

Research Briefing

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Regulation of will writers



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Summary

This research briefing deals primarily with the position in England and Wales, with the position in Scotland discussed in section 8. It covers, among other things, the recent launch of a Competition and Markets Authority investigation looking at potential consumer law breaches in will writing (among other things).

Competition and Markets Authority investigation

On 24 July 2023, the Competition and Markets Authority (CMA) [launched a new investigation](#) to protect consumers following complaints about unregulated will writing (among other things). The CMA said it had identified various areas of concern involving potential risk to customers and possible breaches of consumer protection law, including, in relation to will writing: misleading advertising, the use of potentially unfair contract terms, and reports of pressure selling and coercion of vulnerable customers.

Background

Regulation of legal services

Some types of legal activities, known as “[reserved legal activities](#)”, may be carried out only by regulated “authorised” legal professionals, such as solicitors and barristers. However, other legal advice, including will writing, may be delivered by people (“unauthorised providers”) who are not regulated in the same way.

Regulation of will writing

[There is no sector-specific regulation that covers will writing and no one is legally prevented from offering will writing.](#) A similar service may be offered by regulated legal professionals, such as solicitors; will writers subject to a self-regulatory scheme; and will writers who are not subject to either compulsory or voluntary regulation.

In its [2016 report on the legal services market](#) (PDF), the CMA found three different levels of regulation in will writing:

- at a minimum level, all providers are subject to general consumer law

- regulated legal professionals (“authorised providers”) are covered by their wider professional regulation and are subject to additional requirements intended to protect consumers
- the CMA noted that around half of unauthorised providers had signed up to be regulated by voluntary bodies, such as the Society of Will Writers and the Institute of Professional Willwriters, which have similar requirements to those of regulated legal professionals – the CMA also considered the effectiveness of self-regulation.

Arguments for and against regulation of will writing

Arguments have been advanced both for and against regulating will writing, based on the need for consumer protection on the one hand, and the cost, burden and effectiveness of regulation on the other.

For example, a problem with a will may not come to light until the testator (person making the will) dies, which may be many years after the will was written. If there is a problem, the redress (if any) available may be dependent on who wrote the will, and those involved may not have anticipated this.

However, following a call for evidence on the legal services regulatory framework, in 2014 the Coalition Government said it was [keen to reduce burdens on legal service practitioners, and to ensure the growth of a liberalised and competitive legal services market](#) (PDF). It said it must ensure that “regulation is appropriate, proportionate, and thereby protecting consumers and the wider public interest”.

Government rejection of Legal Services Board recommendation

The list of reserved legal activities may be extended on the recommendation of the Legal Services Board (LSB), which oversees the regulation of lawyers by their own professional bodies. In February 2013, following a statutory investigation, [the LSB recommended to the Lord Chancellor that will writing activities should be reserved](#) (PDF), on the basis that the risk of detriment to consumers was significant enough to warrant regulation.

In May 2013, the then Lord Chancellor [announced his decision not to accept the LSB’s recommendation](#). He acknowledged the LSB had identified consumer detriment in the will writing market. However, he considered further efforts should be made to address the problems through alternatives to regulation, in order to ensure the costs and burdens of increased regulation were not imposed unnecessarily.

Competition and Markets Authority legal services market study

In January 2016, the CMA began a market study into legal services in England and Wales to examine whether they were working well for consumers and small businesses. As part of this exercise, the CMA carried out a detailed examination of will writing and probate services to individual consumers.

The CMA published its [final report](#) (PDF) on 15 December 2016. With regard to will writing services, the CMA found a range of consumer protection issues but had not been able to identify the scale of any consumer detriment. It also found evidence that it was a “small rogue element” rather than the broader unauthorised sector which caused problems.

The CMA concluded there was potentially a role for some regulation of will writing, such as training and entry requirements, but that more evidence was needed. It made recommendations to regulators and the Government.

Scotland

In Scotland, as in England and Wales, will writing is an unreserved activity. The [Legal Services \(Scotland\) Act 2010](#) contains provisions which would allow for the regulation of will writers. These provisions have not been brought into force.

In 2017, the Scottish Government launched an independent review of how legal services are regulated. The Review published its report, [Fit for the Future](#) (PDF), in October 2018. Among other things, it recommended will writing should continue to be unreserved. It noted, in practice, many will writers who are not solicitors are part of a voluntary regulatory regime.

Following [consultation](#) on the Review’s recommendations, the Scottish Government said it was committed to “[reforming legal services and to retaining the sector’s independence within a system that provides greater flexibility in how complaints are handled – to benefit both consumers and legal professionals](#)”.

The [Regulation of Legal Services \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 20 April 2023. A [Policy Memorandum](#) (PDF), published with the Bill, confirms the provisions in the 2010 Act relating to the regulation of will writers would be repealed. However, there would be new provisions allowing for complaints against unregulated legal services practitioners, including will writers.

1 Background

1.1 Will writing

Who can provide will writing services?

It is not necessary to take professional advice to write a will. Some people choose to make a “do-it yourself” will. This can sometimes have unintended and unwanted consequences, including the will being found to be invalid.

People may instead choose to have their will written by:

- a regulated legal professional, such as a solicitor; or
- a will writer subject to a self-regulatory scheme; or
- a will writer who is not subject to either compulsory or voluntary regulation.

Will writing: what is the issue?

A problem with a will may not come to light until the testator (person making the will) dies, which may be many years after the will was written. For example, if a will is found to be invalid, the intestacy rules will apply, instead of the testator’s stated intention (if different).

If there is a problem, the redress available (if any) may be dependent on who wrote the will, and those involved may not have anticipated this.

