

Unregulated legal services

Consumer law compliance guidance
for businesses

Response to consultation document

9 October 2024

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Contents

1. Introduction	4
2. Response to consultation questions	9
3. List of respondents.....	35

1. Introduction

- 1.1 This document summarises the main comments made by stakeholders to the Competition and Markets Authority's (CMA) consultation on draft consumer protection law compliance guidance for unregulated providers of will writing, online divorce and pre-paid probate services (the 'draft guidance').¹
- 1.2 It also sets out the CMA's response to these comments and, where relevant, the corresponding changes it has made to the draft guidance.² The final version of the guidance is available on the CMA website (the 'final guidance').³
- 1.3 Alongside the compliance guidance, the CMA is also publishing two short guides for consumers explaining what to consider when buying will writing services and what to look out for when buying divorce services.⁴
- 1.4 We have also issued an open letter to unregulated providers of will writing, online divorce and pre-paid probate services, calling on them to take necessary steps to satisfy themselves that they comply with consumer law.⁵

Background

Investigation

- 1.5 In July 2023, the CMA launched [an investigation into will writing and other unregulated legal services](#) (online divorce and pre-paid probate services) to gain a better understanding of consumer protection issues arising in these services.
- 1.6 This followed initial research – including a review of Citizens Advice complaint data – which identified potential areas of concern in relation to the provision of

¹ [Draft consumer protection law compliance guidance for unregulated providers of will writing and other legal services - GOV.UK \(www.gov.uk\)](#)

² The Government's Consultation Principles 2018 state that responses to consultations should be published in a timely fashion and within 12 weeks of the consultation. Where this is not possible an explanation should be provided. This response to consultation document is being published outside of the 12 week period since the consultation ended. This is due to the announcement of the general election on 22 May 2024 and the resulting pre-election period of sensitivity, which meant the CMA had to delay its engagement with stakeholders about the consumer guides it has developed for will writing and online divorce services.

³ See <https://www.gov.uk/government/publications/unregulated-legal-services-consumer-protection-law-guidance>

⁴ See <https://www.gov.uk/government/publications/what-to-consider-when-buying-will-writing-services> and <https://www.gov.uk/government/publications/what-to-look-out-for-when-buying-divorce-services>.

⁵ See <https://www.gov.uk/government/publications/open-letter-to-unregulated-legal-services-providers>

the relevant services, including misleading advertising, unfair contract terms, pressure selling, and lack of transparency on costs.

- 1.7 During the investigation, we undertook a range of activities, including:
- analysing the submissions we received from a variety of sources, including from consumers, stakeholders and from interested parties within the sector, at the launch of the project;
 - gathering and reviewing information from unregulated providers of will writing, online divorce, and pre-paid probate services;
 - analysing complaint data;
 - meeting with individual stakeholders; and
 - engaging with local Trading Standards Services.
- 1.8 Our investigation highlighted a number of practices which gave rise to potential risks for consumers and potential breaches of consumer protection law in the provision of the three types of service.

Draft guidance

- 1.9 As part of its role, the CMA produces advice and guidance for businesses to clarify their legal obligations and promote compliance.
- 1.10 The evidence gathered during our investigation led the CMA to propose that guidance to unregulated providers of will writing, online divorce, and pre-paid probate services would be beneficial. We considered that it would help both fair dealing businesses and the consumers who purchase these services. We also discussed this proposal with a number of stakeholders and received support for the proposed guidance.
- 1.11 This work aligns with the CMA's strategic ambition, as set out in our annual plans of both 2023/24 and 2024/25, of ensuring that people can be confident they are getting great choices and fair deals. In particular, this work is focussed on protecting people from harmful practices.

Consultation on draft guidance

- 1.12 Between 30 April and 13 June 2024, we carried out a public consultation on the draft guidance. This was published on the CMA website, and publicised both to, and by, a range of stakeholders, including consumer groups, regulatory and self-regulatory bodies, and individual businesses.

1.13 We received 37 formal responses to the public consultation. The list of respondents who agreed to be named is set out in section 3 of this document. We thank all respondents for their constructive engagement in this consultation.

Actions following consultation

1.14 We have carefully considered all the responses, but we do not in this document address every point made in them or set out every change we have made to the final guidance.⁶ Instead, we focus on the main themes which emerged during the consultation, and a summary of these is set out in section 2 of this document. We also summarise the CMA's response to these points and explain whether, and if so how, we have amended the final guidance to reflect any of the comments received.

