

## AVOIDING CLAIMS FOR WILLS AND PROBATE

Wills and probate work generates a significant number of professional indemnity claims and complaints. This work accounted for 14% of all claims and 10% of the total cost of claims reserved or paid over the 2014-2016 indemnity periods (Marsh data as at March 2017).

Claims and mistakes in this area are not a new problem: a July 2011 study of 101 wills by the Legal Services Consumer Panel found that 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 complaints data for 2015/2016, wills and probate accounted for 13% of resolved complaints.<sup>2</sup> This is the same level as indicated in its November 2014 report, in which it was the third highest source of complaints by area of law. The 2014 report commented that, "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.

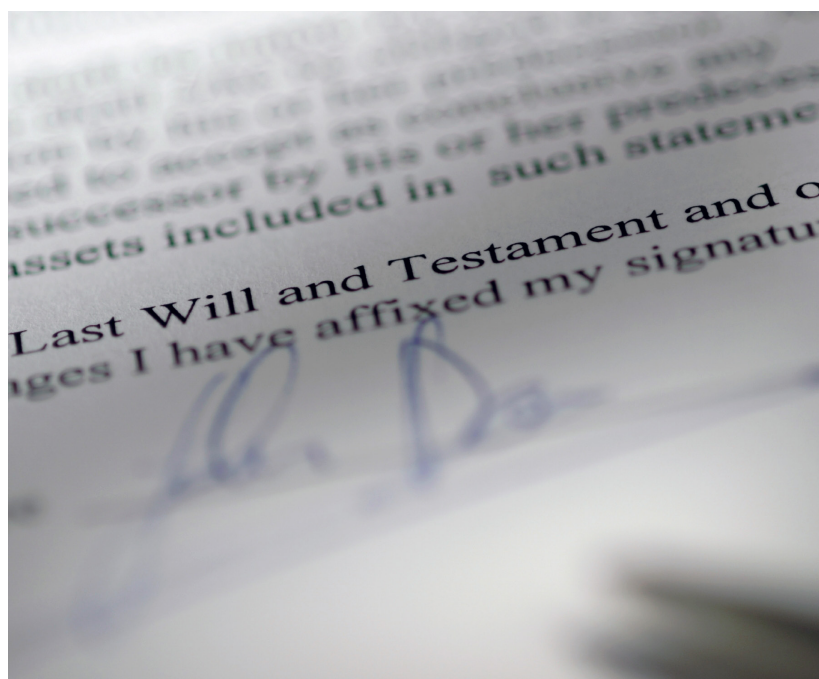


JOHN KUNZLER, HEAD OF FINANCIAL AND PROFESSIONAL LIABILITY, GIVES HIS THOUGHTS ON WILLS AND PROBATE.

This shows that service providers are failing to meet the expectations of clients and beneficiaries far too frequently." <sup>3</sup> The top four areas for frequency and severity of loss are errors in:

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

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



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

## RECOMMENDED ACTIONS

THREAT	PREVENTATIVE MEASURES	BENEFIT
<b>1. LEGAL, SOCIAL AND TAX CHANGES MEAN CHALLENGES TO WILLS AND CODICILS ARE HIGHLY LIKELY</b> Between 2011 and 2015, wills and codicils, Inheritance Act, and tax claims accounted for 46% of trust and probate claims reserved and paid (source: Marsh data).	Increase the number of quality checks for will and codicil drafting, ensuring that: <ol style="list-style-type: none"> <li>Family relationships are accurately recorded.</li> <li>Intended will provisions and risks for second marriages (especially for stepchildren) are discussed and understood by the client.</li> <li>The risk of Inheritance Act claims is explained, as well as evidence recorded of the offer of advice about mitigating that risk.</li> <li>Tax advice and investment approach is correct and current.</li> <li>Advice is delivered that wills need to be reviewed when circumstances, laws, and taxes change.</li> </ol>	Ensures best practice.  Mitigates risk.
<b>2. CONSUMER EXPECTATIONS AND VOLATILE FINANCIAL MARKETS INCREASE THE RISK OF CLAIMS FOR DELAY AND LOST INVESTMENT INCOME</b> Between 2011 and 2015, releasing as sets and distribution accounted for 13% of claims paid and reserved (source: Marsh data).	Take pre-emptive steps to reduce the risk of claims: <ol style="list-style-type: none"> <li>Expected timelines and possible delays should be explained at the outset.</li> <li>Ensure the work has been reviewed by a second pair of eyes before distribution.</li> <li>Monitor time to complete estates – partner review of older matters.</li> </ol>	Manages the expectations of beneficiaries. Reduces the chance of error in distribution. Reduces the risk of complaints and fraud.
<b>3. WILL DRAFTING IS KNOWN TO BE AN AREA OF PERSISTENT ERROR</b> As mentioned above, according to a July 2011 study from the Legal Services Consumer Panel, 25% of wills were of poor overall quality.	Review best practice on less complex wills: <ol style="list-style-type: none"> <li>Review and control use of templates currently in use for wills and explanations – peer review documents.</li> <li>Benchmark the practice with specialist practice notes/quality standards/handbooks, and/or membership associations at least annually.</li> </ol>	Ensure currency of standardised approach.

### FOOTNOTES

- 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 16 August 2017.
- Legal Ombudsman. 2015/2016 Wills and probate complaints data, available at: <http://www.legalombudsman.org.uk/wp-content/uploads/2014/09/Wills-and-probate-overview-2015-16.pdf>, accessed 16 August 2017.
- Legal Ombudsman. Ombudsman report, available at <http://www.legalombudsman.org.uk/publications/will-writing/report.html>, accessed 16 August 2017.

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