1.2 Statutory regulation of legal activities

The [Legal Services Act 2007](#) sets out a range of activities, referred to as “reserved legal activities”,¹ which come under the regulatory oversight of the Legal Services Board (LSB).² These activities include, for example, the exercise of a right of audience in the courts and the conduct of litigation. The list of

¹ The six reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities; probate activities; notarial activities; and the administration of oaths – Legal Service Board, [Reserved Legal Activities](#) (accessed 10 August 2023)

² [Legal Services Act 2007 s12](#). Section 3.1 of this briefing provides more information about the LSB

activities may be extended.³ Only regulated legal professionals, such as solicitors and barristers, are entitled to carry out reserved legal activities.

Other legal advice, such as will writing, which falls outside the definition of reserved legal activities, can be delivered by people who are not subject to regulation, and who may not have any legal qualification.

1.3

Is will writing regulated?

There is no sector-specific regulation that covers will writing and no-one is legally prevented from offering will writing services.⁴ A similar service may be offered by both regulated and unregulated providers.

In its [2016 report on the legal services market](#) (PDF), the Competition and Markets Authority (CMA) found three different levels of regulation in will writing:

- at a minimum level, all providers are subject to general consumer law;
- authorised providers [regulated legal professionals]⁵ are covered by their wider professional regulation and are subject to additional requirements intended to protect consumers, including access to the Legal Ombudsman, professional indemnity insurance (PII), training requirements, and codes of conduct;
- self-regulated providers “have attempted to replicate the benefits of regulation on a voluntary basis”.⁶

Legal professional regulation and guidance

Because of their professional rules, many regulated legal professionals, such as solicitors and barristers, are regulated by their professional bodies even when they are carrying out activities that are not reserved legal activities. For example, the Solicitors Regulation Authority (SRA) has issued guidance, [Drafting and preparation of wills](#).⁷ The SRA says the guidance is to help solicitors understand their obligations and how to comply with them, and that it will have regard to the guidance when exercising its regulatory functions.

³ [Legal Services Act 2007 s24](#)

⁴ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, para 3

⁵ The CMA refers to regulated legal professionals who are entitled to carry out reserved legal activities as “authorised legal services providers” and to other providers as “unauthorised legal services providers”. Some unauthorised providers choose to join a self-regulatory professional body and voluntarily comply with their rules

⁶ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, paragraph 109, and para 9, pA4. Further information about this report is provided in section 6 of this briefing

⁷ Solicitors Regulation Authority, [Drafting and preparation of wills](#), updated 25 November 2019 (accessed 10 August 2023)

Voluntary regulation

In 2016, the CMA noted around half of unauthorised providers had signed up to be regulated by voluntary bodies,⁸ such as the Society of Will Writers (SWW)⁹ and the Institute of Professional Willwriters (IPW).¹⁰

The CMA also noted the requirements of self-regulatory bodies are similar to those, for example, of the Solicitors Regulation Authority:

For example, [self-regulated providers] are subject to training requirements, codes of conduct, PII requirements and external complaints mechanisms. Both the SWW and the IPW have entrance exams, codes of conduct and requirements for professional development (CPD) and require members to have PII. Customers of these providers can refer complaints to these bodies.¹¹

1.4

Redress

If a problem with a will does emerge, the ability to seek compensation may be important. In 2016, the CMA set out the redress options for different types of service provider:

All authorised and self-regulated providers are required to have PII that can provide compensation if things go wrong. However, not all other unauthorised firms have such insurance and even those that might have it may be hard to trace when problems arise because there is no central tracking of firms.

Customers of authorised and self-regulated firms also have the option of escalating complaints to other bodies.¹² Taking into account the size of the self-regulated part of this area of law, the number of escalated complaints appears roughly proportionate to the number referred to LeO [Legal Ombudsman]. However, as explained in paragraph 115, the complaint process may be less effective because providers that are self-regulated can choose to leave a self-regulatory body if they wish to avoid its redress mechanisms.

Other forms of redress options may exist, such as through the courts, but at such high cost as to put them out of reach for most people, particularly where parties are required to go to court.

⁸ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, para 8

⁹ Society of Will Writers, [Code of Practice](#), August 2022 (accessed 10 August 2023)

¹⁰ The Institute of Professional Willwriters (IPW) [Code of Practice](#), May 2019, (accessed 10 August 2023)

¹¹ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, para 114

¹² Footnote to quoted text: “Consumers of authorised providers can escalate complaints to LeO, while consumers of self-regulated providers can escalate complaints to the self-regulatory body or the chosen ADR scheme, where available”

Even where there is a redress mechanism in place, it may not be able to find the original provider; this is particularly a concern in the unauthorised sector where, as noted, there is no central tracking of firms.¹³

1.5

Why was will writing not included in the Legal Services Act 2007?

In the process of consultation and policy development which preceded the Legal Services Act 2007, and in debates on the Bill which became the Act, various calls were made for will writing to be regulated.

The Future of Legal Services: Putting Consumers First

On 17 October 2005, the Labour Government's white paper, [The Future of Legal Services: Putting Consumers First](#), concluded, at that time, there did not appear to be a compelling argument for statutory regulation of will writing. Instead, it recommended voluntary regulation, such as codes of conduct and consumer education schemes.¹⁴

Report of the Joint Committee on the draft Legal Services Bill

The Joint Committee which scrutinised the draft Legal Services Bill recommended that will writing for fee, gain or reward should be included in the new regulatory framework.¹⁵

In its response to the Joint Committee, the Labour Government said it would be for the new Legal Services Board to consider whether there was a need for regulation of will writing in the future.¹⁶

Parliamentary debate on the Legal Services Bill

In debates on the Bill which preceded the Legal Services Act 2007, calls were made for will writing to be included in the list of regulated legal activities. For example, the late Lord Kingsland, who was then Shadow Lord Chancellor and Spokesperson for Constitutional and Legal Affairs, called for will writing for fee, gain or reward to be added to the list of reserved legal activities:

¹³ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, paras 127-130, ppA37-8 (footnotes omitted, except where stated)

