

Code of Practice

The Society of Will Writers Code of Practice - Version 2024.01

1. Definitions

1.1 In this Code of Practice the following words shall have the following meanings:

- "The Society" and "SWW" shall mean The Society of Will Writers and Estate Planning Practitioners.
- "The PSB" shall mean The SWW Professional Standards Board.
- "Member" shall mean an individual holding the grade of Member (MSWW), Associate (ASWW), Fellow (FSWW), Companion (Cpmn.SWW), Honorary (Hon.SWW), or Affiliate (Aff.SWW) of the Society.
- "Consultant" shall mean any person who is involved in any aspect of the provision of Will Writing Services either directly or indirectly.
- "Will Writing Services" shall mean the provision of Wills, Lasting Powers of Attorney, Living Wills, notices of severance, probate advice and other services (subject to Clauses 5.7 and 5.8 below) of a legal nature provided by a Member to his clients. It shall also mean inheritance tax advice and other tax planning advice in connection with the preparation of Wills.
- "Client" shall mean any person the member enters into a contract with for the provision of Will Writing Services.
- Any reference to "the Code" will mean this Code of Practice.
- In this Code the singular shall include the plural and the masculine shall include the feminine and vice versa.
- Reference to a "Clause" shall mean a Clause of this Code.

2. General conduct of business

- 2.1 A Member will observe the law of the jurisdiction in which the Member practices and shall not knowingly assist a Client or Clients to breach the law or leave any breach unreported to the relevant authority.
- 2.2 A Member shall comply at all times with regulations and follow guidance issued by the Society from time to time.
- 2.3 A Member shall only offer and carry out Will Writing Services which the Member has competence to carry out and for which the Member carries professional indemnity insurance in accordance with paragraph 2.12 below.
- 2.4 A Member shall ensure that at all times the required general and technical competence to advise on the provision of the Will Writing Services offered is maintained and has full and proper knowledge of developments in the Member's areas of professional expertise. To this end the Member shall comply strictly with the rules of the Society's Continuing Professional Development Scheme.
- 2.5 Where a matter is beyond a Member's competence the Member must advise the client to seek alternative legal or other advice.
- 2.6 In the conduct of the Member's business the Member shall act with integrity, objectivity and courtesy and shall do nothing to bring the name of the Society into disrepute.
- 2.7 All Members shall:
- a. Display a certificate of compliance with this Code of Practice at their business premises and shall promptly supply a copy of the Code of Practice to their Clients on request free of charge.
 - b. Carry their photo membership I.D. card and present this to Clients as identification upon request.

- 2.8 A Member shall not disclose information relating to the Member's Client's affairs to any third party without the consent of that Client unless legally required to do so and shall comply with all legislation from time to time in force relating to data protection and money laundering.
- 2.9 A Member must display on company literature a statement that the Member is a Member of the Society and supply a copy of such literature to the Society and any changes made to it upon request.
- 2.10 A member who uses the Society logo(s) to promote their individual membership of the Society must do so in accordance with the SWW Logo Rules.
- 2.11 A Member must comply with the Society's annual compliance procedure (Annual Audit) and make periodic returns as required by the Society. In particular the Member must annually upon request:
- a. Supply the Society with details of professional indemnity insurance held by the Member
 - b. Supply the Society with details of continuing professional development undertaken by the Member
 - c. Pay such sum as the Society currently deems to be the annual membership subscription
 - d. Pay such sum as the Society shall reasonably require towards its Public Indemnity Fund
 - e. Supply the Society with a copy of the Member's procedure for dealing with complaints
 - f. Confirmation that the Member has read and agrees to adhere to the latest version of the Society's Code of Practice

Upon receipt of a satisfactory return the Society will issue the Member with an annual certificate of membership and updated photo I.D. card.

