

## WILLS AND PROBATE RISK ADVICE

Wills and probate work generates a significant number of professional indemnity claims and complaints. Over the last three years this work accounted for 12% of all claims, and 8% of the total cost of claims reserved or paid (Marsh data based on 3000 claims as at March 2015).

According to a July 2011 study of 101 wills by the Legal Services Consumer Panel, 25% of wills were of poor overall quality, with little difference in the standard achieved by solicitors compared with other providers. In total, one in four wills failed the quality test applied.<sup>1</sup>

In its 6 November 2014 report, the Legal Ombudsman revealed that "Wills and probate accounted for around

13% of the complaints we resolved last year, making it the third highest source of complaints by area of law. The evidence therefore indicates that the sector is suffering from a number of quality issues...a remedy was required in around 72% of the wills and probate related complaints we dealt with last year. This shows that service providers are failing to meet the expectations of clients and beneficiaries far too frequently."<sup>2</sup>

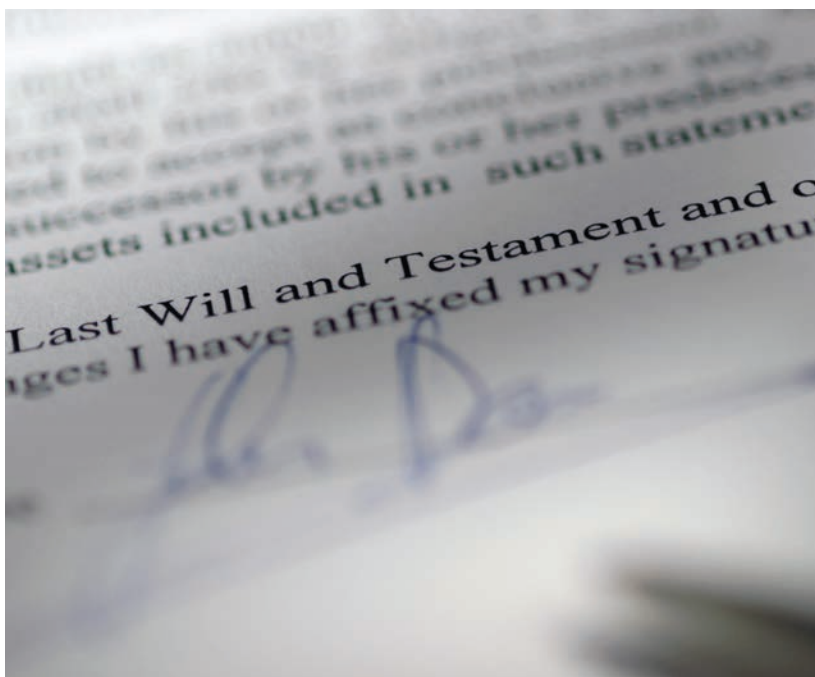


JOHN KUNZLER, HEAD OF FINANCIAL AND PROFESSIONAL LIABILITY, GIVES HIS THOUGHTS ON WILLS AND PROBATE.

Against this background, on the next page we set out some actions that firms could consider to reduce the risk of claims and complaints.

The top four areas for frequency and severity of loss are errors in:

- Wills and codicil drafting.
- Distribution.
- Inheritance Act claims.
- Tax.



FIRMS NEED  
TO REVIEW  
THEIR BEST  
PRACTICE IN  
WILLS AND  
PROBATE  
REGULARLY.

## RECOMMENDED ACTIONS

	ACTION	BENEFIT
<b>1.</b>	<p>Increase the number of quality checks for will and codicil drafting ensuring that:</p> <ul style="list-style-type: none"> <li>a. Family relationships are accurately recorded.</li> <li>b. Intended will provisions and risks for second marriages (especially for step-children) are discussed and understood by the client.</li> <li>c. The risk of Inheritance Act claims is explained as well as evidence recorded of the offer of advice about mitigating that risk.</li> <li>d. Tax advice and investment approach is correct and current.</li> <li>e. Advice is delivered that wills need to be reviewed when circumstances, laws, and taxes change.</li> </ul>	<p>Ensures best practice.</p> <p>Mitigates risk.</p>
<b>2.</b>	<p>Administration of estates:</p> <ul style="list-style-type: none"> <li>a. Expected timelines and possible delays should be explained at the outset.</li> <li>b. Ensure the work has been reviewed by a second pair of eyes before distribution.</li> <li>c. Monitor time to complete estates – partner review of older matters.</li> </ul>	<p>Manages the expectations of beneficiaries.</p> <p>Reduces the chance of error in distribution.</p> <p>Reduces the risk of complaints and fraud.</p>
<b>3.</b>	<p>Review best practice on less complex wills:</p> <ul style="list-style-type: none"> <li>a. Review templates currently in use for wills and explanations – peer review documents.</li> <li>b. Benchmark the practice with specialist practice notes/quality standards/handbooks, and/or membership associations at least annually.</li> </ul>	<p>Ensure currency of standardised approach.</p>

### FOOTNOTES

1. Legal Services Consumer Panel, Regulating will-writing, available at [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/consumerpanel\\_willwritingreport\\_final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/consumerpanel_willwritingreport_final.pdf), accessed 15 September 2015.
2. Legal Ombudsman, Complaints in Focus: Wills and Probate, available at <http://www.legalombudsman.org.uk/publications/will-writing/report.html>, accessed 15 September 2015.

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