¹⁴ [The future of legal services: putting consumers first - GOV.UK \(www.gov.uk\)](#), October 2005, Cm 6679, p79

¹⁵ Joint Committee on the Draft Legal Services Bill, [Draft Legal Services Bill](#) (PDF), 25 July 2006, HC 1154, HL 232 2005-06, paras 212-216

¹⁶ [Government Response to the Report by the Joint Committee on the Draft Legal Services Bill](#) (PDF), Cm 6909, 25 September 2006, p17

Our view is that the absence of regulation of will writing combined with the fact that a defect in a will is normally identified only when it is too late to do anything about it provide a particularly strong need for regulation in this sector”.¹⁷

Baroness Ashton of Upholland, who was then a junior Minister in the Department for Constitutional Affairs,¹⁸ resisted, arguing that evidence had not shown that regulation was necessary.¹⁹

¹⁷ [HL Deb 22 January 2007 c943](#)

¹⁸ As it was then, now Ministry of Justice

¹⁹ [HL Deb 22 January 2007 c946](#)

2

Should will writing be regulated by statute?

Arguments have been advanced both for and against regulating will writing, based, for example, on the need for consumer protection on the one hand, and the cost, burden and effectiveness of regulation on the other.

2.1

Westminster Hall debate

In a Westminster Hall debate on the will writing industry in February 2008, Lorely Burt (Liberal Democrat) set out concerns about the lack of regulation, but also acknowledged there were many ethical operators:

Independent financial advisers are regulated and required to be qualified, and solicitors need to be qualified and closely controlled, but someone could be a convicted fraudster, set up as a will writer tomorrow with no qualifications, experience or professional indemnity insurance and proceed to dispense advice on tax, inheritance laws and so on. Most consumers are unable to judge the quality or value of the service that they are getting, so it is no exaggeration to say that will writing has become a happy hunting ground for the incompetent, the dishonest and the fly-by-night operator.

Of course, there are many ethical operators, and there are two professional bodies for will writers. I have mentioned the Institute of Professional Willwriters, and the other main body is the Society of Will Writers. The problem is not with them, or with the vast majority of their members, but with those who operate without proper training, professionalism and insurance.²⁰

In reply, Bridget Prentice, who was then a junior Justice Minister, set out arguments against regulation at that time. She said the Government would regulate only if there was evidence that regulation was not only necessary, but also the most effective way of increasing consumer protection, adding:

We are committed to reducing regulatory burdens as far as possible, and we will not introduce regulation unless there is evidence of significant problems.²¹

Bridget Prentice said she did not consider regulation would necessarily be effective to address problems with will writing:

There is always a possibility that mistakes will be made in will writing, but regulation would not necessarily rectify those problems, and there is no evidence that lack of regulation causes those mistakes. Solicitors, who are

²⁰ [HC Deb 19 February 2008 c62WH](#)

²¹ [HC Deb 19 February 2008 cc64-5WH](#)

regulated, can often make mistakes in will writing, and we are concerned that the cost of regulation might restrict competition and impose unnecessary burdens on providers and costs on consumers.

Instead, Bridget Prentice said she wanted to work with consumer organisations and others, including the will writing associations, to ensure consumers had sufficient information to make informed choices about the quality of service they should expect to receive.

2.2

Legal Ombudsman report

In October 2014, the Legal Ombudsman (LeO)²² published a [report](#) (PDF) setting out concerns about wills and probate related legal services. The report included seven case studies that illustrated what could go wrong and concluded, among other things:

A disjointed approach to regulation and consumer redress could be leaving consumers confused about which service providers to use and where to go for help when things go wrong.²³

The LeO further concluded that all consumers of wills and probate service providers should have access to redress, adding:

Regulators, representative bodies, and government should work together to find a solution to the problems caused by an unregulated sector.²⁴

²² The Legal Ombudsman deals with complaints about regulated providers of legal services, [How We Work | Legal Ombudsman](#) (accessed 10 August 2023)

²³ Legal Ombudsman, [Complaints in focus: Wills and probate](#) (PDF), October 2014, p1

²⁴ As above

3 Legal Services Board review

3.1 The Legal Services Board and Legal Services Consumer Panel

The Legal Services Board (LSB) oversees the regulation, by [approved regulators](#), of people authorised to undertake reserved legal activities.²⁵ In broad terms, this means that it oversees the regulation of lawyers by their own professional bodies. The Secretary of State may, by order, extend the activities within the scope of the definition of "reserved legal activities", but only on the recommendation of the LSB.²⁶

The Legal Services Consumer Panel, created by the Legal Services Act 2007, is an independent arm of the LSB. Its role is to provide evidenced-based advice to the LSB, in order to help it make decisions that are shaped around the needs of users. The Panel has legal powers to publish its advice and the LSB has a legal duty to explain its reasons when it disagrees with the advice published by the Panel.²⁷

3.2 LSB review of whether the scope of reserved legal activities should be altered

In its [Business Plan 2010/11](#) (PDF), the LSB said it would examine whether the scope of reserved legal activities should be altered. The LSB acknowledged that, in doing this, it expected to have to balance better consumer protection with the additional costs of regulation.²⁸

In a response to the BBC's Panorama investigation into the mis-selling of wills, broadcast on 9 August 2010, the LSB indicated that, because of concerns expressed about will writing, it would be looking at the case for regulation in that area on an expedited timetable.²⁹

²⁵ [Approved regulators - The Legal Services Board](#) (accessed 10 August 2023)

²⁶ [Legal Services Act 2007 s24](#)

²⁷ Legal Services Consumer Panel, [About us](#) (accessed 10 August 2023)

²⁸ Legal Services Board, [Final Business Plan 2010/11](#) (PDF), paragraph 91

²⁹ "The Legal Services Board's full response", BBC Panorama, 8 August 2010

In September 2010, the LSB asked its Consumer Panel to conduct an investigation into consumers' experiences of will writing.³⁰

