

Building Consumer Confidence in Will Writing

STEP believes that everyone should be encouraged to have a will. Properly drafted, a will can provide support to families, friends and charities after death. But those making a will ('testators') need to be confident that it is properly drafted and achieves what they want. After all, passing their estate on to their family or chosen beneficiaries is probably the biggest financial transaction most people will ever plan for.

This leaflet outlines:

- some of the current problems in the will-writing market
- what STEP is doing to give consumers confidence they are dealing with well-qualified, reputable practitioners
- how STEP plans to participate in future regulatory initiatives

The arguments for change

For some time, STEP has been concerned at standards in the will-writing market. This market is unregulated and in recent years has seen growing numbers of new entrants with few, if any, formal qualifications. In early 2011, STEP published an influential report 'Cowboy Will Writing – incompetence and dishonesty in the UK will market'. This report highlighted that **three-quarters of professional practitioners had encountered cases of incompetence or dishonesty in the will-writing market** in the previous 12 months. Among the issues identified were:

- Invalid wills with basic drafting errors, inappropriate standard clauses and technical errors.
- Will writers making untrue claims about legal changes requiring consumers to change their wills.
- Will writers falsely representing themselves as having generally recognised qualifications, being regulated or having insurance cover.
- Will writers going out of business and clients' wills disappearing, often in spite of clients being charged costly 'will storage' fees.
- The widespread use of hidden fees and additional charges over and above the advertised price.
- Evidence of fraud in estate administration, a crime that can cause particular distress to grieving families.

'Three-quarters of professional practitioners had encountered cases of incompetence or dishonesty in the will-writing market'



Official recognition of the problem

The STEP report on will writing helped highlight an increasingly widely recognised problem. The Legal Services Ombudsman has observed ‘a mismatch between consumer expectations’ of the protections that clients get in areas of legal services such as will writing, and the reality of the protection they actually have in unregulated areas. As the Ombudsman noted ‘this confusion is not helped by the habit many unregulated companies have of presenting themselves as though they were traditional law firms, with websites and advertising material branded with the panoply of wigs, gowns and quill pens’¹.

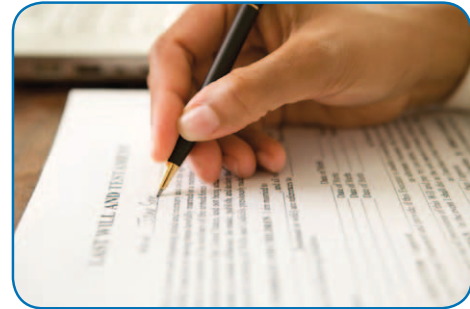
Similarly a review of the evidence by the Legal Services Consumer Panel led them to conclude there was ‘little doubt that standards across the whole industry need to be raised in the quality of will writing’. The Consumer Panel has recommended regulation of the market aimed at ‘improved training, reaccreditation, providers to be subject to conduct rules, robust storage requirements and access to redress for clients and beneficiaries’².

The Legal Services Board now agrees ‘that there is a prima facie case to start a statutory investigation into regulation, not just of will writing but also of estate administration and probate as a part of the process to leading to a formal recommendation to the Lord Chancellor that will writing be reserved’³. **STEP warmly welcomes the work the Legal Services Board is now undertaking and will continue to help in any way it can.**

¹ Annual report and accounts, The Office for Legal Complaints, July 2011

² ‘Regulating will writing’, Legal Services Consumer Panel, July 2011

³ ‘LSB announces first statutory investigation into will writing’, Legal Services Board press release, July 2011



Action from STEP

Inevitably, the process of putting effective regulation in place for the will-writing and estate administration markets will take some time. In the meanwhile, the legal services market continues to change rapidly, not least with the arrival of alternative business structures widening the options for how legal services providers can be owned and potentially opening the way for an array of new entrants into the marketplace. STEP therefore decided early on that it needed to take measures to reassure consumers using STEP Members that they were dealing with practitioners with both **proven standards of technical competence and a commitment to a strong professional code of conduct.**

STEP Certificate in Will Preparation

In 2011, STEP launched a Certificate in Will Preparation in England & Wales, a level 6 (degree level) qualification, **the first of its kind at this level**. Course modules include:

- commercial issues in will preparation
- client interviews and taking instructions
- mental capacity and undue influence
- tax issues
- drafting the will
- the execution of the will
- traps you must be aware of in preparing a will,
- issues of ethics.

