

# **THE SOCIETY OF WILL WRITERS AND ESTATE PLANNING PRACTITIONERS**

## **CODE OF PRACTICE**

### **1. Definitions**

In this Code of Practice the following words shall have the following meanings:

- "the Society" shall mean The Society of Will Writers and Estate Planning Practitioners
- "a Member" shall mean a companion, fellow, member, honorary member, associate or affiliate of the Society
- "a Consultant" shall mean any person who is involved in any aspect of the provision of Will Writing Services either directly or indirectly
- "Will Writing Services" shall mean the provision of Wills, Lasting Powers of Attorney, Living Wills, notices of severance, probate advice and other services (subject to Clause 5.7 below) of a legal nature provided by a Member to his clients. It shall also mean inheritance tax advice and other tax planning advice in connection with the preparation of Wills
- Any reference to "the Code" will mean this Code of Practice
- In this Code the singular shall include the plural and the masculine shall include the feminine and vice versa
- Reference to a "Clause" shall mean a Clause of this Code

### **2. General conduct of business**

- 2.1 A Member will observe the law of the jurisdiction in which the Member practices and shall not knowingly assist his clients to breach the law or leave any breach unreported to the relevant authority
- 2.2 A Member shall comply at all times with regulations and guidance issued by the Society from time to time
- 2.3 A Member shall only offer and carry out Will Writing Services which the Member has competence to carry out and for which the Member carries professional indemnity insurance in accordance with paragraph 2.11 below
- 2.4 A Member shall ensure that at all times he has the required general and technical competence to advise on the provision of the Will Writing Services which the Member offers and has full and proper knowledge of developments in his areas of professional expertise. To this end the Member shall comply strictly with the rules of the Society's Continuing Professional Development Scheme
- 2.5 Where a matter is beyond a Member's competence the Member must advise the client to seek alternative legal or other advice
- 2.6 In the conduct of the Member's business the Member shall act with integrity, objectivity and courtesy and shall do nothing to bring the name of the Society into disrepute
- 2.7 All Members shall display a certificate of compliance with this Code of Practice at their business premises and shall promptly supply a copy of the Code of Practice to their clients on request free of charge

- 2.8 A Member shall not disclose information relating to the Member's client's affairs to any third party without the consent of that client unless legally required to do so and shall comply with all legislation from time to time in force relating to data protection and money laundering
- 2.9 A Member must display on his letterhead a statement that the Member is a Member of the Society and supply a copy of such letterhead to the Society and any changes made to it
- 2.10 A Member must comply with the Society's annual compliance procedure and make periodic returns as required by the Society. In particular the Member must annually upon request:
- (a) supply the Society with details of his professional indemnity insurance
  - (b) supply the Society with details of continuing professional development undertaken by the Member
  - (c) pay such sum as the Society shall reasonably require towards its Public Indemnity Fund
  - (d) supply the Society with a copy of the Member's procedure for dealing with complaints

Upon receipt of a satisfactory return the Society will issue the Member with an annual certificate of membership

- 2.11 A Member shall not practice unless the Member maintains in force a professional indemnity policy with an approved insurer to a limit of at least £2 million and produces to the Society evidence that such policy is in force
- 2.12 A Member shall have satisfactory arrangements in place for the conduct of the Member's practice in the event of his death or prolonged incapacity and shall provide details of such arrangements to the Society upon request
- 2.13 A Member must ensure that the work of all those employed by the Member is satisfactorily supervised and that all such employees and any agents or consultants of a Member are aware of this Code of Practice, comply with it and are adequately and properly trained for the tasks that they perform. The Member will be responsible for a breach of the Code by any of the above who is not a registered Member in his own right
- 2.14 If a Member shall become bankrupt or enter into an arrangement with creditors or being a director of a company that is wound up or enters into administration or liquidation (except for the purposes of reconstruction or amalgamation) he shall cease to practise and advise the Society
- 2.15 A Member offering to store Wills or other documents for a client shall ensure that they are stored in fire-resistant and flood-resistant secure premises and that they are adequately insured. A Member offering to store Wills and other documents for the lifetime of a client shall for the protection of the client offer alternative storage arrangements (at no further cost to the client) in the event of him ceasing to practise for whatever reason
- 2.16 Each Member shall ensure that he provides a free or reasonably priced after-sales service for clients that is simple to use and easily accessible. This shall include advice and information regarding the products and services purchased or available for purchase. Where an after sales service is offered details and limitations must be clearly stated in writing. The service should be offered for a reasonable period or for the period advised to the client. Phone calls to any after-sales service should not be charged at a premium rate