- 2.12 A Member shall not practice unless the Member maintains in force a professional indemnity policy with an approved insurer to a limit of at least £2 million and produces to the Society evidence that such policy is in force.
- 2.13 A Member shall have satisfactory arrangements in place for the conduct of the Member's practice in the event of death or prolonged incapacity and shall provide details of such arrangements to the Society upon request.
- 2.14 A Member must ensure that the work of all those employed by the Member is satisfactorily supervised and that all such employees and any agents or consultants of a Member are aware of this Code of Practice, comply with it and are adequately and properly trained for the tasks that they perform. The Member will be responsible for a breach of the Code by any of the aforementioned who is not a registered Member in their own right.
- 2.15 If a Member shall become bankrupt or enter into an arrangement with creditors or being a director of a company that is wound up or enters into administration or liquidation (except for the purposes of reconstruction or amalgamation) the Member shall cease to practice and advise the Society.
- 2.16 A Member offering to store Wills or other documents for a Client shall ensure that they are stored in fire-resistant and flood-resistant secure premises and that they are adequately insured. A Member offering to store Wills and other documents for the lifetime of a Client shall for the protection of the Client offer alternative storage arrangements (at no further cost to the Client) in the event of the Member ceasing to practice for whatever reason.
- 2.17 Each Member shall ensure that a free or reasonably priced after-sales service for Clients that is simple to use and easily accessible is provided. This shall include advice and information regarding the products and services purchased or available for purchase. Where an after sales service is offered details and limitations must be clearly stated in writing. The service should be offered for a reasonable period or for the period advised to the Client. Phone calls to any after-sales service should not be charged at a premium rate.

3. Conflict of Interests

- 3.1 A Member shall take reasonable precautions to ensure that no conflict of interests arises between the Member and a Client. A Member must not act where a conflict of interests arises.

- 3.2 There is a conflict of interests if:
- a. A Member or the Member's company owes separate duties to act in the best interests of two or more Clients in relation to the same or related matters and those duties conflict.
 - b. A Member's duty to act in the best interests of any Client in relation to a matter conflicts with the Member's own interests in relation to that or a related matter.
- 3.3 Where a Client proposes to make a lifetime gift or a gift on death to, or for the benefit of a Member or the Member's company, the Member's Client must be advised to seek independent advice unless the Client is a member of the Member's family.

4. Information for Clients:

- 4.1 Before a Client can be bound by a contract a Member, including any person acting on behalf of a Member, must give a Client details of the General and Specific Information as follows:
- a. The General Information, see below at 4.2, must be provided to the Client either before or during the meeting when the Client's instructions are accepted by the Member; and
 - b. The Specific Information, see below at 4.3, must be provided to the Client not more than 5 working days after the date of the meeting at which the Member accepts the Client's instructions.
 - c. Both the General and Specific Information must be clear and comprehensible to the Client and in a format that the Client agrees, for example on paper or electronically by email; so that both parties have a record of what is agreed.
 - d. Should the Client require that information is provided in a special format, for example in Braille, large print or a different language, the Member is responsible for the cost.

- 4.2 The "General Information":

Information that must be provided by the Member:

- a. The Member's name and address including details of a person acting on behalf of the Member.
- b. A copy of the Member's terms of business, as approved by the Society.
- c. Information on the key contract terms: delivery, payment, cancellation rights.
- d. Pricing information including total price and full breakdown of charges for each product or service, delivery charges, attestation charges and any other items incurring charges.
- e. Details of the Member's complaints procedures and after-sales procedures.
- f. Information about linked services such as updates and storage arrangements.
- g. A statement that the Member adheres to this Code of Practice and that a copy is available upon request.

- 4.3 The "Specific Information":

Information that must be provided by the Member:

- a. The Member or the person acting on behalf of the Member must provide the Client with a written document(s) giving;
- b. Clear confirmation of the Client's instructions, including details of the Client's circumstances.
- c. A Summary confirming the main characteristics of the service, advice and/or product(s) recommended by the Member to meet the Client's requirements in 4.3(b) above.
- d. Details of all relevant tax advice must be included in the Summary.
- e. The total price of the service and/or product provided.
- f. Confirmation of the delivery times for draft documents.
- g. Confirmation of completion times for signed and approved documents and;
- h. Where the client does not wish to accept the Member's advice or where it is not possible to complete the Client's instructions either legally or practically, an explanation as to the differences between the Client's instructions and their expectations should be noted and provided to the client.