1.15 We are now publishing our final guidance. We may review the guidance from time to time, to ensure that it remains current and relevant to businesses.

1.16 Since the CMA consulted on the draft guidance, the Digital Markets, Competition and Consumer Bill has received royal assent. When the relevant provisions come into force⁷, the Digital Markets, Competition and Consumer Act 2024 ('DMCC Act') will give the CMA powers to determine itself whether consumer law breaches have occurred, and the ability to impose fines and order firms to pay compensation to affected consumers.

1.17 The DMCC Act contains broadly similar prohibitions against unfair and misleading commercial practices as are currently contained in the Consumer Protection from Unfair Trading Regulations 2008.

1.18 As we note and explain further in the guidance itself, the DMCC Act also introduces some other changes to consumer protection law that will affect some of the issues covered in the guidance. Examples include:

- a) new protections for consumers who enter into 'subscription contracts', which are likely to be relevant to will storage and will update products;
- b) a specific prohibition on 'drip pricing', which is the practice of advertising a price but then introducing further additional fees later in the sales process; and

⁶ Some of which are changes made for consistency and / or clarity, including where changes made in response to points made during the consultation have made further consequential amendments to the guidance appropriate.

⁷ The Government expects to commence these provisions in April 2025.

- c) new regulations applying to consumer savings schemes, which could be relevant to businesses offering pre-payment products.

Next steps

- 1.19 The main purpose of the guidance is to help businesses understand and comply with their existing obligations under consumer law.
- 1.20 With this in mind, we will work closely with key stakeholders in the sector (including trade bodies) to help us in disseminating, and drawing businesses' attention to, our guidance, as well as in setting out our expectation that businesses will review and, if necessary, make changes to their practices, including their marketing materials, to ensure compliance with consumer law as soon as possible. The guidance has also been published on the CMA's website.
- 1.21 We are mindful that the majority of businesses currently in the sector are SMEs. To help businesses understand our key principles, we have sought to improve the overall appearance and layout of the final guidance to make it more accessible and easier to navigate, and to help businesses to quickly and easily consider what changes they might need to make to their marketing materials and practices.

Compliance review and enforcement

- 1.22 We expect to carry out a compliance review in due course, to assess businesses' compliance with consumer law in relation to the provision of will writing, online divorce and pre-paid probate services.⁸ A compliance review would involve the analysis of information from a range of sources, including from stakeholders such as consumers, businesses, Trading Standards Services, as well as businesses' websites.
- 1.23 The CMA will also continue to monitor businesses' compliance as part of its general intelligence-gathering functions (for example, through the receipt of complaints or other intelligence about a trader).
- 1.24 Should infringements be identified, the CMA (or another consumer enforcement body)⁹ may decide to take action. This does not mean that

⁸ Subject to the [CMA's prioritisation principles](#).

⁹ Including, for example, Trading Standards Services.

enforcement action must, or will, be taken in every case, and decisions will be taken in accordance with the CMA's prioritisation principles.

- 1.25 At present, only a court can determine whether a business has infringed consumer protection law. As stated at paragraph 1.16 above, when the relevant provisions come into force, the DMCC Act will give the CMA powers to determine itself whether breaches have occurred and to issue fines.

2. Response to consultation questions

- 2.1 The CMA's consultation on its draft compliance guidance for unregulated providers of will writing, online divorce, and pre-paid probate services invited responses to the questions shown in bold below.
- 2.2 We have carefully considered all the responses received and the representations made to the CMA as part of the consultation.
- 2.3 The CMA's response to the main issues highlighted is included after each question.
- 2.4 It is also worth noting that a number of consultation responses included points relevant to several of the questions asked. To avoid undue repetition, we have not repeated every point under every question. Instead, we have described the point under the question to which we think it most closely relates. This is in addition to considering it more generally for all aspects of the guidance.

Questions on scope and content

Does the draft guidance cover the most important consumer protection law issues relating to unregulated will writing, online divorce and pre-paid probate services? If not, what additional issues should the compliance guidance address and why?

- 2.5 The majority of respondents agreed that the guidance covered the most important issues, or did not comment.
- 2.6 Most respondents focussed on how the draft guidance applies in the context of will writing services. This is consistent with the fact that the number of businesses providing will writing services is greater than those providing online divorce and/or pre-paid probate services.¹⁰
- 2.7 The draft guidance is directed to unregulated providers of will writing, online divorce, and pre-paid probate services. Several respondents suggested that the guidance should instead be aimed at all providers, including businesses regulated by an approved legal regulator. This would include, for example, solicitors regulated by the Solicitors Regulation Authority (SRA).