### **3. Conflict of Interests**

3.1 Members shall take reasonable precautions to ensure that no conflict of interests arises between their clients and themselves. A Member must not act where a conflict of interests arises

3.2 There is a conflict of interests if:

- a) A Member or his company owes separate duties to act in the best interests of two or more clients in relation to the same or related matters and those duties conflict
- b) A Member's duty to act in the best interests of any client in relation to a matter conflicts with his own interests in relation to that or a related matter

3.3 Where a client proposes to make a lifetime gift or a gift on death to, or for the benefit of a Member, or the Member's company the Member must advise his client to seek independent advice unless the client is a member of his family.

### **4. Pre-contractual Information**

4.1 Before accepting instructions from a client the Member will supply to his client pre-contractual information which is clear and accessible and available in writing

4.2 This pre-contractual information must be provided to every client and in a special format if necessary such as in Braille, large print or in a different language.

4.3 As a minimum this information should include the following:

- a) The Members name and address and the name of the attending consultant
- b) Information on the main characteristics of the products and services to be provided including definitions of any technical terms used
- c) Information on key contract terms including delivery, payment, withdrawal and cancellation rights.
- d) Pricing information containing a total price and full breakdown for each product or service including any delivery charges, VAT charges, credit charges by compliance with the Consumer Credit Act and any other items incurring a fee
- e) Information about complaints and after sales procedures
- f) Where the instructions cannot be legally or practically followed; explanations as to any differences between the client's instructions or expectations and the documents to be provided
- g) Information on the availability of linked goods and services such as lifetime updates and storage
- h) A statement that the Member adheres to this Code of Practice and that a copy of it is available upon request

4.4 A Member shall submit his terms of business (in a form approved of or recommended by the Society) to the Member's client before entering into a contract for the supply of Will Writing Services. Members must ensure that their terms of business comply with the Unfair Terms in Consumer Contracts Regulations 1999, the Consumer Protection from Unfair Trading Regulations 2008 and any other relevant legislative provision. In particular the terms of business shall provide Members' clients with:

- a) a date by which the Will Writing Services are to be completed in the normal course of events
- b) advance notice of any delays that may be likely and in the event of delay for any reason a revised completion date

- c) details of cancellation rights as described at Clause 6.2
- d) a statement that the Member complies with this Code of Practice
- e) details of full complaint procedures

