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Organisation

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Do you have any suitable law reform projects to suggest?

There are two areas which we like to address:

1. The matter of professional Will Writers and their professional status; and
2. the growing concerns amongst our profession and the consumer over the issues surrounding the 'signing off' of the Continuing Power of Attorney, both from the point of view of cost and time, both of which can cause consumers who need these services the most to "put off until later", when they could be dealt with faster and more cost effective if properly trained and indemnified Will Writers could take on the task at the point of sale.

Do you have any project to suggest that would be suitable for the Commission Bill process in the Scottish Parliament; or, in relation to reserved matters, for the House of Lords procedure for Commission Bills?

Does the Scottish Law Commission have any power over the present Continuing Power of Attorney and the 'signing off' of the documents prior to registration? You have mentioned in your document that you may work with the Law Commissioners of England and Wales to bring about change, the subject of POA's and capacity is very much in evidence in their current consultation document. The cost to the consumer, resulting in consumers probably not registering the documents, the increased time delays and the growing reluctance of GP's to actually undertake mental capacity checks should be of increasing concern for the future. Professional Will Writers who offer this service are as comfortable and confident as the majority of solicitors as it something they undertake every day when deciding on the testators capacity to make a Will. The Society can provide any additional training as required to identify capacity issues for Will Writers should it be considered necessary.

Please provide us with information about the issues with the law that you have identified:

There are cases reported where Advocates and solicitors refusing to sign off the CPA, on the grounds they did not create the original document.

GP's are themselves taking the view that it is not their 'job' rather that of a solicitor - this may be based on the time constraints that is being put on GP's with an aging population and other pressures.

Please provide us with information about the impact these issues are having in practice:

It is our belief, and this is based on feed-back from clients, that the cost especially, is delaying the donor and families from getting the documents registered early.

Please provide us with information about the potential benefits of law reform:

If the law was now amended to allow Professional Will Writers, as it is in England and Wales, the power to sign off the POA's it would mean more would be registered at a time when, if there is an issue the donor still has capacity to put matters right, rather than registering them only when the donor has lost capacity when correcting any issues becomes more prohibitive to the family. It will also speed up the system, and a Will Writer tends to spend more time with the donor than other professionals the likelihood of coercion or undue influence will be reduced.

General comments:

Following on from the announcement of the Tenth Programme on Law Reform consultation is to be launched in 2018, the Scottish Law Society are calling on the Commission to use the review to look at other areas of law which are currently being handled by "unregulated firms or persons".

The Legal Services (Scotland) Act 2010 introduced 'regulation of Will Writers' at Part 3 Chapter 2 s101, but which has never been implemented.

The Society of Will Writers view is that now that the main companies, who together were the main cause of the problems within the Scottish market have now gone, it leaves mainly only those few companies and individuals, many of who have been practicing for over 20 years, to be penalised unfairly in our judgement.

It is not our view that Will Writers are causing any problems, errors will always occur and our members are fully indemnified, and to impose any statutory regulation in these circumstances would be both unaffordable and probably devastating for individuals and families alike, and would not really achieve any better service or results in such a small market.

However, the Society is more than willing to meet with the Executive and the Commissioners to look again at the 2010 Act and work to formulate a scheme that is both affordable to the members and self-funding so the Scottish Parliament bears no cost, as was agreed in the Act