3.3 Legal Services Consumer Panel: will writing should be reserved legal activity

Following an investigation, in July 2011, the Legal Services Consumer Panel published its [final report](#) (PDF) and proposed that will writing services should be made a reserved legal activity.³¹ It considered the scope of regulation should include the commission, sale and preparation of will writing and related services for fee, gain or reward. The Panel found a compelling case to intervene to protect consumers of will writing services:

This is based on: the risks to consumers due to innate features of the market; the potential severity of harm, including to clients in vulnerable circumstances; and the strong evidence of consumer detriment, especially in relation to the poor quality of wills. The nature of the detriment suggests that preventative, rather than remedial measures, are needed. This is because quality problems are normally only discovered after the client has died, the financial and personal harm to beneficiaries can be severe, and beneficiaries have limited remedies available to them.³²

The Consumer Panel said this did not mean restricting will writing to solicitors only:

Having considered all the options, the Panel is clear that it is only by regulating will-writing that detriment will be prevented and standards improved. This does not mean giving solicitors a monopoly. As now, anyone should be able to offer will-writing services. The difference is that providers should have to satisfy regulators as to their competence and commitment to client care before they are allowed to do so.

The Report's recommendation to the LSB is therefore for regulation to demand improved training, reaccreditation, providers to be subject to conduct rules, robust storage requirements and access to redress for clients and beneficiaries.³³

3.4 LSB statutory investigation

On 14 July 2011, having considered the advice of the Consumer Panel and an associated research report,³⁴ the LSB announced the start of a statutory

³⁰ [Letter from the Legal Services Board requesting that the Legal Services Consumer Panel investigate will writing](#) (PDF), 9 September 2010 (accessed 10 August 2023)

³¹ Legal Services Consumer Panel, [Regulating will-writing](#) (PDF), July 2011, para 1.23

³² As above, para 11.1

³³ As above, p1

³⁴ IFF Research, [Understanding the consumer experience of will-writing services](#) (PDF), 14 July 2011

investigation into how best to protect consumers in the will writing, probate and estate administration markets.³⁵ This was followed, on 5 September 2011, by a call for evidence.³⁶

LSB's consultations

During 2012 the LSB undertook two consultations on will writing, estate administration and probate activities:

- [Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities](#) (PDF), April 2012. The LSB noted that problems had been discovered across both the regulated and unregulated sectors:

In particular, problems around quality, service issues, transparency and fraud appear to exist across both sectors. However, the worst sales practices, issues with the safekeeping of wills and the sufficiency of redress options, appear to be largely confined to the unregulated sector.³⁷

The consultation paper set out two key proposals:

- **Recommending that the list of reserved activities be extended to include will-writing and estate administration activities.** This would ensure that appropriate consumer protections, including access to redress, are in place no matter who delivers the service. Legal services regulation would apply to all providers rather than just those with professional titles. This would make it impossible for unscrupulous or poor quality providers to avoid regulation.
 - **Improving the effectiveness of the existing legal services regulation that applies to the majority of providers delivering these services where it is not working well for consumers.** This would involve regulators placing a greater emphasis on targeted, risk-based monitoring and supervision of regulated businesses and a lesser reliance on wider professional titles.³⁸
- [Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities](#) (PDF), September 2012. The LSB said it had developed and refined its proposals in light of responses to the earlier consultation and of discussions with stakeholders, but it remained committed to its core proposals.³⁹

³⁵ Legal Services Board, "[LSB announces first statutory investigation into will-writing](#)" (PDF), 14 July 2011

³⁶ Legal Services Board, [Call for evidence: investigation into will-writing, estate administration and probate activities](#) (PDF), September 2011

³⁷ Legal Services Board, [Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities](#) (PDF), April 2012, para 5

³⁸ As above

³⁹ Legal Services Board, [Enhancing consumer protection, reducing regulatory restrictions: will-writing, probate and estate administration activities Cover paper and consultation document](#), p1

LSB final reports: will writing activities should be regulated

On 13 February 2013, the LSB published its final reports.⁴⁰ It recommended to the Lord Chancellor that will writing activities should be reserved on the basis that the risk of detriment to consumers was significant enough to warrant regulation.

The LSB said its proposals were based upon three main principles:

- ensuring that proportionate protections, including access to redress, are in place for all consumers irrespective of who provides their service;
- making competition more effective between all different types of will-writing providers so that the market works well for both consumers and businesses;
- improving the existing legal services regulation that applies to the majority of providers in these markets.⁴¹

The LSB had considered alternatives to reservation but still considered regulation to be necessary:

We have considered the following alternatives to reservation: voluntary self-regulation, enforcement of existing consumer protections, enhanced consumer education and improving existing legal services regulation. Many elements of these arrangements are already in place and, even if further promoted, we consider that they are unable to address the problems found, either individually or in combination. We consider reservation is now necessary to protect consumers and improve competition in the market.⁴²

Existing approved legal services regulators would not be approved automatically in relation to will writing activities on the basis of their current regulatory arrangements. Each would have to demonstrate how their arrangements were proportionate and fit for purpose in relation to these specific activities.⁴³

The LSB anticipated the following benefits would be delivered:

- protection for consumers against identified detriments, improved consumer confidence leading to more people writing wills
- reduction in problems requiring resolution by a court, Probate Service or Her Majesty's Revenue and Customs
- support for sector growth by enhancing the operating environment for reputable providers

⁴⁰ LSB, [Sections 24 and 26 investigations: will-writing, estate administration and probate activities](#) (PDF), 13 February 2013

⁴¹ As above, para 21

⁴² As above, para 24

⁴³ As above, para 27

- better targeting of legal services regulation.⁴⁴

The LSB pointed to support for their proposals:

We are supported in this proposal by bodies representing both consumers and charities; existing legal services professional and regulatory bodies; and the main trade bodies representing the unregulated sector.⁴⁵

The recommendation related only to will writing; in a change to the position in its provisional report, the LSB had decided not to recommend that estate administration activities should be reserved.⁴⁶

The LSB's final reports provide further details about, and the reasons for, the LSB's decisions. The [LSB website](#) has links to documents associated with its work on will writing and estate administration.⁴⁷

⁴⁴ As above, para 28

⁴⁵ As above, para 29

⁴⁶ Ibid p33

⁴⁷ LSB, [Will-writing and estate administration](#) (accessed 10 August 2023)

4 Lord Chancellor's response: LSB's recommendation rejected

4.1 The decision not to make will writing a reserved legal activity

On 14 May 2013, Chris Grayling, who was then Lord Chancellor and Secretary of State for Justice, announced his decision not to accept the LSB's recommendation to make will writing a reserved legal activity.⁴⁸

The Decision Notice acknowledged that evidence provided in the LSB's report identified consumer detriment in the will writing market. However, the Lord Chancellor considered the report did not adequately demonstrate that reservation was the best solution, or that alternative measures had been sufficiently exhausted in seeking to address the detriment. The Decision Notice stated, in order to ensure the costs and burdens of increased regulation were not imposed unnecessarily, further efforts should be made to address the problems through alternatives to regulation:

For example, there could be more targeted guidance for the legal profession and strengthening of existing regulation of authorised persons in this area, combined with voluntary regulation schemes and codes of practice for non-authorised providers. There could also be greater efforts made to educate consumers on the different types of provider and their respective protections and options for redress, as well as greater use of existing consumer protections.

4.2 Reaction to Lord Chancellor's decision

The then Chairman of the Legal Services Board, David Edmonds, expressed disappointment with the Government's decision. He indicated what would happen next:

In the meantime the LSB will work with Ministry of Justice officials, consumer groups, providers and other stakeholders to ensure that the issues are tackled and that consumers' confidence in the market for will writing services is increased.

⁴⁸ GOV.UK, Ministry of Justice, [Decision Notice: Extension of the reserved legal activities](#), 14 May 2013 (accessed 10 August 2023)

The onus is now on both regulated and unregulated providers of will-writing services to improve standards and thereby earn consumer and public confidence.⁴⁹

4.3 What happened next?

In July 2014, in a written answer to a Parliamentary question, the then junior Justice Minister, Shailesh Vara, provided information about what was being done following the Lord Chancellor's decision:

...Since then, the Legal Services Board (LSB) has taken a number of steps, with the intention of encouraging and supporting measures to improve standards, in both the regulated and unregulated legal service sectors.

In relation to the regulated sector, the LSB has written to the approved regulators, to encourage them to take steps to address concerns about the quality of will writing by authorised persons. In May 2014, the Solicitors Regulation Authority issued guidance for solicitors on will writing.

In relation to the unregulated sector, the LSB convened a roundtable with industry stakeholders, including leading will writing trade bodies, in January 2014, to explore ways to improve the coverage and effectiveness of voluntary schemes and codes. At this roundtable, the LSB and stakeholders also discussed how to improve consumer information, to better educate consumers about the differences between regulated and unregulated will providers, and related protections and redress routes.⁵⁰

In December 2016, Sir Oliver Heald, who was then Justice Minister, said the Government's position remained the same but it would consider any recommendations made by the Competition and Markets Authority.⁵¹

⁴⁹ Legal Services Board, [The Government declines to accept the regulation of will-writing activities](#) (PDF), 14 May 2013 (accessed 10 August 2023)

⁵⁰ [HC Deb 7 July 2014 c88W](#)

⁵¹ [PQ 55155 \[on Wills\], 6 December 2016](#) Section 6 of this research briefing deals with the Competition and Markets Authority legal services market study

5

Review of the regulation of legal services: no extension proposed

On 5 June 2013, the Coalition Government launched a call for evidence, which ran until 2 September 2013, as part of a review of the regulation of legal services.⁵² The Government set out the purpose of the call for evidence as being:

to seek evidence and comments from stakeholders across the legal services sector and legal services practitioners in respect of simplifying the legal services regulatory framework and ideas for reducing unnecessary regulatory burdens on the legal services sector”.⁵³

On 1 May 2014, the Ministry of Justice published a [summary of responses](#) (PDF).⁵⁴ While noting a number of responses highlighted the inconsistency between reserved activities and other legal services which are not regulated, the Coalition Government confirmed it did not propose to extend the scope of regulation to new areas at that time.⁵⁵ In the Ministerial Foreword, Shailesh Vara reiterated the Government’s position on regulation:

This government is keen to reduce burdens on legal service practitioners, and to ensure the growth of a liberalised and competitive legal services market. Competition and innovation in the sector is to the benefit of consumers and is in line with our wider Agenda for Growth. At the same time we must ensure that regulation is appropriate, proportionate, and thereby protecting consumers and the wider public interest.⁵⁶

⁵² [HC Deb 5 June 2013 c105-6WS](#)

⁵³ Ministry of Justice, [Call For Evidence on the Legal Services Regulatory Framework Summary of responses to the Government’s call for evidence on concerns with, and ideas for reducing, regulatory burdens and simplifying the legal services regulatory framework](#) (PDF), 1 May 2014, p3

⁵⁴ As above

⁵⁵ As above, p5

⁵⁶ As above

6 Competition and Markets Authority legal services market study

6.1 The market study

On 13 January 2016, the Competition and Markets Authority (CMA) began a market study into legal services in England and Wales to examine whether they were working well for consumers and small businesses.⁵⁷

As part of this exercise, the CMA carried out a detailed examination of will writing and probate services to individual consumers.