## 5. Instructions

- 5.1 A Member that takes deposits or advance payments for the provision of Will Writing Services shall have in place an appropriate system to ensure the prompt return of any such deposit or advance payment in the event that the Member is unable to comply with his obligations under his terms of business and/or this Code of Practice
- 5.2 A Member that provides services not intended to be provided within a 30 day period or a Member that holds money on behalf of a client shall have a Business Client Account separate to that of the Member's business and with no right for the Member's bankers to offset any liabilities accrued on the Member's business account against such separate account. Such account shall be described as a client account and a Member shall not be permitted to deposit their own funds in such client account. The account will be used to hold the following:
- (a) No less than 50 % of all money received by a Member for or directly from a client for services not intended to be provided within a 30 day period
  - (b) All money received by a Member to be held on behalf of a client as part of the administration process or in any circumstances where a Member is holding money on behalf of a client
- 5.3 A Member must not refuse to accept instructions from any person solely on the grounds of sex, race, colour, ethnic origin, religion or belief, age, disability, sexual orientation or transgender status
- 5.4 In this Clause and in Clause 5.5 a "vulnerable client" is someone who is elderly, infirm, with a disability or learning difficulty or someone purchasing Will Writing Services at a time of illness or distress or with insufficient knowledge to understand a document that may be produced or advice that may be given to him or her, but who is nonetheless adjudged by the Member, with or without supporting medical opinion, to be of sufficient capacity to act on the advice given by the Member
- 5.5 While it is accepted that Wills and other documents prepared by the Member may be complex in nature and couched in legal language, a Member must be prepared to explain to the vulnerable client terminology used in any such documents and in language that such client is likely to understand at no additional cost and in writing if requested. Failing which the Member shall rescind the contract for the provision of Will Writing Services and refund any fees paid if the vulnerable client so requests
- 5.6 In cases where instructions are received by a Member to carry out Will Writing Services in circumstances where a Member does not meet his client the Member shall take all reasonable and proper precautions to verify the identity of the client and that such instructions emanate from the client. Where instructions are taken by an employee, consultant or agent of the Member that person will take all reasonable and proper precautions to verify the identity of the client and that such instructions emanate from the client although it will ultimately be the Member's responsibility to ensure that this is carried out where any of the above is not a Member in his own right. Without prejudice to the foregoing a Member,

when engaged in a regulated activity as defined by the Money Laundering Regulations 2007, shall comply with such Regulations

- 5.7 A Member shall not undertake probate services or the administration of the estate of a deceased person for gain without the prior consent of the Society. Such consent shall not be unreasonably withheld from a Member who provides evidence of valid Professional Indemnity Insurance cover for probate activities and competence established by the attainment of one of the following:
- (a) Certificate of Probate Practice (Licensed Conveyancers)
  - (b) Completion of the Legal Practice Course including Private Client Unit
  - (c) ILEX Level 6 Probate Practice
  - (d) STEP Diploma for England & Wales (Trusts and Estates)
  - (e) STEP Diploma for Scotland

## **6. Carrying out Will Writing Services**

- 6.1 A Member must comply with the client's instructions with reasonable skill, care and expedition appropriate to the need of the client. A Member must endeavour to dispatch documents by first class post or contact the client to arrange attestation of such documents within 14 days of taking a client's initial instructions. However, where circumstances occur which are outside of the Member's control which will result in a delay beyond this period, a client must be informed and given a full written explanation if requested by the client and the opportunity to renegotiate the contract or cancel the agreement with a full refund being provided. The documents must be produced as soon as possible and, in any event, the Member shall produce and dispatch the draft Will(s) within 30 days of having taken the initial instruction
- 6.2 A Member must refund any money paid in respect of the preparation of a client's documents should they change their mind within 7 days from the date of taking instructions unless the clients have signed a waiver of their rights under The Cancellation of Contracts made in a Consumer's Home or Place of Work etc. Regulations 2008. If a Member provides further cancellation rights the Member may reserve the right to charge for the advice given and for any work already carried out in accordance with signed instructions, after the expiration of this period but must provide a full breakdown of charges incurred
- 6.3 In taking instructions it is the Member's duty to establish that the client is acting freely, without coercion with a full understanding of the transaction and is of testamentary or other appropriate capacity with reference to the principles of the Mental Capacity Act 2005 and the common law test in *Banks v Goodfellow*
- 6.4 Clients must be provided with the opportunity for the attestation of all documents produced by a Member to be supervised by a Member or his representative and it shall be made clear in the Member's terms of business whether or not this is chargeable. Where a client does not opt for such an attestation service then the Member shall offer free of charge a service to check, as far as is practical, that such documents appear to have been attested correctly
- 6.5 Where a Member produces a Will or other document that contains a clause which limits the liability of an executor or trustee for breach of trust then the Member shall draw this clause to the client's attention and confirm to the client in writing the consequences of the clause