¹⁰ We note that research carried out by Frontier Economics for the Solicitors Regulation Authority, estimated the number of unregulated providers found in each category of unreserved legal services, and found that the number of providers was highest in the area of 'wills and estate administration': Frontier Economics (2023) [Understanding the Unreserved Market \(sra.org.uk\)](#), see Table 1 on page 24.

- 2.8 Respondents highlighted that the general requirements of UK consumer law also apply to regulated businesses, and that cases of non-compliance with consumer law are not confined to unregulated providers.
- 2.9 Some respondents were concerned that by focussing on unregulated providers, the guidance implies that unregulated providers are inherently worse than regulated providers.
- 2.10 Relatedly, some stakeholders also noted that in England and Wales solicitors employed by unregulated providers of legal services are permitted to provide services to the public, and that in such cases the solicitor will be personally regulated by the SRA. Stakeholders suggested that this should be made clear in the guidance.
- 2.11 We also received comments regarding additional legal services that the guidance could cover. This included suggestions for the guidance to be expanded to cover issues such as the provision of tax advice, pre-paid funeral plans and lasting power of attorney (LPA).

CMA response

- 2.12 We have carefully considered the suggestions made by respondents in relation to extending the scope of the guidance.
- 2.13 Although consumer law applies widely, our primary aim in preparing the guidance is to help unregulated providers of will writing, online divorce, and pre-paid probate services to understand and comply with their obligations under consumer protection law.
- 2.14 When producing advice and guidance for business, the CMA generally focusses on sector-specific issues that have emerged from an in-depth review or investigation of a particular market from which we have obtained relevant expertise. In this instance, our investigation began after we had observed complaints and concerns relating to the provision of online legal services by unregulated providers, and specifically in the areas of will writing, online divorce and pre-paid probate services.
- 2.15 This does not mean that consumer protection law does not apply to regulated services providers. Nor does it mean that unregulated providers are worse than regulated ones. The CMA's previous legal services market study in 2016 and follow up review in 2020 identified growth within the marketplace of unregulated providers of legal services and the important contribution these providers could make in offering services that consumers benefit from in

competition with other providers¹¹. But, given this growth, it is important that, like all providers, they comply with consumer protection law. Taking account of the complaints data we had seen, and the potential for significant consumer harm, we decided to investigate the issues further. Through our stakeholder engagement we received widespread support for our proposal to issue specific CMA compliance guidance for unregulated businesses providing will writing, online divorce, and pre-paid probate services.

2.16 Accordingly, we have not amended the scope of the guidance. However, we have amended the wording to:

- ensure that its scope is clearly explained (see paragraphs 2.7 to 2.8 and 2.16);
- ensure that the guidance is clear that regulated providers must also meet their legal obligations (including compliance with consumer law), and in addition must meet the requirements of professional regulation (footnote 17);
- explain the position regarding solicitors employed by unregulated firms, and signpost the relevant SRA guidance applicable in England and Wales (footnote 22); and
- expressly confirm that the final guidance should not be taken as a general comment on the quality of unregulated legal services (paragraph 2.7)

2.17 As to whether the scope of the guidance should extend to additional issues or services such as tax advice, pre-paid funeral plans and LPAs, we recognise that unregulated firms providing will writing services may also provide these additional legal services. The draft guidance notes that consumers should be informed when issues arise that require other professional help to resolve (for example, tax issues). We have not added any additional detail on services other than those that we discussed in our draft guidance, as these are outside of the scope of our investigation. The guidance instead focusses on the issues relevant to the sectors we have specifically looked into.

¹¹ [Legal services market study: Final report \(publishing.service.gov.uk\)](#), see, for example, paragraph 70 and [Final report \(publishing.service.gov.uk\)](#) – see paragraph 5.41

Is the draft guidance clear and helpful on the relevant legal principles and the issues of concern the CMA has identified? If not, how could it provide guidance on those principles and issues more clearly and helpfully?

- 2.18 The majority of respondents agreed that the guidance was helpful and clear on the principles and issues set out by the CMA, or made no comment on the issues identified.
- 2.19 We received a number of comments and/or suggestions regarding how the guidance could address certain issues more clearly and helpfully. These are summarised below.