6.2 CMA reports

The CMA published an [Interim Report](#) (PDF) in July 2016 and a [Final Report](#) (PDF) in December 2016. The wills and probate services case study forms [Appendix A](#) (PDF) to the Final Report.⁵⁸

Overall, the CMA found that competition in the legal services sector for individual consumers and small businesses was not working well.⁵⁹ It made recommendations to address issues it had identified.

6.3 CMA consideration of will writing services

With regard to will writing services, the CMA found a range of consumer protection issues but had not been able to identify the scale of any consumer detriment. It also found evidence that it was a “small rogue element” rather than the broader unauthorised sector which caused problems:

Although the limited evidence on quality we have suggests similar problems among both authorised and unauthorised providers, other consumer protection concerns, for instance, in relation to sales practices, are more prevalent in the unauthorised sector. Problems in will writing are especially difficult to address through redress mechanisms due to consumers’ difficulty in

⁵⁷ GOV.UK, Competitions and Market Authority, [Legal services study launched by CMA](#), 13 January 2016 (accessed 10 August 2023)

⁵⁸ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016

⁵⁹ As above, p218, para 7.1

assessing quality and the potentially long delay before the will is needed. However, due to the general lack of evidence, we have not been able to identify the scale of any consumer detriment. Furthermore, there is evidence that it is a small rogue element, rather than the broader unauthorised sector, that is the source of such problems.⁶⁰

In the context of looking at general consumer protection, the CMA set out some particular issues related to will writing:

All will providers are covered by general consumer laws designed to protect consumers. These include protections against aggressive and misleading sales practices, false advertising, unfair contract terms, faulty service and breach of contract.⁶¹ However, as highlighted by Citizens Advice in its response to the LSCP's [Legal Services Consumer Panel] 2010 consultation, there are particular problems that are specific to will writing: for example, contractual rights are not passed on with the deceased's estate, and so executors and beneficiaries must rely on showing the providers' negligence.⁶² Overall, the LSCP reported that many of the poor sales practices that it outlined might breach existing consumer law,⁶³ but also concluded that further regulation was desirable.⁶⁴

The CMA considered the role of regulation in will writing including the different positions of authorised and unauthorised providers:

There are additional regulatory requirements on authorised providers, such as solicitors. ...these include both those designed to make problems less likely, such as having certain qualifications, undertaking a certain amount of training and being subject codes of conduct, and those to help if things do go wrong, such as having PII and a compensation fund, and the ability to take complaints to the LeO [Legal Ombudsman] and the relevant regulator. Failure to adhere to these requirements can result in providers being fined or even struck off from profession.

Some solicitors feel that they are at a disadvantage compared with unauthorised providers due to the burdens of regulation. However, it appears that these regulations are those that relate to being a solicitor rather than regulations specific to will writing; the majority of respondents to the CMA's online questionnaire of solicitors did not think they incurred any regulatory costs specific to will writing.⁶⁵

Self-regulated providers are covered by similar requirements to those in authorised professions. For example, they are subject to training

⁶⁰ Footnote to text: "The LSCP [Legal Services Consumer Panel] found that the 'evidence suggests that a relatively small number of companies are responsible for the worst problems'. See LSCP (2011), Regulating will writing": CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, paragraph 139

⁶¹ Footnote to text: "Appendix E (Overview of the consumer law framework) provides further details on the consumer law framework"

⁶² Footnote to text: "[Citizen Advice \(2010\). Investigation into will writing call for evidence: Response to the Legal Services Consumer Panel from Citizens Advice](#)"

⁶³ Footnote to text: "Indeed, there have been successful prosecutions of will writers who have sold wills under false pretences. Examples are reported by Wigan Today (2015) Fake will writer jailed; the Law Gazette (2011), Will writing fraudster jailed; and Lincolnshire Live (2010), Will makers jailed for three-and-a-half years for stealing £400k from estates of clients"

⁶⁴ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, paragraph 111

⁶⁵ Footnote to text: "CMA's online questionnaire of solicitors providing wills and probate services"

requirements, codes of conduct, PII requirements and external complaints mechanisms. Both the SWW and the IPW have entrance exams, codes of conduct and requirements for professional development (CPD) and require members to have PII. Customers of these providers can refer complaints to these bodies...⁶⁶

The CMA considered whether self-regulation by unauthorised providers was effective:

There is little evidence about how effective these regimes are. As self-regulation is voluntary, providers can choose not to join a body that will impose such requirements. Research by Economic Insight suggests that only around half of unauthorised providers have signed up to be regulated by voluntary bodies.⁶⁷ In theory, providers can choose to abandon self-regulation if they wish to avoid the restrictions it places on them. Self-regulatory bodies themselves have noted the difficulties they face in enforcing their rules as members can be expelled, but then continue trading.⁶⁸ However, the SWW told us that in practice these instances are extremely rare as the majority of members will act on the recommendations from the SWW. The Law Society has said that it is ‘not worth the risk in hoping that a will writer will abide by any voluntary requirements they sign up to.’⁶⁹

The CMA concluded there was potentially a role for some regulation of will writing, such as training and entry requirements, but that more evidence was needed:

We have found that the nature of will writing, particularly consumers’ difficulty in assessing quality and the potentially long delay before the will is used, means there is potentially a role for ex-ante regulation, eg training and entry requirements. The benefit of any such regulation would have to be weighed against the burdens it placed on businesses and the impact on choices for consumers. However, there is not clear evidence on how widespread consumer protection problems are and therefore the extent to which further regulation would be beneficial. More robust evidence about the unauthorised sector would allow this question to be assessed more comprehensively.⁷⁰

6.4 Recommendations to Government and Ministry of Justice response

The CMA made recommendations to regulators and also to the Government. In a [letter to the CMA dated 19 December 2017](#) (PDF), Lord Keen of Elie, who

⁶⁶ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, paras 112-114

⁶⁷ Footnote to text: “Economic Insight (2016), Unregulated legal service providers: Understanding supply-side characteristics, commissioned by the LSB”

⁶⁸ Footnote to text: “SWW (2011), Investigation into will writing, estate administration and probate activities, SWW’s response to LSB Call for evidence”

⁶⁹ Footnote to text: “The Law Society, Regulation of will writing: Protecting the consumers”, CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, para 115

⁷⁰ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, Appendix A, para 142

was then Lords Spokesperson for the Ministry of Justice, set out the response to recommendations addressed to the Government.

