

THE SOCIETY OF WILL WRITERS CODE OF PRACTICE VERSION 2018.05

# CODE OF PRACTICE



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## 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 (Aff.SWW).
- “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 follow 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:
- a) 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.
  - b) show their membership I.D card to clients as identification upon request.
- 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 upon request.

A member can use the SWW logo to promote their individual membership of the SWW but must do so in accordance with the SWW logo rules for use.

- 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 practice 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 practice 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. Information for Clients:

4.1 Before a Client can be bound by a contract a Member, including any person acting on behalf of a Member, must give a Client details of the General and Specific Information as follows:

- a) The General Information, see below at 4.2, must be provided to the Client either before or during the meeting when the Client's instructions are accepted by the Member; and
- b) The Specific Information, see below at 4.3, must be provided to the Client not more than 5 working days after the date of the meeting at which the Member accepts the Client's instructions.
- c) Both the General and Specific Information must be clear and comprehensible to the Client and in a format that the Client agrees, for example on paper or electronically by email; so that both parties have a record of what is agreed.
- d) Should the Client require that information is provided in a special format, for example in Braille, large print or a different language, the member is responsible for the cost.

4.2 The "General Information":

Information that must be provided by the Member:

- a) The Member's name and address including details of a person acting on behalf of the Member;
- b) A copy of the Member's terms of business, as approved by SWW;
- c) Information on the key contract terms: delivery, payment, cancellation rights;
- d) Pricing information including total price and full breakdown of charges for each product or service, delivery charges, attestation charges and any other items incurring charges;
- e) Details of the Member's complaints procedures and after-sales procedures;
- f) Information about linked services such as lifetime updates and storage arrangements;
- g) A statement that the Member adheres to this Code of Practice and that a copy is available upon request.

4.3 The "Specific Information":

Information that must be provided by the Member:

- a) The Member or the person acting on behalf of the Member must provide the Client with a written document(s) giving;
- b) Clear confirmation of the Client's instructions, including details of the Client's circumstances;
- c) A Summary confirming the main characteristics of the service, advice and/or product(s) recommended by the Member to meet the Client's requirements in 4.3(b) above;
- d) Details of all relevant tax advice must be included in the Summary;
- e) The total price of the service and/or product provided;
- f) Confirmation of the delivery times for draft documents;
- g) Confirmation of completion times for signed and approved documents and;
- h) Where the client does not wish to accept your advice or where it is not possible to complete the Client's instructions either legally or practically, an explanation as to the differences between the Client's instructions and their expectations should be noted and provided to the client.

#### 4.4 Statutory Obligations:

- a) Members and their companies must uphold their obligations to the Client as required by the provisions of existing legislation, including but not exhaustively:
- b) The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013
- c) Consumer Rights Act 2015
- d) The Consumer Protection from Unfair Trading Regulations 2008 and Consumer Protection Regulations 2014
- e) Consumer Credit Act 2006
- f) General Data Protection Regulation (GDPR) (EU) 2016/679

The Member is responsible for ensuring that all documents and information given to a Client complies fully with the requirements of the relevant legislation.

#### 4.5 SWW Complaints Protocols:

Members are reminded that in the event of SWW receiving a valid complaint from a Client, the Member's adherence to the Code of Practice, including the requirements of clauses 4.1 to 4.5 inclusive will be checked to ensure that the Member has properly complied with these requirements. The Member's failure to comply may result in the Client's complaint being decided against the Member. The Member will always be required to prove compliance with the requirements of Clause 4.

## 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) CILEX Level 6 Probate Practice
- d) STEP Diploma for England & Wales (Trusts and Estates)
- e) STEP Diploma for Scotland
- f) Approval by the Society based on experience

## 6. Carrying out Will Writing Services

### 6.1

- a) A member must comply with the client's instructions using all due skill, care and expedition appropriate to the need of the client and having regard to the requirements of clause 2.5 above. When taking instructions members must agree in writing with the client when the draft and/or executable documents are to be dispatched to the client. Members must in all cases take account of the client's specific circumstances, including consideration of the client's age and health and concerns about infirmity or disability, when delivery timescales are discussed and agreed.
- b) However where circumstances occur, including those beyond the Member's control, which result in the documents being delivered outside the agreed timescales: the client must be informed and upon their request must be provided with a full written explanation by the member explaining the cause of the delays and the new timescales. In addition the client must also be given the opportunity to renegotiate or cancel the contract, with a full refund being provided should it be requested by the client.

### 6.2

- a) A Member must give the Client, at the meeting where the contract is agreed, the Notice of Right to cancel that conforms to the Consumer Contracts Regulations 2013, and see 4.2(c) above. Under the requirements of the 2013 Regulations any money paid in respect of the preparation of a Client's documents must be refunded in whole should the Client change their mind within 14 days from the date of agreeing instructions; unless the Client has signed a Cancellation Waiver of their rights to cancel. Where a Cancellation



Waiver is signed the Member is entitled to recover reasonable costs incurred from the Client if they subsequently decide to cancel the contract.

b) The 2013 Regulations provide that before the Client can be bound by the contract the Client must be given the General and Specific Information, see 4.2 and 4.3 above, including the Notice of Right to Cancel. If the Member, in breach of the 2013 Regulations, does not provide the information about the right to cancel at the meeting when the contract is agreed, the cancellation period is extended and will still apply as follows:

- 1) If the Member provides the Client with the required Notice of Right to Cancel in the period of 12 months after the contract is agreed, the cancellation period ends 14 days after the Client receives the information; and
- 2) Otherwise if the information is not given the cancellation period ends 12 months and 14 days after the day on which the period should have ended.
- 3) With the result that a Member will not be able to enforce a contract for Client work carried out until the cancellation period has ended altogether.

- 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 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 Promotional material produced by a Member which carries the Society's logo must also state the Member's adherence to the Code of Practice. A copy must be supplied to the Society upon request.
- 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 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 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. The Society's Complaints Procedures are deemed to be incorporated within this Code of Practice and which have been read and agreed to by the Member, and must be adhered to with relation to all complaints matters.

- 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 ADR 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.



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