Material information

- 2.20 In general, there was support among stakeholders for the focus within the guidance on ensuring that consumers have the information they need to make informed decisions.
- 2.21 A number of stakeholders commented on paragraphs 3.3 to 3.5 of the draft guidance. These paragraphs explain that it is unlawful to mislead consumers by failing to give them the information they need to make an informed decision.¹² The draft guidance listed the categories of information that the CMA considers will usually be material information. These include:
- an explanation that the business is not regulated by an approved legal regulator; and
 - details of the qualifications the individual(s) providing the relevant service(s) have for doing so (or an explanation that they are unqualified).
- 2.22 Many respondents broadly supported the inclusion of the above points within the scope of material information but suggested that the CMA should go further, for example, by requiring businesses to explain or provide evidence of their regulatory status.
- 2.23 However, several stakeholders strongly disagreed that these categories should be considered to be material information. These stakeholders expressed concern that these requirements were unfair, unnecessary and would potentially cause confusion among consumers.
- 2.24 A number of respondents understood paragraphs 3.3 to 3.5 of the draft guidance to be introducing a positive legal obligation that such information

¹² [Consumer Protection from Unfair Trading Regulations 2008 \(CPRs\) Regulation 6.](#)

should be provided in all circumstances. Some respondents suggested that it was improper 'overreach' for the CMA to impose new legal obligations on unregulated firms.

2.25 In particular, respondents expressed concerns that:

- (a) It was not necessary or appropriate for providers to describe themselves as 'unregulated' when parliament has not decreed that regulation is required for the provision of all legal services.
- (b) Consumers may misconstrue a statement that a particular provider is not regulated, interpreting it to mean that they the service is of lower quality. This could have the effect of limiting consumer choice and hampering competition in the market.
- (c) Information about the provider's qualifications should always be viewed in context – will writers may have considerable experience, while a qualified solicitor may have very little experience in drafting wills. Some respondents suggested that disclosure of compliance with a self-regulatory body's code of practice should suffice in this context.
- (d) The statement that providers should disclose information regarding 'qualifications' was insufficiently certain, as it was not clear what qualifications would be sufficient for this purpose.
- (e) The services on offer by different providers come with different levels of complexity and risk, and different disclosures may be appropriate in different circumstances.

2.26 Many stakeholders also made suggestions for expanding the list of material information outlined in the guidance, particularly for those areas where there may be some consumer confusion around the differences between regulated providers and unregulated providers. In particular, we received requests to say that unregulated business should be required to provide consumers with:

- a) details of whether the provider holds adequate insurance to cover any potential claims; and
- b) details of any redress mechanisms available to consumers if things go wrong.

2.27 Finally, one respondent suggested that providers could give consumers a document – similar to the 'Key Facts Illustration' which a mortgage broker operating under Financial Conduct Authority (FCA) regulations must provide to their client - setting out within this, as a minimum, details of the services to

be provided, cancellation rights, professional indemnity insurance, and the provider's complaints procedure.

Cancellation rights and refunds

- 2.28 A few stakeholders commented on paragraphs 3.49 to 3.51 of the draft guidance, which cover the 'Terms relating to the right to cancel'. There was a request for clarification of the legal position regarding cancellation rights and refunds, particularly in respect of the rights of consumers who have purchased a legal service away from a business premises to cancel their purchase (and receive a refund) within 14 days. In particular, stakeholders:
- asked for the guidance to be clearer about the possibility of consumers waiving their cancellation rights in urgent situations, for example deathbed wills; and
 - sought clarification as to the conditions under which consumers can cancel services and how businesses can manage this process.

Subscriptions

- 2.29 A few stakeholders asked for further information to be outlined within the guidance about how traders should contact consumers prior to the renewal of subscription services, including requests for additional details about what would constitute 'reasonable steps' in this context.

Use of prepayments

- 2.30 Some stakeholders, specifically in the context of will writing services, provided comments about the reference to prepayment terms in the guidance.
- 2.31 For example, some stakeholders noted that providers need to invest significant time and effort in the early stages of the will writing process. If payment is restricted until a later stage, providers may need to increase prices in order to account for the costs of debt recovery.
- 2.32 We also heard that, when will writing self-regulatory bodies receive complaints, these often relate to circumstances where the payment has been made by the consumer, but the service has not been delivered within a specified timeframe or to the consumer's satisfaction.

Reasonable care and skill

- 2.33 Paragraph 3.57 of the draft guidance states that ‘where unregulated providers offer substantively the same service, consumers are entitled to expect that there will be no distinction between regulated and unregulated providers as to the level of care and skill used’.
- 2.34 In response, stakeholders have commented that:
- (a) there is no legal basis to assert that consumers should automatically get the same level of service from two parts of the market;
 - (b) there is no single ‘regulated’ standard of care that firms can be measured against;
 - (c) if unregulated providers are subject to a duty of care and skill, it should be recognised that this includes an obligation to offer additional necessary services; and
 - (d) if regulated and unregulated providers must provide equivalent services, there is no need for unregulated providers to disclose (as material information) that fact that they are not regulated.

