



The Society of Will Writers

Response to CMA Draft Guidance Consultation

This response is being submitted to the Competition and Markets Authority (CMA) on behalf of The Society of Will Writers and Estate Planning Practitioners (SWW) and its members.

The SWW has offered its full cooperation with the CMA since the launch of their investigation in 2023 into the unregulated legal services of will writing, online divorce and pre-paid probate and has welcomed the opportunities to participate in the discussion and offer what support we have so far.

We believe that the approach the CMA are taking in terms of providing this guidance is a positive step in the right direction. We expect the guidance once published in its final form to serve as a useful tool for providers of these services and we intend to make it available as a resource for all active SWW members and new entrants to the SWW in future.

We have carefully considered the content of the guidance, including the 'do and don't' checklists and case studies, as well as the questions outlined by the CMA and have summarised our answers to them in this response.

We welcome further discussions with the CMA and any other interested parties ahead of the final guidance being issued and thank them for taking the time to consider our response.

Comments on the Draft Guidance

Overall, the guidance does hit home the key points of explaining how to provide a service to consumers that is accessible and transparent in terms of its pricing, delivery and standards and we are pleased with the approach the CMA have taken towards promoting common-sense when it comes to adhering to legislation. We know SWW members already uphold these obligations as demonstrated by the exceptionally low number of complaints and insurance claims we see, and through discussions with key

members and the wider SWW membership since the draft was published, there's been little in the way of queries about the chapters within the draft. We are aware some SWW members are responding directly, and we have some comments that have been sent to us to forward on as well.

The guidance goes into good detail on some of the bigger concerns we have, particularly around aggressive sales practices and misleading pricing – two things we're very much aware are happening throughout the sector and it is good to see attempts being made to stamp these out. We believe the guidance in these areas will help us more strongly enforce our own Code of Practice with any SWW members who fall foul of the rules.

We do see the unrealistically low prices advertised such as wills for £20 or less, and along with the SWW Professional Standards Board (PSB), we are already investigating providers who advertise these offers as there is doubt as to the feasibility of them and whether clients are truly receiving documents and services at these prices. It must be said however that these very same offers are prevalent within the regulated sector too, so it is evidently not a regulatory issue. The guidance, whilst aimed at providers of unregulated services, still needs to be clear that regulated providers must adhere to the same legislation.

We would like to see the guidance expanded regarding subscription services. As clear as it is about making clients aware of renewals and pricing for those renewals, it lacks detail in how these notices should be delivered. We respect that this is only guidance and not a how-to guide, however we believe providers would be grateful for as much support as needed to ensure compliance.

The 'do and don't' lists are clear, although without knowing what specific issues led to the CMA launching their investigation in the first place it is not as straightforward in our view as saying whether or not these are the correct ones to list. They do cover a great deal of points that we would expect providers to follow, and by helpfully signposting the case studies they are neatly expanded with good examples to help them understand what they mean. In combination with the guidance that precedes these lists, we would say that they are sufficient however it may be the guidance takes the form of a working document that is subject to regular review with future issues filling in any gaps that become apparent. Similarly, the case studies are clear and relevant to real situations, so we're pleased with these.

We will highlight the 'do' that states to '*Clearly and prominently explain that your business is **not regulated.***' This has understandably given rise to concern amongst SWW members. Whilst we are strict on ensuring that members do not falsely claim they are regulated, in our view that having to specifically state they are not could be to their detriment and helps enable the prejudice already aimed towards the unregulated sector. Such a statement in our view is contradictory to the praise given to unregulated

providers earlier in the guidance document and does not help a consumer make an informed decision. If anything, it could potentially deter them from using an unregulated provider due to the negative connotations attached to the word when a “will writer” is just that – someone who writes wills. In the case of SWW members, these are providers who train specifically to provide that service and aren’t mixing up their practice with a multitude of other legal services such as litigation or employment law. In our view they are best placed to provide these services, and so to have to provide statements that risk deterring potential clients seems wholly unfair.

We would not expect unregulated providers to lie by omission, however, so would like the guidance to enable scope for alternative statements, and a requirement for providers to clearly state any memberships or affiliations they hold, and what those entail. We believe that clear signposting to membership schemes would do more to enable consumers to make an informed decision by being able to verify their provider’s membership or regulatory status with the body in question directly. Similarly, the guidance could provide information on what the consequences of any misleading claims to membership or regulatory status would be.

We are pleased that the CMA recognises the unregulated sector’s ability to be innovative, and similarly it is good they have highlighted that providers can offer a more cost-effective service for consumers in comparison to some that are regulated. However, there are a multitude of factors that influence a consumer’s decision over who they choose for their legal services provider, and amidst the current regulatory landscape it is not always as black and white as regulated vs. unregulated, which we feel the guidance could do more to highlight.

Even within the unregulated sector there are those who sign up to voluntary bodies such as ours to self-regulate, and then there are those who are truly unregulated and do not align themselves to any professional body at all, which diversifies the legal sector even further. Whilst the guidance does highlight the obligations providers are bound by, there is a concern that the ones who are causing detriment within the profession will not read it, or even know it exists. There has been reporting on the investigation and subsequent consultation however we are heavily reliant on these providers being willing to take note and engage with the process, and we fear some may not.

