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CMA call for evidence on consumer experience of will-writing

Submission from the CLC

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The CLC is the specialist regulator of conveyancing and probate services. Ten years ago, when the then Ministry of Justice consulted on the matter, the CLC argued for will-writing and associated services to become reserved legal services or to be brought within regulation in some other way.

We continue to take this position despite the then Lord Chancellor's decision not to regulate those legal services. We do so for the following reasons.

- Most people will only make these purchases once. They are therefore highly likely to lack the information, insight and experience needed to be able to make a fully informed choice of provider or to understand in detail what they need from that provider.
- As preparing a will can raise difficult or emotional issues, the client is likely to be in a vulnerable position.
- Any shortcomings in the service provided are likely to come to light only after the client is deceased. At that point, it may be very difficult or even impossible to correct mistakes.

These factors point to the need for regulation before, during and after the event in the form of minimum standards of training to provide the services, protections for clients in the delivery of the service and recourse should anything go wrong.

Therefore, we welcome this exercise by the CMA to gather evidence in relation to issues that have arisen in the provision of unregulated or partly regulated legal services. Our experience bears out the concerns that the CMA highlights in relation to will-writing in its call for evidence, namely that consumers may be misled about the protections in place when they purchase a will, that pricing may not be transparent and that emotional selling tactics may be in wide use.

We provide below a case study that illustrates some of these concerns. They relate to an entity regulated by the CLC that procures services from unregulated companies in ways that may harm client interest and consumer protection.

CASE STUDY

The trading style of the XX Group (the Group) covers the companies below.

Regulated

The **Licensed Body**

Licensed by the CLC as an Alternative Business Structure under the provisions of the Legal Services Act 2007 to provide the reserved activities of Conveyancing and Probate in England and Wales (the

reserved activities). The Licensed Body is also permitted to provide the non-reserved legal activities of Will-writing, Lasting Powers of Attorney, Court of Protection Services and Estate Planning (collectively, the non-reserved activities).

Unregulated

Company A providing Last Will & Testament, Lasting Power of Attorney (LPA), Family Asset Trusts, Severance of Tenancy, Protective Property Trusts

Company B performing a financial function to the other companies.

Company C providing wills and LPA.

Company D making arrangements for the pre-payment of probate fees.

All five companies are registered with Companies House at the same office location.

CLC-regulated activities

Under the current operating model of XX Group, clients for non-reserved activities enter into a contract for services (via agreeing Terms of Engagement) with Company A. The Licensed Body refers to the instructions received from clients of Company A to provide non-reserved activity products as "orders", connoting the commerciality of the service. Clients for reserved activities enter into a separate contract for services (Terms of Engagement) directly with the Licensed Body.

Pursuant to a Services Retainer Agreement (the **Agreement**), Company A engages The Licensed Body to perform regulated, non-reserved activities for Company A to enable Company A to complete its "orders".

On this basis, Company A is the client of the Licensed Body, not the consumer who engages Company A and as such, CLC-regulation (and the protections offered by it) is limited to a very small portion of any "order" received by Company A.

Transparency

Central to the CLC's concerns with the Licensed Body is transparency in relation to the true reach of CLC-regulation for services provided by companies within XX Group. This is because the protections available to clients of Company A are limited to the very small portion of an "order" which is performed by The Licensed Body.

In the past, XX Group's client-facing documentation suggested that the non-reserved activities provided by the Group were regulated by the CLC. The CLC have worked with The Licensed Body to the extent possible to ensure transparency, however our regulatory reach is limited to The Licensed Body, and does not extend to the other, unregulated, companies involved.

The CMA will well understand that the XX Group and/or unregulated entities within it cannot purport to be regulated based on regulated activities being provided by another entity in the Group. When this happens, there is a risk that clients of the Group (and stakeholders) do not appreciate that the protections normally afforded by CLC-regulation, do not extend to them. In our experience, the most notable protections not offered (but may be believe by clients to be) are:

- the rules relating to holding client money;
- recourse to the Legal Ombudsman;
- recourse to the CLC Compensation Fund.

Secure Badge

When the CLC inspected The Licensed Body, we discovered that the CLC secure badge was being used on Company A and Company B's websites, which falsely represented to clients and stakeholders that both were CLC-regulated. This issue has since been resolved, but it is an example of an unregulated company within the business blurring the regulatory divide and misleading clients.

Company C also stated that its "parent company" is the Group, however the Group is a trading style, not a formal group structure and so this statement was misleading.

Shared concerns with the CLC

Our experience has led the CLC to share the CMAs concerns in respect of:

1. consumers being misled by advertising which offers an extremely low initial fee for advice but does not indicate that final costs can increase significantly;
2. 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);
3. reports of pressure selling and coercion of vulnerable customers.

The CLC have noted the significant costs paid by clients of COMPANY A, for services they may not actually require, most notably, selling complex wills and estate structuring to clients with unsophisticated circumstances which include for example, testamentary discretionary trusts.

The CLC have received complaints (although, we should not have, given that clients had engaged Company A) which have centred around clients being sold these services over the phone (pressure selling) then not wanting to proceed once they had taken the time to understand the services (and costs) being offered. Often clients are sold several services/documents too, including not just simple wills, but complex wills, powers of attorney, statements of wishes and trust instruments. These clients reported feeling pressured and distressed at the thought of having to pay significant costs, for a service, when properly considered, they did not need.

We are aware of at least two instances where Company A had asserted that its costs were payable regardless, as documents had been produced. These documents are precedent documents generated by software which extracts data from the client's "initial meeting" and often no authorised person has yet reviewed them. In reality they cost very little to produce (being generated via software).

It is common practice for Company A to have clients appoint The Licensed Body as executor. We understand that Company A sell this to clients by playing on their emotions, telling them that their loved ones won't have to be burdened by administering their estate when the time comes, portraying this as a complex and burdensome process.

We have also received complaints from beneficiaries that The Licensed Body have been difficult when requested to renounce as executor. The Licensed Body also charge clients for renunciation, often hundreds of pounds. The CLC have commented that we consider their conduct to be unreasonable, however the assertion by The Licensed Body is that they need to ensure they understand the estate sufficiently, to ensure that in renouncing they are acting in the best interests of the estate. In simple circumstances with one or two beneficiaries, this level of charging does seem excessive and a professional executor like The Licensed Body, unnecessary.

The CLC understand from speaking to the Group CEO that The Licensed Body's business model largely centres around building up a very large will bank from Company A, where they are routinely appointed as executor. The CEO made comments to the CLC as to the value of the will bank in years to come which made clear that client interest was not being prioritised but rather the maximisation of profit.

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