions, and this stands to do far more to upset a consumer, or more likely the family left behind, than it would paying for a properly drafted will in the first place.

The notion being purported that it is overwhelmingly the unregulated sector engaging in such morally ambiguous tactics should be refuted, however. As already pointed out there are regulated firms doing these things and more should be done across the entire legal sector to stamp bad practice out. The SWW, if necessary, will lead the charge and is in the process of drafting a series of advertising standards and guidelines for its members to be inserted alongside its Code of Practice. The SWW PSB have also recently proposed an insertion to the Code of Practice to give them more powers to investigate any members engaging in such dangerous marketing practices too, something which will come into force in the new year.

Pre-paid Probate

The SWW has on several occasions publicly spoken out against the sale of pre-paid probate products, or certainly the idea of a pre-payment of sorts for an administration service and fully welcomes and supports an investigation into pre-paid probate.

The SWW's late Director General Brian McMillan, in a post to the SWW website on 17 May 2019 reiterated the SWW's view that such a product is likely to be a "ticking time bomb". Raising concerns of bereaved families who were wrongly led to believe probate had in part or even in full already been paid for, only to find the opposite be the case. Such beliefs could potentially mean thousands of families left out of pocket and clamouring for redress, something which at present, no independent body or regulator exists to provide.

In August 2022, following a consultation with the SWW PSB, the SWW Code of Practice was updated to specifically prohibit the introduction or sale of pre-paid probate products. A move welcomed throughout the SWW membership and within the wider sector following the sudden rise in firms entering the marketplace, many looking to capitalise on the loss of income from the recently introduced regulation of pre-paid funeral plans.

Such plans no doubt with the right sales tactics appeal to those most vulnerable or financially insecure and it is our concern that the low-cost plans being pushed by some firms have the potential to rack up bills significantly higher than the cost of an at-need service, or more straightforward appointment of a professional executor.

At the time of writing this response, we do not see how such a product could at all be viable without suitable regulation to ensure sound financial backing, monitoring and control to make sure that consumers' money is secured, and firms cannot simply disappear before they're ever needed to be called upon to deliver on plans bought. We've already seen the horrors of funeral planning firms collapsing in recent years, and without proper security, we've no doubt that pre-paid probate firms will go the same way.

The SWW, along with other self-regulatory bodies in the will writing sector was approached shortly after the announcement of our ban with a proposal to join forces in creating a self-regulatory body for pre-paid probate, however, did not believe at the time it appropriate, or within our remit to do so. A model like that of the FCA's pre-paid funeral plan regulation would perhaps be sufficient, however, would require significant consultation and research into the sector before such a proposal would be considered worthy of lifting the ban within SWW. The SWW PSB shares this stance and at the time of writing sees no way the ban could be lifted either.

Online Divorce

Whilst this practice is well outside the SWW's remit, what comment we can provide is a reminder that divorce does not revoke a will, and even though a spouse will no longer be entitled to benefit that is not to say that there are others named in the will a testator may now not want to.

There will always be a need to review your estate planning regularly, and the SWW suggests every 3-5 years, or sooner if there is a significant change in personal circumstances – divorce being one of them. Recently divorced people should be encouraged to update their will, however, as mentioned already, should take care to choose the appropriate provider to do this for them. The SWW is not involved with any firms offering online or “quickie” divorces, so is unable to comment any further on the suitability of any such firm also offering a will writing service as it's not something we see happening within our membership.

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The SWW thanks the CMA for including us in their project so far and reiterates its offer of full cooperation with anything further that is required whilst things progress. This response means a great deal to the SWW and its members, and it is our hope that it shines a light on good that the unregulated sector does, especially SWW members, and gives a version of events often unheard amongst those with the power to enact meaningful change.