The Certificate is appropriate for professionals who have existing experience in will preparation and is delivered through a blend of distance learning and face-to-face workshops. Assessments are via workshop-based tasks and a three-hour closed-book examination.

On successfully completing the Certificate, students become a STEP Affiliate or they can go on to take the STEP Diploma to become a full STEP Member and earn the right to use TEP (Trust and Estate Practitioner) after their name. **Both STEP Affiliates and STEP Members are required to fulfil rigorous ongoing CPD (Continuous Professional Development) programmes.**



STEP Standard Practice Note: Principles of Ethical Will Preparation

STEP has a long-standing Code of Professional Conduct that is binding on all STEP Members and Affiliates⁴. In addition, STEP is introducing a Practice Note specifically designed for those offering will-writing services in England and Wales. **This is designed to cover the particular issues that arise in will preparation and estate administration and to give the public the clearest possible assurances regarding the standards of behaviour they can expect when doing business with a STEP Member or Affiliate.** This Practice Note applies to any STEP Member or Affiliate offering will-writing services.

Among the areas covered in the STEP will preparation practice note are:

- The need for open and transparent dealings with the testator.
- The need to take particular care in circumstances where there may be doubt as to the mental capacity of the testator.
- The need to ensure confidentiality.
- The need to use an appropriately qualified draftsman.
- The avoidance of potential conflicts of interest.
- The need for adequate professional indemnity insurance.
- The need for appropriate dispute resolution procedures.

‘Assurances regarding the standards of behaviour they can expect when doing business with a STEP Member or Affiliate’



⁴ www.step.org/professionalstandards

Keeping pace with an evolving environment

STEP welcomes the acknowledgement from the Legal Services Board that there is a prima facie case for regulating the will-writing and estate administration market. At this stage, however, it is unclear what exact form regulation in this area may take and how long it may be before we have an effective regulatory environment in place.

Likely changes in the regulatory environment in the will-writing area also need to be seen in the context of the broader changes taking place in the legal services market. The emergence of alternative business structures could potentially see a large number of non-traditional providers enter the legal services market in a range of areas, including will writing and estate administration. Many of these new market entrants are expected to develop very different business models to those traditionally seen in the private client services area.

As the legal services market evolves, STEP is committed to ensuring that it plays a key role in providing high quality professional training to all those working in areas such as will writing and estate administration. **Moreover, as the regulatory environment develops, we intend that anyone with appropriate STEP qualifications should have access to an appropriate form of regulatory oversight.**

Many STEP members are fully qualified solicitors or accountants and are already regulated by bodies such as the Solicitors Regulation Authority or the major accountancy bodies. We recognise, however, that many of those students taking or planning to take the STEP Certificate in Will Preparation do not, under current arrangements, have access to existing regulators. STEP is therefore holding discussions with a range of stakeholders – including employers, consumer representatives, existing regulators and bodies such as the Legal Services Board – **helping to develop the most appropriate regulatory structures for those with STEP will-preparation qualifications.** We hope to make a formal announcement in the first half of 2012.

‘We intend that anyone with appropriate STEP qualifications should have access to an appropriate form of regulatory oversight’

What is STEP?

The Society of Trust and Estate Practitioners (STEP) is the worldwide professional body for practitioners in the fields of trusts and estates, executorship, administration and related issues. STEP members help families secure their financial future and protect the interests of vulnerable relatives. STEP promotes the highest professional standards through education and training leading to widely recognised and respected professional qualifications. STEP internationally has almost 17,000 members, with over 6,500 members in the UK. Over 4,500 students worldwide are currently studying for STEP qualifications and in the UK STEP supports an extensive regional network providing training and professional development.

In their professional practice, STEP members often help people at difficult points in their lives, such as after the death of a close family member. To help consumers, STEP has produced a range of free leaflets, written by experts, on topics ranging from 'what to do when somebody dies' to 'trusts explained'. These leaflets can be found at www.step.org/leaflets



STEP Worldwide

Artillery House (South)
11–19 Artillery Row
London, SW1P 1RT
United Kingdom

Telephone: +44 (0)20 7340 0500

Facsimile: +44 (0)20 7340 0501

Email: step@step.org

www.step.org

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Registered number 2632423. Registered Office: Artillery House (South), 11–19 Artillery Row, London, SW1P 1RT United Kingdom

