



Is there a future for the Probate practitioner ?

Probate is becoming an overcrowded market. Once considered by the newly qualified solicitors as a sleepy backwater, that view is changing. There are many new entrants into this sector of the market. Trust corporations, traditionally owned by the Banks have been around for a long time. New entrants, however are using the vehicle of a trust corporation combined with, in most cases a powerful consumer brand to enter the market. These new entrants often have a greenfield site with no embedded attitudes to delivering the service. This gives them the opportunity to introduce new working methods and pricing structures, which are not only in the interests of their clients but are benefits that are rapidly becoming the expected norm by clients.

The market is hugely fragmented and largely undervalued. Many practices provide a one stop shop for all legal services. Increasingly the client is seeking a specialist not a generalist. Clients are looking for expertise; fixed fees, regular communication and updates; frequent distributions and a process that is not unduly lengthened by a lack of knowledge on the part of the practitioner. Gone are the days when a client was content with an estate administration taking over a year. They want the money and they want it now.

There is a great deal of information available on-line and it is the role of the specialist to add value to that information. Unfortunately there is a shortage of specialists. Few practitioners specialise in estate administration and even fewer provide a service that covers the whole of England and Wales..

The Legal Services Act has opened the door. The Co-Operative Society is already undertaking probate through its own trust corporation. DAS the legal insurer has declared its intention to move into the market. How long before other well established consumer brands who have the power to move customers from one product offering to another follow suit? For many of these organisations Will writing and Probate are not just an additional revenue stream, they are a means to ensure access to the next generation of clients and so are worth investing in for the long term

One of the fundamental differences between these large institutions and the traditional solicitor undertaking Probate is their geographical cover. Traditionally solicitors service local clients, unless they are a national firm. The new entrants have no geographical limitation. They can cover the whole of England and Wales and before long Northern Ireland and Scotland. They are powerful players in this market because in many cases they have unlimited amounts of money to make the venture a success; the power to buy in expertise and IT and early access to the bereaved. It is a well known fact that the earlier contact is made with the executor the more likely the firm or company is to be appointed to administer the estate. These factors combined with a well known trusted brand make the new competition a significant and continuing threat.

Traditionally solicitors have been appointed as executors in wills and have felt that this provides them with a stream of potential future income, as without a court order, it is extremely difficult to force an executor to renounce. This stance is unsustainable in the future and clearly breaches the principle of “Treating Customers Fairly” which is being applied in an increasingly prescriptive manner by regulators. Despite the arguments that “It was what the testator wanted” or that there were good reasons for being appointed, it is often plain to the family that the only reason solicitors will not renounce is so that they can charge for administering the estate. In our experience some solicitors even charge to renounce thus destroying the argument that the testator wanted them to act. Further increasing the pressure to change, many large institutions now provide a Will writing service and naturally are going to want to promote their own trust corporations as

executors. The negative publicity involved when a solicitor refuses to renounce or even worse charges for renouncing, is impossible to ignore in a world where the rights of the customer are paramount.

Wills are however not the only way to obtain a stream of future income. The larger institutions are moving in as early as possible after the death. What is to stop funeral directors offering probate services through their own trust corporation or a third party? How long before probate is included in the funeral package?

What should solicitors do to protect themselves? They need to recognise that client's needs have changed. Clients do not want to wait a long time for the Grant application to be obtained; they want to have access to whoever is handling their case and they want quick distributions and monthly updates. Most of all they want to know how much it is going to cost. Hourly charge out rates are not client friendly and do not promote efficient working practices. Clients want transparency in solicitors charging structures.

To compete with these new entrants solicitors have several choices. They can merge, close or specialise. The impact of the credit crunch can be seen in the number of closures and mergers already taking place. Specialism provides an alternative route, but to specialise in estate administration will require them to fundamentally change their processes and outlook to compete with the consumer brands of the new market players. To sustain this expertise strategy they will need to specialise in this one area and will therefore have to divest themselves of other areas of work. Alternatively they can decide to specialise in other areas in which case they will need to divest themselves of the estate administration work by outsource it to one of the new entrants who can provide a better, cheaper, more client friendly service than they can and by doing so actually increase fee income for the practitioner.

Outsourcing to a reliable provider can reap many benefits. The profit element of the fee is guaranteed. No more writing off time that is unrecoverable. The resulting time bonus for

the practitioner should enable them to focus on their core specialism and thereby improve the overall profitability of the firm.

Client satisfaction should improve enormously since the client will receive regular updates and can call or contact the provider as often as they wish without the fear of a “ticking meter”.

The practitioner will retain his client for all other legal or financial work as a good provider will agree to refer back to the practitioner all work apart from that outsourced.

Outsourcing will also protect the firm’s professional indemnity insurance. Where a practitioner only undertakes a few estate administrations a year there is a heightened risk of something going wrong and a potential claim on the PI insurance could result. The risk is therefore reduced by outsourcing the work to experts.

When considering outsourcing there are certain fundamentals that all firms should consider. First of all what are you going to outsource ? Wills, administration of estates, Tax, Trust ? It is important to remember that the aim is to reduce costs and improve client service. Ask yourselves “ Can you do both ?” If the answer is no consider outsourcing that function. Secondly look at the financial stability of the company you are going to outsource to. You want to make sure they are an organisation with the necessary expertise and reliability and are not going to disappear over night. Remember to consider in advance what service level agreement you want for your clients. It is up to you to negotiate. Finally ask if they will white label for your firm.

Can solicitors survive in the new order ?.It is now a fast changing environment for legal services and especially for high street practices. Solicitors need to adapt and to specialise to survive. and in order to do that they need to dispose of their non-core activities. If their non-core activity includes wills and probate they should consider outsourcing to specialist providers. It’s up to solicitors to change, form new alliances or lose market share.

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