4.4 Statutory Obligations:

- a. Members and their companies must uphold their obligations to the Client as required by the provisions of existing legislation, including but not exhaustively:
- b. The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- c. Consumer Rights Act 2015
- d. The Consumer Protection from Unfair Trading Regulations 2008 and Consumer Protection Regulations 2014
- e. Consumer Credit Act 2006
- f. Equality Act 2010
- g. General Data Protection Regulation (GDPR) (EU) 2016/679
- h. The Member is responsible for ensuring that all documents and information given to a Client complies fully with the requirements of the relevant legislation.

4.5 SWW Complaints Protocols:

Members are reminded that in the event of the Society receiving a valid complaint, the Member's adherence to this Code of Practice, including the requirements of clauses 4.1 to 4.5 inclusive will be checked to ensure that the Member has properly complied with these requirements. The Member's failure to comply may result in the Client's complaint being decided against the Member. The Member will always be required to prove compliance with the requirements of Clause 4.

5. Instructions

- 5.1 A Member that takes deposits or advance payments for the provision of Will Writing Services shall have in place an appropriate system to ensure the prompt return of any such deposit or advance payment in the event that the Member is unable to comply with the obligations under the Member's terms of business and/or this Code of Practice.
- 5.2 A Member that provides services not intended to be provided within a 30-day period or a Member that holds money on behalf of a Client shall have a Business Client Account separate to that of the Member's business and with no right for the Member's bankers to offset any liabilities accrued on the Member's business account against such separate account. Such account shall be described as a client account and a Member shall not be permitted to deposit their own funds in such client account. The account will be used to hold the following:
 - a. No less than 50% of all money received by a Member for or directly from a Client for services not intended to be provided within a 30 day period.
 - b. All money received by a Member to be held on behalf of a Client as part of the administration process or in any circumstances where a Member is holding money on behalf of a Client.
- 5.3 A Member must not refuse to accept instructions from any person solely on the grounds of sex, race, colour, ethnic origin, religion or belief, age, disability, sexual orientation, or transgender status.
- 5.4 In this Clause and in Clause 5.5 a "vulnerable client" is someone who is elderly, infirm, with a disability or learning difficulty or someone purchasing Will Writing Services at a time of illness or distress or with insufficient knowledge to understand a document that may be produced or advice that may be given to him or her, but who is nonetheless adjudged by the Member, with or without supporting medical opinion, to be of sufficient capacity to act on the advice given by the Member.
- 5.5 While it is accepted that Wills and other documents prepared by the Member may be complex in nature and couched in legal language, a Member must be prepared to explain to the vulnerable client terminology used in any such documents and in language that such client is likely to understand at no additional cost and in writing if requested. Failing which the Member shall rescind the contract for the provision of Will Writing Services and refund any fees paid if the vulnerable client so requests.
- 5.6 In cases where instructions are received by a Member to carry out Will Writing Services in circumstances where a Member does not meet the Client in-person the Member shall take all reasonable and proper precautions to verify the identity of the Client and that such instructions emanate from the Client.

Where instructions are taken by an employee, consultant or agent of the Member that person will take all reasonable and proper precautions to verify the identity of the Client and that such instructions emanate from the Client although it will ultimately be the Member's responsibility to ensure that this is carried out where any of the above is not a Member in their own right. Without prejudice to the foregoing a Member, when engaged in a regulated activity as defined by the Money Laundering Regulations 2007, shall comply with such Regulations.

- 5.7 A Member shall not undertake probate services or the administration of the estate of a deceased person for gain without the prior consent of the Society. Such consent shall not be unreasonably withheld from a Member who provides evidence of valid Professional Indemnity Insurance cover for probate activities and competence established by the attainment of one of the following:
1. Certificate of Probate Practice (Licensed Conveyancers)
 2. Completion of the Legal Practice Course including Private Client Unit
 3. CILEX Level 6 Probate Practice
 4. STEP Diploma for England & Wales (Trusts and Estates)
 5. STEP Diploma for Scotland
 6. Approval by the Society based on experience

It should be noted that the Society is not an approved regulator as defined under the Legal Services Act 2007 and cannot grant authorisation to any individual or firm to carry out a reserved legal activity. The Society maintains only a record of Members who undertake probate services and authorisation to carry out a reserved activity where necessary should be sought by an approved regulator.