- 6.6 In order that a Member may comply fully with the requirements of any future investigation of whatsoever nature initiated by the Society or a client or his personal representatives or any other third party, the Member agrees to make available without time limit and upon demand a copy of the client file(s) to the Society or other party entitled under law
- 6.7 Upon conclusion of business a Member shall ensure each client is aware of the location of the customer satisfaction form for completion on The Society's website or provide a hard copy where requested

## **7. Business promotion**

- 7.1 A Member may advertise the Member's practice and seek to obtain directly or indirectly clients in any manner and through any medium provided that the good reputation of the Society is not damaged
- 7.2 In particular any advertising or promotional material shall be truthful, in good taste such as will be unlikely to cause offence to any other person and shall contain no disparaging statements, express or implied, about any other Member. A Member shall not use misleading, unfair or deceptive sales practices to advertise or promote Will Writing Services
- 7.3 The Society must approve before publication all advertising and promotional material produced by a Member which carries the Society's logo and such material will state the Member's adherence to the Code of Practice
- 7.4 All advertisements placed by a Member must comply with all relevant codes of advertising including the British Codes of Advertising and Sales Promotion, the Independent Television Commission code; the Radio Authority Code; the Independent Committee for the Supervision of Standards of Telephone Information Services and all relevant statutory instruments including the Consumer Protection from Unfair Trading Regulations 2008
- 7.5 A Member shall not seek to harass or exert pressure upon clients or potential clients
- 7.6 Members shall not make unsolicited telephone calls to those registered with the Telephone Preference Service, make unsolicited faxes to those registered with the Fax Preference Service or make unsolicited mailings to those registered with the Mailing Preference Service
- 7.7 Any prices quoted in any advertising material (or in any literature produced by a Member) shall indicate whether they include or exclude Value Added Tax

## **8. Complaints**

- 8.1 A Member must have in place a written complaints procedure which should be provided to clients upon request. It should be reviewed annually and issued to staff as appropriate
- 8.2 The complaints procedure will contain details of how to make a complaint, the information that must be provided, who to address it to, the timescales involved and that a client has the option to refer the complaint to the Society should the Member not provide a satisfactory resolution
- 8.3 All written complaints should be acknowledged as soon as received and no later than 7 days after. A formal response should be provided to a complaint within 14 days or, where this is not possible, the client advised of the reasons for this

and then provided with a formal response as soon as possible and no later than 28 days after the complaint is received

- 8.4 Members shall provide the same level of co-operation to either a third party or an intermediary who acts on behalf of a complainant as they would offer to the complainant
- 8.5 If complaints cannot be resolved between the Member and the Member's client within a reasonable time, then the Member shall advise the Society of the complaint. The Member shall advise the client that the complaint has been referred to the Society and provide details of the Society's complaint handling procedure, including the right of access to the IDRS Dispute Resolution Service if the complaint remains unresolved following the Society's intervention
- 8.6 Clients should be informed that, although advisable, they do not have to pursue complaints through the procedures laid out in this Code and that they may pursue other options, such as independent arbitration or court action, at any time
- 8.7 A written record should be kept of each complaint made to a Member and this should be made available on request to the Society

## **9. Disciplinary Procedure**

- 9.1 Any breach of this Code of Practice is considered by the Society as a serious matter and may result in disciplinary proceedings being instigated by the Society against the Member
- 9.2 The Society's disciplinary procedures are set out in its Complaints and Disciplinary Procedures which are deemed to be incorporated within this Code of Practice and which have been read and agreed to by the Member

I.....(full name)

of.....(company name)

a Member of the Society hereby undertake to comply with this Code of Practice in every respect and to be bound by its terms.

Signed.....

Date.....

**The Code of Practice is available in Braille, Audio or large print – for your copy please contact the Society of Will Writers on 0800 838270**