

CMA investigation into will-writing and other unregulated legal services

About Us

STEP is the worldwide professional association for those advising families across generations. We help people understand the issues families face in this area and promote best practice, professional integrity and education to our members.

Today we have over 22,000 members in over 100 countries and over 8,000 members in the UK. Our membership is drawn from a range of professions, including lawyers, accountants and other specialists. Our members help families plan for their futures: from drafting a will or advising family businesses, to helping international families and protecting vulnerable family members.

We take a leading role in explaining our members' views and expertise to governments, tax authorities, regulators and the public. We work with governments and regulatory authorities to examine the likely impact of any proposed changes, providing technical advice and support and responding to consultations.

Background

We have c7000 members based in England and Wales, of whom the majority are involved in will writing or estate administration. Our membership comprises individuals from both the regulated and the unregulated sector. STEP was initially created to bring together professionals specialising in the trust and estate industry to share their knowledge and expertise in an area that was lacking training and recognition as a specialist area.

Recognising a gap in training, we developed bespoke qualifications for the sector eventually launching the industry standard Advanced Certificate in Will Preparation and the STEP Code for Will Preparation. The STEP Diploma also encompasses aspects of will preparation and ensures that advisers are adequately able to advise and STEP membership brings access to a wide network of professional practitioners who can be called upon for advice. Our Members who obtain Full membership and use the TEP designation have all had their professional practice experience assessed by the Membership Panel who are experienced practitioners.

As a professional body we have long been concerned that unqualified, uninsured and potentially incompetent individuals are letting down clients as a result. We welcome the CMA's investigation into this area. Due to the make-up of our members we have limited our response to the issue of will writing only.

Our view on will writing

Our members who draft wills in England and Wales are required to abide by the STEP Code for Will Preparation as part of the terms and conditions of membership.

This sets out the standards of transparency, service and competence which a client can expect from a STEP member who prepares their will.

Whilst many of our members are regulated individuals through their primary qualification, and regulation can bring many benefits, by itself regulation is insufficient to provide the assurance which clients require. Clients should be assured that their will writer:

- Has been trained and obtained a qualification in wills and estates
- Holds membership with a relevant professional body
- Abides by a code of ethics and standards of practice in relation to will writing
- Holds professional indemnity insurance (PII) and has business continuity arrangements in place
- Undertakes continuing professional development to remain up to date
- Has an in house complaints process and is subject to an independent complaints process through their professional body
- Ensures that their client knows their rights under the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

STEP can provide all of these assurances.

Minimum standards of competence

The STEP Diploma syllabus is aimed at practitioners working in the field of trusts and estates. Whilst flexible in its design it enables those practitioners who complete it to expand their technical knowledge, develop their professional competence and enhance their ability to provide advice to clients. For those working in England and Wales we recommend completing a combination of Advanced Certificates in the Administration of Estates, Administration of Trusts, Taxation of Trusts and Estates and Trust and Estate Accounting which cover all the relevant aspects a professional may need.

Members in England and Wales are also encouraged to undertake the Advanced Certificate in Will Preparation as a standalone qualification to enhance their continuing professional development. This qualification covers the essentials which a will drafter needs to have a sound knowledge and understanding and it is practical in nature.

It reflects upon will preparation as a business, the process of will preparation, client meetings and the taking of instructions, and considerations which must be taken into account by the will drafter including matters such as mental capacity and undue influence, joint property, IHT and exemptions other tax issues, gifts and overseas assets. The qualification also covers how to draft a will, what to include and its important execution.

By obtaining such a qualification we believe an individual's competence is enhanced and they are able to demonstrate a duty of care to clients which also benefits employers.

We supplement this course with a range of complementary qualifications which focus on estate administration, advising vulnerable clients, testamentary capacity and dealing with contentious trusts and estates.

To aid consumer awareness, members who have successfully passed the Advanced Certificate can be identified through the use of our will writing logo.