- 5.8 A Member shall not require, solicit, or otherwise attempt to obtain any advance payment for acting in the administration of a client's estate, except for payment taken for an at-need service. This specifically prohibits the introduction to or sale of pre-paid probate products.

6. Carrying out Will Writing Services

6.1

- a. A Member must comply with the Client's instructions using all due skill, care and expedition appropriate to the need of the Client and having regard to the requirements of clause 2.5 above. When taking instructions Members must agree in writing with the client when the draft and/or executable documents are to be dispatched to the Client. Members must in all cases take account of the Client's specific circumstances, including consideration of the Client's age and health and concerns about infirmity or disability, when delivery timescales are discussed and agreed.
- b. However, where circumstances occur, including those beyond the Member's control, which result in the documents being delivered outside the agreed timescales: the Client must be informed and upon their request must be provided with a full written explanation by the Member explaining the cause of the delays and the new timescales. In addition, the Client must also be given the opportunity to renegotiate or cancel the contract, with a full refund being provided should it be requested by the Client.

6.2

- a. A Member must give the Client, at the meeting where the contract is agreed, the Notice of Right to Cancel that conforms to the Consumer Contracts Regulations 2013 and see 4.2(c) above. Under the requirements of the 2013 Regulations any money paid in respect of the preparation of a Client's documents must be refunded in whole should the Client change their mind within 14 days from the date of agreeing instructions; unless the Client has signed to explicitly express their permission for the Member to commence work before the end of 14-day cooling off period. Where such permission is granted, the Member is entitled to recover reasonable costs incurred from the Client if the Client subsequently decides to cancel the contract.
- b. The 2013 Regulations provide that before the Client can be bound by the contract the Client must be given the General and Specific Information, see 4.2 and 4.3 above, including the Notice of Right to Cancel. If the Member, in breach of the 2013 Regulations, does not provide the information about the right to cancel at the meeting when the contract is agreed, the cancellation period is extended and will still apply as follows:

1. If the Member provides the Client with the required Notice of Right to Cancel in the period of 12 months after the contract is agreed, the cancellation period ends 14 days after the Client receives the information; and
 2. Otherwise if the information is not given the cancellation period ends 12 months and 14 days after the day on which the period should have ended.
 3. With the result that a Member will not be able to enforce a contract for Client work carried out until the cancellation period has ended altogether.
- 6.3 In taking instructions it is the Member's duty to establish that the Client is acting freely, without coercion with a full understanding of the transaction and is of testamentary or other appropriate capacity with reference to the principles of the Mental Capacity Act 2005 and the common law test in *Banks v Goodfellow*.
- 6.4 Clients must be provided with the opportunity for the attestation of all documents produced by a Member to be supervised by a Member or a Member's representative and it shall be made clear in the Member's terms of business whether or not this is chargeable. Where a client does not opt for such an attestation service then the Member shall offer free of charge a service to check, as far as is practical, that such documents appear to have been attested correctly.
- 6.5 Where a Member produces a Will or other document that contains a clause which limits the liability of an executor or trustee for breach of trust then the Member shall draw this clause to the Client's attention and confirm to the Client in writing the consequences of the clause.
- 6.6 In order that a Member may comply fully with the requirements of any future investigation of whatsoever nature initiated by the Society, the PSB or a Client or a Client's personal representatives or any other third party, the Member agrees to make available without time limit and upon demand a copy of the client file(s) to the Society or other party entitled under law.
- 6.7 Upon conclusion of business a Member shall ensure each Client is aware of the location of the customer satisfaction form for completion on the Society's website or provide a hard copy where requested.