Among other things the CMA recommended the Ministry of Justice should work with the Legal Ombudsman, the self-regulatory bodies, Citizens Advice, HM Courts and Tribunals Service and the Probate Service in order to consider whether there is scope to adapt existing data sources to collect additional information relating to the unauthorised part of the legal services sector.⁷¹ The Government accepted this recommendation:

We will work with the listed bodies to consider whether further information is already available, or could be collected as part of on-going operational changes, to shed light on the size and performance of the unauthorised sector. In doing so we will ensure that the benefits of collecting additional information are weighed against any costs.

Specifically, we have noted the suggestions made in your report, and we will liaise closely with the Legal Ombudsman to review what further information could be collated and published from the complaints data it holds. We will also contact self-regulatory bodies and consider what information they currently collect that they may be able to share with us. We are already working with HMCTS and the Probate Service and will carefully consider if there is an opportunity to change the way data is collected as part of the courts reform agenda and greater digitisation of the courts and tribunals. We are also in dialogue with external bodies over data collection.⁷²

The Government also accepted a recommendation that the Ministry of Justice should review whether and how to extend redress to consumers using unauthorised providers,⁷³ indicating this would involve some cross-Department work:

We recognise that there is a disparity in the redress available to consumers depending on their choice of provider, with those using authorised providers having access to the Legal Ombudsman Scheme, while those using unauthorised providers may have access to other redress mechanisms depending on their choice of provider. We also recognise that consumers may not understand the implications of their choices on the consumer protection available to them should there be a problem with the service they receive...

We agree that there is a general lack of data on the scale and range of unauthorised providers, the extent to which those providers are members of ADR [alternative dispute resolution] schemes, and the variance in the protections offered by those schemes, preventing any meaningful consideration of the scale of any consumer detriment that may arise from this disparity, and therefore whether there is a case for reform. We will work with the Department for Business, Energy and Industrial Strategy,^[74] as the

⁷¹ As above, p272, para 7.201

⁷² Ministry of Justice, [Legal Services Market Study](#) (PDF), 19 December 2017

⁷³ CMA, [Legal services market study Final report](#) (PDF), 15 December 2016, p272, para 7.201

⁷⁴ In 2023, the Department for Business, Energy & Industrial Strategy when it was split to form the Department for Business and Trade, the Department for Energy Security and Net Zero and the Department for Science, Innovation and Technology

department with wider policy responsibility, to review the existing provision and consider whether further steps are necessary and proportionate.⁷⁵

The CMA also recommended that, in the longer term, the Ministry of Justice should review the regulatory framework for legal services.⁷⁶

The Ministry of Justice agreed incremental change could bring about “significant improvements”. It recognised the inconsistency of the current framework:

We note your concern, however, that the current regulatory framework may not be sustainable in the longer term, particularly if the steps being taken to address issues such as price and quality transparency change consumer behaviour and lead to increasing use of unregulated providers. We recognise that the current framework is not consistent, with a disparity in the regulatory burdens on authorised and unauthorised providers potentially offering some of the same services, as well as in the related protections for consumers. While this may impact on competition between regulated and unregulated providers, it does also provide greater consumer choice.

The Ministry of Justice noted specifically “the widely held view that the current reserved legal activities should be reviewed, to ensure that regulation is appropriately targeted to ensure the right balance between consumer protection, wider public interest and competition is achieved”.

The Government did not commit to carry out a formal review of the regulatory framework at that time, instead saying it would “continue to reflect” on the potential need for a review, “particularly as the market develops following the steps taken by regulators to address the transparency and consumer knowledge issues” the CMA report identified.⁷⁷

In May 2020, answer to a written Parliamentary question, the Government said it had no plans to review the Legal Services Act 2007.⁷⁸

6.5 Further information

[Legal services market study - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674247/legal-services-market-study-2017.pdf) has links to further information, including the plans of the legal services regulators.⁷⁹

⁷⁵ Ministry of Justice, [Legal Services Market Study](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674247/legal-services-market-study-2017.pdf) (PDF), 19 December 2017

⁷⁶ CMA, [Legal services market study Final report](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674247/legal-services-market-study-final-report.pdf) (PDF), 15 December 2016, p17 para 52

⁷⁷ Ministry of Justice, [Legal Services Market Study](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674247/legal-services-market-study-2017.pdf) (PDF), 19 December 2017

⁷⁸ [PQ 45128 \[on Solicitors: Regulation\], 18 May 2020](https://www.parliament.uk/business/committees/committees-a-z/commons-clerk/written-questions/written-questions-by-committee/solicitors-regulation/)

⁷⁹ [Plans published to make it easier to shop around for legal services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/674247/plans-published-to-make-it-easier-to-shop-around-for-legal-services-2017.pdf), 29 June 2017 (accessed 10 August 2023)

6.6

CMA review of the legal services market study

In 2020, the CMA carried out an assessment of the implementation and impact of the recommendations of its 2016 market study into the legal services sector in England and Wales.⁸⁰ The CMA repeated its call for the Ministry of Justice to undertake a review of the Legal Services Act 2007. In the meantime, the CMA considered the LSB should review the activities reserved to certain legal services providers to ensure that such restrictions are necessary and proportionate.⁸¹

The CMA said it “would be cautious about extending reservation except where there is a clear justification to do so given its potential impact on competition and cost”.⁸²

⁸⁰ [Review of the legal services market study in England and Wales - GOV.UK \(www.gov.uk\)](#), 17 December 2020 (accessed 10 August 2023)