Details of the syllabus for the STEP Advanced Certificate in Administration of Estates – England and Wales can be read [here](#).

Details of the syllabus for the STEP Advanced Certificate in Administration of Trusts – England and Wales can be read [here](#).

Details of the syllabus for the STEP Advanced Certificate in Will Preparation can be read [here](#).

More information on the STEP Diploma can be found [here](#).

Ethical Code

In addition to knowledge and competence we strongly believe in the importance of ethical behaviours amongst will drafters. We developed the STEP Code of Will Preparation to set out the standards of transparency, service, integrity and competency which clients should expect when preparing their will.

Knowing that a will drafter has opted to sign up to a code of ethics provides peace of mind to clients by providing them with assurance that their will drafter is taking necessary actions to help them plan the future for their assets and loved ones. To aid consumer awareness we have also developed a guide for the public on our Code, which members can give to their clients.

Professional Indemnity Insurance

PII is an essential safeguard for both practitioners and their clients. Clients are assured that a practitioner is acting in their best interests and it raises public confidence more generally. Any PII cover should be appropriate to the needs of the practitioners business and effective PII cover should be sufficient to cover the majority of claims which could arise and include run-off cover.

CPD audit

STEP members are required to demonstrate their ongoing competence to retain their membership. All members are mandated to comply with our continuing professional development policy and each year we audit two per cent of our membership to check

compliance. CPD undertaken can be wide ranging however our auditors will need to see evidence of how a member's CPD relates directly to their job role.

Complaints process

In the event that something does go wrong we expect all members or their firms to operate an in house complaints process which should be used to attempt to resolve matters at the earliest opportunity. We recognise that sometimes this may not happen or may not be appropriate. In those circumstances clients can complain directly to STEP, and we will review matters against our Code of Professional Conduct, our guidance and in line with our Disciplinary Rules 2020.

Member survey

Between April and May 2023 we carried out a survey of members regarding will writing, trust and tax advice. We received 329 responses which highlighted concerns across a number of areas. We have published our findings in our Wills and Trusts: Buyer Beware report (STEP, 4th September), a copy of which is enclosed with this response.

Our report acknowledges the benefits of what regulation can bring in terms of ensuring a baseline of standards and requirements through ongoing competence and compliance measures and legal obligations to remain up to date with legislative and tax changes. The picture is however more complex. Our Members have raised concerns on a number of issues which are expanded upon below. We have also used information obtained from our own complaints process and enquiries made to STEP for advice.

Rogue Traders

- *Hidden fees*

We frequently see adverts for what appear to be competitively priced wills. However what may not be apparent are the hidden fees referred to in the terms and conditions. Cheap wills may also require the client to appoint the firm as a professional executor. What is not explained is that once appointed as an executor the professional can charge their hourly rate in discharging their duties and may also outsource aspects of the estate administration to third party firms, such as accountants or tax specialists. We are aware that many non SRA regulated firms charge a percentage of the estate as a fee on top which can be excessive.

Disbursements can often eat up a significant portion of the estate, which is far from what was intended by the client when deciding to appoint a professional executor. We have spoken with members of the public who have been unaware of these additional fees.

Professional Executors have been appointed because the will drafter has convinced them that they are being kind to their loved ones who will be bereaved and too upset to deal with the worry of dealing with administration. The cases we have come across have tended to involve relatively low value estates. In our view such behaviour is seeking to take advantage of vulnerable clients for financial gain.

Despite the above reservations, there are many good reasons for appointing a professional executor. This could be due to a lack of family or close friends, a complex estate, or a warring family. In some cases the client may ask for a professional executor up front and this will be in their best interests however clients should always be given sufficient information about the administration process and associated costs, so that they can take these additional costs into account.

Clients have complained to us about circumstances where they have been charged a significant fee for the retrieval of their will from storage where they have also been paying a yearly storage fees. Many STEP firms will not charge for the storage of a will and some register the wills with the National Will Registry as part of the overall service.