7. Business Promotion

- 7.1 A Member may advertise the Member's practice and seek to obtain directly or indirectly clients in any manner and through any medium provided that the good reputation of the Society is not damaged.
- 7.2 In particular any advertising or promotional material shall be truthful, in good taste such as will be unlikely to cause offence to any other person and shall contain no disparaging statements, express or implied, about the Society and any other Member.
- 7.3 A Member shall not use misleading, unfair or deceptive sales practices to advertise or promote Will Writing Services.
- 7.4 Promotional material produced by a Member which carries the Society's logo must also state the Member's adherence to the Code of Practice. A copy must be supplied to the Society upon request.
- 7.5 All advertisements placed by a Member must comply with all relevant codes of advertising including the British Codes of Advertising and Sales Promotion, the Independent Television Commission code; the Radio Authority Code; the Independent Committee for the Supervision of Standards of Telephone Information Services and all relevant statutory instruments including the Consumer Protection from Unfair Trading Regulations 2008.
- 7.6 A Member shall not harass or exert pressure upon Clients or potential Clients.
- 7.7 A Member shall not make unsolicited telephone calls to those registered with the Telephone Preference Service, make unsolicited faxes to those registered with the Fax Preference Service or make unsolicited mailings to those registered with the Mailing Preference Service.
- 7.8 Any prices quoted in any advertising material (or in any literature produced by a Member) shall indicate whether they include or exclude Value Added Tax.

8. Complaints

- 8.1 A Member must have in place a written complaints procedure which should be provided to Clients upon request. It should be reviewed annually and issued to staff as appropriate.
- 8.2 The complaints procedure will contain details of how to make a complaint, the information that must be provided, who and where to address it to, the timescales involved and that a Client has the option to refer the complaint to the Society should the Member not provide a satisfactory resolution.
- 8.3 All complaints should be acknowledged as soon as received and no later than 7 days after. A formal response should be provided to a complaint within 14 days or, where this is not possible, the Client advised of the reasons for this and then provided with a formal response as soon as possible and no later than 28 days after the complaint is received. The Society's Complaints Procedures are deemed to be incorporated within this Code and which have been read and agreed to by the Member and must be adhered to with relation to all complaints matters.
- 8.4 Members shall provide the same level of co-operation to either a third party or an intermediary who with authority to do so acts on behalf of a complainant as they would offer to the complainant.
- 8.5 If complaints cannot be resolved between the Member and the Member's Client within a reasonable time, then the Member shall advise the Society of the complaint. The Member shall advise the Client that the complaint has been referred to the Society and provide details of the Society's complaint handling procedure, including the right of access to the Alternate Dispute Resolution (ADR) Service if the complaint remains unresolved following the Society's intervention.
- 8.6 Clients should be informed that, although advisable, they do not have to pursue complaints through the procedures laid out in this Code and that they may pursue other options, such as independent arbitration or court action, at any time.
- 8.7 A written record should be kept of each complaint made to a Member and this should be made available on request to the Society.
- 8.8 A Member is required to advise the Society by way of their annual return the total number of complaints received and how many of those were resolved or remain outstanding within the last membership year.

9. Disciplinary Procedure

- 9.1 Any breach of this Code is considered by the Society as a serious matter and may result in disciplinary proceedings being instigated by the Society against the Member.
- 9.2 The Society's disciplinary procedures are set out in its Complaints and Disciplinary Procedures which are deemed to be incorporated within this Code and which have been read and agreed to by the Member.

10. Oversight and Governance

- 10.1 The Society along with its Professional Standards Board (PSB) has a responsibility to its members, the legal profession, and the general public to prevent consumer harm or detriment. This is done via Member's compliance with the Code and oversight by both the Society and the PSB.
- 10.2 Where evidence comes to light of alleged consumer harm or detriment, the Society or the PSB shall have the right to open an enquiry into the Member or Members alleged to be the cause of the harm or detriment.
- 10.3 In all cases where an allegation comes to light the Society shall refer the complaint to the Member concerned so that they may exhaust their own internal complaints procedure prior to the Society opening a formal enquiry.