We realise that this guidance isn’t intended to be an instrument to promote the self-regulatory bodies, however with it being aimed at helping providers comply with the law, more needs to be done to get it in front of them because neither the CMA, the SWW, or the other membership bodies in our sector can do this alone. The PSB have highlighted in their response that an opportunity for change has been missed here, with a move towards a more formal licencing/registration requirement for providers being recommended – a sentiment we cannot help but echo.

There are SWW members who feel they already face an uphill battle of sorts in distinguishing themselves from those who do cause detriment to consumers and the profession, and there are providers doing this across both the regulated and unregulated sectors. This is something a consumer facing guidance document could highlight, which we appreciate the CMA is considering and will discuss our thoughts on in the next section of this response.

In lieu of regulation or a more formal registration process for providers, tighter controls will naturally need to be imposed by membership bodies, and it would be good to have the CMA's support behind this.

As far as online divorce is concerned it does not fall within our remit and so we cannot comment. Similarly for pre-paid probate there is little more we can add as it remains banned under the SWW Code of Practice, something we are grateful the CMA have highlighted in the guidance, and, at present we see no way to lift that ban. It is good that the CMA have included the risks associated with pre-paid probate plans in the guidance, in doing so demonstrating to the wider legal sector the precise concerns that led to us banning our members from selling them in the first place. We would add that the footnotes do not point towards section 5.8 of the SWW Code of Practice and would be grateful if that could be added.

<https://www.willwriters.com/about-us/code-of-practice/>

The SWW PSB have provided their response already addressing some points specifically from a practitioner's perspective, and for the sake of avoiding repetition we will confirm that the SWW agrees with what they have raised in relation to; pricing, misleading pricing practices, prepayment of services, clarity on regulation status (although this has been heavily discussed in this response too) and the use of disclaimers.

<https://www.willwriters.com/blog/psb-cma-guidance/>

In summary, the guidance does cover the most important consumer protection law issues, at least in regard to will writing and we are overall satisfied with its content. With some clarifications requested ahead of a final version being published we think this will be a positive step towards raising standards within the profession.

Consumer Facing Guidance

In our experience consumers more often than they should wait until after they have handed money over or endured a lengthy appointment to check the regulatory status of their chosen provider. Unfortunately, sometimes the contact we receive from these consumers results in no matches found within our membership and whilst that's not always necessarily an issue, it does give rise to the concerns rightly highlighted within this guidance surrounding misleading information, high-pressure sales tactics and

ambiguous terms and conditions. These are all things that our Code of Practice, including its new Oversight and Governance section, coupled with our training and support methods goes a long way towards preventing within our own membership. The issue is that is as far as it goes currently, and where you have a provider that is not registered with us or another body, then it leaves the consumer in a difficult position if something has gone wrong.

Some of the providers who already do not adhere to consumer protection law, or at the very least more loosely interpret their requirements under it, won't suddenly become compliant because a guidance document tells them how, and neither will they take heed of a regulator or membership body they've no requirement or desire to be registered with. Whilst our intention is not necessarily to see any firm removed from the picture, at least not those who are prepared to accept they might be causing detriment and take steps to correct it, it is our view that efforts could be better focused into helping educate consumers on these types of purchases, and who best to purchase them from so that power is taken away from providers causing issues.

This must however be a collaborative and focussed effort from both the regulated and unregulated sectors. We need to move past the argument of choosing regulated vs unregulated and ensure that we are providing consumers with the information and support they need to make an informed decision. Those providers who flaunt the rules and do not align themselves to any of the professional bodies would quickly find themselves on the backfoot and either need to seek membership and the guidance and support it can provide or correct their ways of their own accord.

A will, as rightly pointed out by the CMA, is not something that a person frequently purchases. Therefore, it is important that they purchase it from somebody who is suitably qualified so that they receive the best advice for their circumstances. That provider also needs to be insured, and in some way monitored by a regulatory or membership body to ensure that a good service is being provided and it need not necessarily matter the provider's regulatory status if there are protections for the consumer in place in the event something goes wrong.

We have a fund available for clients of members who fail to deliver on services that have been paid for and are exploring further funding options to support consumers of retired members. We also have a 3-strike disciplinary process for members who fail to uphold our standards. Whilst we cannot stop a provider from trading, we can publish information to warn consumers about engaging with them. Throughout the SWW's 30-year history we have continued to strengthen requirements for our members such as upping the minimum hours of mandatory CPD and enforcing minimum insurance requirements. We also continue to engage with the wider legal sector including regulators, other membership bodies, and relevant stakeholders to help get the message across. Thankfully, we have a great deal of support in doing so since we are

ultimately working towards the common goal of getting the public to make a will, and using a provider who will deliver a good service.

A consumer facing guidance document would be welcomed by us, providing it gives a fair representation of providers across the whole sector and ticks all the right boxes in giving the information that consumers need. This includes information about who they can speak to if things do go wrong, as currently that can be unclear in some circumstances. Support from trading standards varies regionally in our experience, and often the legal ombudsman points people in our direction when we can't always help. Whilst we understand that is because at times, they can't either, if these authorities aren't best placed to assist consumers and don't know where to send them when they aren't, the question must be asked; *who is?*

We would welcome further consultation and discussion with the CMA and any other interested parties about the production of a consumer facing guidance document as we do feel it would be of genuine benefit. Who that should be led by is a matter still for discussion, although naturally it would make sense for it to be produced as an accompaniment to the CMA's draft guidance that we are presently consulting on.