The majority of respondents (63%) have come across cases where a will writing company has quoted a fee for writing a will then subsequently charged additional costs not covered within the terms of business.

- *False advertising*

We have seen adverts for people who claim to be cheaper than solicitors. They sell their services on the basis that solicitors usually operate on an hourly rate and it may cost several thousand pounds to draft wills compared with a will writers fixed fee.

This is a compelling argument. However it is rarely accurate. Our research shows that a STEP member/solicitor is likely to charge less than £500 for drafting a will and all the fees are set out clearly in their client engagement letter (or similar).

Over half of those who responded to our survey have come across firms making false claims. People have been sold products that they didn't need with over 53% of our members having come across firms making false claims about the product they were selling to their clients.

We have unfortunately seen cases of misleading advertising. This can include references to the will writer being a lawyer or working for a firm offering legal services which gives the impression that they or the firm are regulated which is often not the case. 21.9% of our members also reported this as an issue to us.

Members of the public need to be aware of the dangers involved in having a Will which is too cheap. A £100 will may seem good value however it does mean that the Will is good. Our members have highlighted cases where notes and instructions

have not been properly taken, the Will is invalid, or drafting has created an expected tax liability which will end up causing thousands more to be spent upon death to deal with the mess which has been created.

When considering value, it's not just about the price. An appropriately qualified practitioner will bring value to the Will being obtained.

- *No terms and conditions*

We believe that an ethical will drafter will provide a letter of engagement which sets out the service to be provided in a clear and friendly manner which is understandable to the client. This should also set out a fee estimate or the basis on which fees are charged. We would expect this contract to comply with all consumer regulations.

- *Mirror wills not always appropriate*

People may be advised to take out mirror wills leaving everything to the survivor at relatively low cost but these may not be in the best interest of one or both of the clients. For example, those who have children from previous relationships may want to make different provisions for them.

In these circumstances the client may leave everything to their new spouse, who upon their death may decide to change their will and not include those children identified as beneficiaries in the first settlor's will. This is clearly not the intention of the first settlor who assumed that upon the death of their spouse, their remaining share of assets would go to their identified beneficiaries. Not only does this defeat the original intention of the testator but can result in a lengthy and costly legal battle on death.

- *Lack of awareness around tax leading to high tax*

We have seen cases where clients have not been correctly advised about tax. Some clients have been advised when drafting their will to set up a lifetime trust gifting their home and other assets to protect their home from care homes fees. This is a deliberate deprivation of assets and is not effective for avoidance of care home fees. However the person preparing the documents has pocketed a few thousand in extra fees and in many cases, the clients are left with tax charges that they were not aware of, as well as losing the security of their home. We have many members who specialise in unwinding such schemes for clients. The fact that such specialism is necessary is worrying.

Just over half of those surveyed (54%) have come across firms making false claims about the wills they are selling to clients. Of those, 71 people mentioned that advisors had wrongly told their clients that they could avoid care home fees by putting their home and other assets into a trust during their lifetime. Some clients have been advised to gift their house during their lifetime. Both of these are

considered to be deliberate deprivation of assets and are ineffective for care assessment which can lead to serious problems.

We are aware of cases where people have been misadvised on their IHT requirements and have been penalised by HMRC. A third of respondents to our survey had come across cases where incompetence has led to significant tax bills, with examples of tax charges in many instances in the tens or hundreds of thousands of pounds and in a few cases up to £2 million. See our report for a case study which left a client with an IHT bill of £45k.

A poorly drafted will, or one which does not meet the intentions of the client, can prove costly for families, both financially and emotionally in having to resolve issues in the future. They may also need to make an application to the courts to remove unengaged professional executors or to overturn a will where a vulnerable dependent has been unintentionally overlooked.

If you have any questions relating to our response please contact Sarah Manuel, Head of Professional Standards Manager at standards@step.org or call +44 (0) 3752 3762

Submitted by STEP dated 4 September 2023