- 10.4 Where such an enquiry is opened the Member or Members agree to co-operate fully with the enquiry and provide all necessary information and assistance to bring the enquiry to a satisfactory conclusion.
- 10.5 On the opening of an enquiry the Society will invoice the member for the sum of £150 as a complaint investigation fee. The invoice must be paid by the member within 7 days of issue. Non-payment of this fee shall be deemed a breach of the Code.
- 10.6 If the complaint is unresolved at the initial enquiry and is consequently referred to the PSB for adjudication an additional £100 will be payable by the member on the same terms as 10.5 above.
- 10.7 At the conclusion of the enquiry the Member or Members concerned agree to comply with the conclusions of the enquiry. Furthermore, the Member or Members shall provide proof of compliance to the Society or the PSB.
- 10.8 Failure to comply with the conclusions of the enquiry shall be a further breach of the Code.

A. Scope

- A.1 The Society or the PSB can open an enquiry into anything they judge to cause consumer detriment. This can include but is not limited to:
1. Consumer Complaints.
 2. Allegations of Mis-selling.
 3. Misleading Advertising.
 4. Misleading the Society or the PSB.
 5. Overselling.
 6. Overcharging (where the price charged is not commensurate with the work undertaken).
 7. Sale of products that have been banned by the Society.
 8. Complaints from other Members about a fellow Member's conduct (it should be noted that any Member making a malicious complaint about another Member shall automatically be in breach of the Code and subject to the Society's disciplinary procedures).
 - 8.1 Where a malicious complaint is made and deemed to be unfounded the Member making the unfounded complaint shall be liable to pay the complaint investigation fees outlined in 10.5 and 10.6 above.
 9. Complaints from other members of the Legal Profession.
- A.2 The Member shall be responsible under this Code for their own conduct, that of their staff, their self-employed consultants, and their introducers insofar as they give advice on estate planning that is covered by the Member's professional indemnity insurance.
- A.3 Consumer harm or detriment can include but is not limited to financial, emotional and reputational harm to:
1. Individual clients.
 2. The Society and its Members.
 3. The PSB.
 4. The wider legal profession.

B. Sanctions

- B.1 Should an enquiry find that a Member or Members have caused detriment or harm then the Society or the PSB shall have the power to sanction the Member:
1. To cease the activities that gave rise to the enquiry.
 2. To make good any financial loss that has been suffered.
 3. To rectify any errors without additional costs.
 4. To commit to any programme of supervision or retraining that the Society may deem necessary.
- B.2 The Society and PSB will operate a three-tier sanction policy. The policy will be time bound insofar as each sanction shall remain in place for a maximum period of 3 years. The sanctions will in most cases fall away as soon as compliance with the sanction has been demonstrated.

1. Where a Member is found to be in breach of the code in the first instance the Member shall be sanctioned privately.
2. For a second breach the Member shall be sanctioned, and that sanction shall be published publicly by the Society. Publication shall be on the Society's website for a period of three months following the sanction, the Society's newsletter and via its social media channels immediately following the sanction.
3. For a third breach the Member will be expelled from the Society and notice of expulsion will be published publicly by the Society. Publication shall be on the Society's website for a period of six months following the expulsion, the Society's newsletter and via its social media channels immediately following the expulsion.

B.3 If a Member refuses to comply with the findings of the enquiry, then they shall be expelled from the Society and notice of expulsion will be published publicly by the Society.

B.4 Notwithstanding the points above the Society and the PSB recognise that in exceptional circumstances there may be breaches that are so grave that the immediate expulsion from the Society may be the only appropriate course of action. Again, notice of expulsion will be published publicly by the Society.

B.5 Right of Appeal:

Any Member facing sanctions from an enquiry shall have the right of appeal against the sanctions. Such appeal will be heard by two independent members of the PSB not involved in the original enquiry.

B.6 Alternative Dispute Resolution:

The PSB offers a mediation service to facilitate the settlement of disputes between Members and clients. In appropriate circumstances Members shall utilise the facility as outlined in S8.5 of the Society's Code of Practice.

C. Supervision and Retraining

C.1 Should the Society or PSB deem it necessary the Member or Members shall agree to any reasonable programme of supervision or retraining.

C.2 The costs of any supervision or retraining shall be met by the Member.

C.3 Failure to comply with any such request shall be a further breach of the code.