

Society of Will Writers Professional Standards Board (PSB) – Response to Draft Guidance

This response on behalf of the PSB is supplemental to the original response to the CMA Investigation.

Scope and Content

Whilst the PSB broadly welcomes the proposed guidance, we are concerned that it does not go far enough in addressing the consumer protection issues. Specifically, it does not address two key areas with sufficient vigour.

Many of the firms that work in the unregulated space choose to submit to forms of ‘voluntary regulation’ with membership of the Society of Will Writers, The Institute of Professional Will Writers, The Society of Trust and Estate Practitioners, The Institute of Paralegals (Professional Paralegal Register) and the BEST Foundation. These organisations require members to have robust complaints handling policies and procedures in place and to sign up to a code of conduct / practice. This fact alone means that the CMA’s concerns are largely allayed by the fact of membership.

However, there is a significant ‘rump’ of firms in the space that have chosen not to align themselves with any of the voluntary bodies, and it is these firms that, in the PSB’s experience, are the most likely to engage in misleading and unfair practices. It is therefore our contention that the CMA have missed an opportunity to enhance consumer protection by requiring practitioners to align themselves with the good practice mandated by the membership organisations. It is our firm belief that mandatory membership of one of the five bodies mentioned above would go a long way to cleaning up the sector.

It has long been one of the frustrations of the PSB that if a member disagrees with the outcome of an investigation from one of the membership bodies they can simply resign their membership and continue to trade unaligned to any membership body.

Secondly, whilst the membership of any of the bodies binds practitioners to strict codes of practice it does not give consumers access to proper financial redress. This is perhaps the biggest missed opportunity in the draft guidance. Whilst it is acknowledged that a consumer who has experienced bad practice and mis-selling can seek redress via the Courts, the reality is that most people won’t want to undertake this daunting process due to fears about costs and time. The rest of the legal sector offers a genuine redress scheme via the Legal Ombudsman. It is a unfortunate that the CMA have not chosen to address this glaring discrepancy in consumer protection. It may be beyond

the remit of the CMA, but a request to the LSB to address this matter may have been helpful.

Once clients of unregulated practitioners have genuine access to redress the PSB believes that many of the negative issues highlighted by the review would simply disappear.

Those two concerns aside, the draft guidance is generally clear and helpful. Specifically, the do's and don'ts are clear, concise and easy to understand. The case studies are useful as far as they go and may well help practitioners to identify areas in their businesses that need to be tightened up.

Specific Comments on Pricing and Transparency

Finally, the guidance at 3.5, 3.13 and 3.36 discusses terms relating to pricing, but the Do's and Don'ts fail to delve further into questions of pricing. An example of this is that Will Writing is almost exclusively a business to consumer sector, yet it is still normal practice to quote prices "plus VAT". Consumers are generally not used to having to calculate VAT when making purchases, as such the requirement to display the total cost of services should expressly place a duty on practitioners to quote and advertise the VAT inclusive price of the service where prices are displayed.

Misleading Pricing Practices

3.13(a) talks about misleading starting prices and 3.13(b) addresses drip pricing, but the guidance is silent on what the correct approach in these matters should be. This is particularly important where companies are attracting clients with very low starting prices or very high percentage discounts (70% to 90% off is not uncommon). The guidance needs to be expanded on this issue, perhaps requiring practitioners to add the average price paid by consumers responding to this type of promotion.

Prepayment of Services

3.36(c) addresses the issue of prepayment stating that it can often be unfair for businesses to seek the full prepayment of services. This practice is not uncommon in the profession and whilst the flavour of the point is accepted from an unbalanced legal contract perspective, the practical application is questionable. Prepayment happens in many industries and professions and considerably reduces administrative costs involved in 'debt collection', thus ultimately allowing lower prices for consumers. Where genuine good service follows the upfront payment, there is little concern. The concern

arises when it is accompanied by mis-selling or followed by poor service. Again, the codes of conduct of existing membership bodies would largely remedy this point if practitioners were mandated to their choice of membership body. In its current form, it would be useful if the guidance was more expansive on this point, giving practitioners a clear steer on what is and is not acceptable when it comes to prepayment.

Clarity on Regulation Status

3.16 gives clarity on the fact that unregulated practitioners should not mislead consumers into a false belief that they operate in a regulated capacity. However, in the do's and don'ts examples, it states "Clearly and prominently explain that your business is not regulated". This provides a distinctly unfair and negative representation of the nature of the service provided. Competent will writers will concentrate their continued professional development, qualifications and experience on this single area of the law and can often be significantly more competent than regulated counterparts. As part of the membership organisation requirements, they must have similar levels of insurance in place to protect the consumer as their regulated equivalents.

Use of Disclaimers

3.61(d) whilst the sentiment of this point is completely in accordance with the PSB's opinion, the example given does not seem appropriate. In a profession where the advice given, and the services provided, do have legal consequences in the future at a time when the consumer is no longer able to represent their stated position, the use of a disclaimer can have genuine uses if applied correctly. A simple change of language could address this point, for example to state, 'for example, by misleading the consumer into purchasing a service that they do not need by requiring the consumer to sign a 'disclaimer' stating that the business is not responsible for the consequences of that consumer choosing not to purchase the service in question.'

Thank you for the opportunity to engage in this important process, which we trust will result in a significant improvement in standards for the benefit of all concerned.