⁸¹ [CMA publishes review of progress in legal services sector - GOV.UK \(www.gov.uk\)](#), 17 December 2020 (accessed 10 August 2023)

⁸² CMA, [Review of the legal services market study in England and Wales](#) (PDF), 17 December 2020, para 5.111

7

New CMA investigation

On 24 July 2023, the CMA launched a new investigation looking at potential consumer law breaches in will writing (among other things).⁸³ The CMA noted that alternative providers to conventional law firms “very often offer services that are innovative and convenient for consumers, and that can be cheaper too”. However, it warned that, where providers are unregulated, “it becomes all the more important that normal consumer protection laws are complied with and, if necessary, enforced”.⁸⁴

The CMA said it had identified various areas of concern involving potential risk to customers and possible breaches of consumer protection law, including, in relation to will writing:

- consumers being misled by advertising which offers an extremely low initial fee for advice but does not indicate that final costs can increase significantly
- the use of potentially unfair contract terms, such as exclusions of liability, failure to provide cancellation rights, and terms which automatically appoint the firm as executor (often for a fee)
- reports of pressure selling and coercion of vulnerable customers.⁸⁵

The CMA said it is keen to hear about people’s experiences when buying services and products, particularly from unregulated providers.⁸⁶ It has invited responses from individual consumers and interested parties including consumer advocates and advice bodies, professional bodies, or trade associations.

The closing date for responses is 4 September 2023.

⁸³ [CMA investigates will-writing and other legal services - GOV.UK \(www.gov.uk\)](#), 24 July 2023 (accessed 10 August 2023). The CMA is also looking at potential consumer law breaches in online divorce provision and pre-paid probate plans.

⁸⁴ As above

⁸⁵ As above

⁸⁶ [Will-writing and other unregulated legal services - GOV.UK \(www.gov.uk\)](#) (accessed 10 August 2023)

8 The position in Scotland

In Scotland, as in England and Wales, will writing is an unreserved activity. The [Legal Services \(Scotland\) Act 2010](#) contains provisions which would allow for the regulation of will writers. Most of these provisions have not been brought into force.

In 2017, the Scottish Government launched an independent review of how legal services are regulated. The Review published its report, [Fit for the Future](#) (PDF), in October 2018 (the Scottish Government also refers to this as “the Robertson review”).⁸⁷ It made 40 recommendations aimed at:

reforming and modernising the existing legal services regulatory framework, to provide a proportionate approach to regulation whilst supporting growth and competitive provision within the legal services sector, and placing consumer interests at its heart.⁸⁸

The Review recommended will writing should continue to be unreserved (although it noted, in practice, many will writers who are not solicitors are part of a voluntary regulatory regime):

I believe that, in this instance Will Writers should have the option on a voluntary basis to be subject to regulation.

There should be no substantial change at this stage to bring more activities within the scope of those activities “reserved” to solicitors or to remove activities i.e. will writing should not be reserved. ...

It should be for the regulator to propose to the Scottish Government which activities to reserve to legal professionals in the future and which should be regulated.⁸⁹

In 2021, the Scottish Government consulted on the Review’s recommendations, asking for views on the above, among other things.⁹⁰

The Scottish Government published its response to the consultation in December 2022.⁹¹ It said it was committed to “reforming legal services and to retaining the sector’s independence within a system that provides greater

⁸⁷ Esther A Robertson, [Fit for the Future, Report of the Independent Review of Legal Services Regulation in Scotland](#) (PDF), October 2018

⁸⁸ Scottish Government, [Legal services regulation reform: consultation](#), 1 October 2021

⁸⁹ Esther A Robertson, [Fit for the Future, Report of the Independent Review of Legal Services Regulation in Scotland](#) (PDF), October 2018, p42

⁹⁰ [Legal services regulation reform: consultation - gov.scot \(www.gov.scot\)](#), Part 3

⁹¹ [Legal services regulation reform - consultation analysis: Scottish Government response - gov.scot \(www.gov.scot\)](#), 22 December 2022

flexibility in how complaints are handled – to benefit both consumers and legal professionals”.⁹²

The Regulation of Legal Services (Scotland) Bill was introduced in the Scottish Parliament on 20 April 2023. [Information about the Bill](#) can be found on the Scottish Parliament website.

A [Policy Memorandum](#) (PDF) published with the Bill confirms the provisions in the 2010 Act relating to the regulation of will writers would be repealed.⁹³ However, there would be new provisions allowing for complaints against unregulated legal services practitioners:

The 2010 Act proposed a new scheme for the regulation of confirmation agents^[94] and will writers requiring them to be members of an approving body. The approving body would be certified by the Scottish Ministers and would be responsible for regulating the activities of its members. The 2010 Act also introduced the ability of the SLCC [Scottish Legal Complaints Commission] to take complaints relating to the services provided by confirmation agents and will writers. Most of these provisions have not been brought into effect and the proposed regulatory system for confirmation agents and will writers is not in operation. The Bill will repeal the provisions relating to confirmation agents and will writers in the 2010 Act. New provisions in the Bill allowing for complaints against unregulated legal services practitioners, including confirmation agents and will writers, will allow a level of protection for consumers who receive poor services in relation to these areas.⁹⁵

⁹² [Reform of legal services regulation - gov.scot \(www.gov.scot\)](#), 22 December 2022 (accessed 10 August 2023)

⁹³ [Policy Memorandum to the Regulation of Legal Services \(Scotland\) Bill](#), paras 155-161

⁹⁴ Confirmation is the legal evidence of the personal representative’s authority to manage the deceased’s estate, whether or not there is a will. In England and Wales, the terms “probate” and “letters of administration” are used instead

⁹⁵ [Policy Memorandum to the Regulation of Legal Services \(Scotland\) Bill](#), para 156

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