Aggressive sales practices

- 2.35 Paragraph 3.61(d) of the draft guidance notes that the use of disclaimers may amount to an aggressive commercial practice. A couple of respondents asked for clarificatory wording and examples to be added to the guidance regarding the use of disclaimers: one respondent noted, for example, that the code of practice of at least one self-regulatory body suggests that it is best practice to require a consumer to sign a disclaimer when they decline advice.
- 2.36 Paragraph 3.61(e) of the draft guidance notes that exploiting a consumer’s misfortune in order to influence their decision with regards to the service may amount to an aggressive commercial practice. Respondents noted that it would be helpful to understand the CMA’s position on the difference between providing genuine guidance and advice to consumers in relation to complex legal concepts on the one hand, and exploitation and aggressive up-selling on the other.

CMA response

Material information

- 2.37 Consumer protection law requires that people are not misled and can make informed decisions about what they buy. It prohibits misleading actions and misleading omissions by businesses. A failure to provide material information (that is, information which the average consumer needs, according to the context, to take an informed transactional decision) may amount to a misleading omission where it causes or is likely to cause the average consumer to take a transactional decision he would not have taken otherwise.¹³
- 2.38 Whether or not particular information is ‘material’ will depend upon the specific circumstances of the transaction and the specific legal services being offered. The list set out at paragraph 3.5 of the draft guidance is the CMA’s view of the information that would ‘usually’ be necessary for the consumer to take an informed transactional decision; however, this assessment must be made by individual businesses on a case-by-case basis.
- 2.39 We have amended the final guidance to clarify this, and to make clear that businesses are more likely to comply with the law if they provide the information set out at paragraph 3.10 to consumers. We have also added text to clarify that this is part of businesses’ obligations not to mislead consumers (by action or by omission) under the CPRs.
- 2.40 For the avoidance of doubt, the list at paragraph 3.10 of the final guidance does not create a standalone positive legal obligation, and does not extend or expand the scope of the obligations on unregulated providers of legal services. Rather, it is a statement of the CMA’s view on how unregulated businesses can ensure that they comply with their existing obligation not to mislead consumers ‘by omission’.
- 2.41 We have carefully considered the comments received in respect of the specific categories of information set out at paragraph 3.10, and made changes where appropriate. Our position in respect of each category is summarised below.

¹³ CPRs, Reg 6.

(i) Regulatory status

- 2.42 As set out above, some respondents raised concerns regarding paragraph 3.5(g) of the draft guidance ('an explanation that the business is not regulated by an approved legal regulator').
- 2.43 The CMA considers that, in many circumstances, the business's regulatory status will constitute material information, and therefore the absence of this information could be misleading.
- 2.44 The broader market context is relevant to this assessment: for example, we have heard from stakeholders who reported that they were aware of a degree of general consumer confusion regarding an unregulated provider's regulatory oversight and consumers' ability to seek redress if needed. This was discussed in the section 'Claims relating to the nature of services provided' in paragraphs 3.14 to 3.16 within the draft guidance. Our review of the legal services market study in England and Wales, in 2020, also referenced the lack of consumer awareness regarding the regulatory status of their providers.¹⁴ It is important and, in the CMA's view, in line with consumer protection law, that consumers know what services they are buying and what to expect from them. That can mean giving people information about a business's unregulated status.
- 2.45 We note that some respondents expressed concerns that consumers would infer from a statement that a business is not regulated that the service must be of lesser quality, and that this would have a negative impact on competition in the market. In this respect, we note that well-informed consumers are in a better position to choose between the various options available to them in the market, which in turn facilitates competition and innovation.¹⁵ Unregulated providers who provide prospective consumers with a clear and detailed explanation of their services (including the fact that they are not regulated by a legal regulator), alongside an explanation of the benefits of choosing an unregulated provider (which may include cost, specialised knowledge and experience, and an innovative service) will help to promote consumer confidence in the market.

¹⁴ [Final report \(publishing.service.gov.uk\)](#), see paragraph 5.42

¹⁵ [Consumer protection: enforcement guidance \(CMA58\)](#), 17 August 2016, paragraph 2.2. See also CMA's [Legal services market study, Final Report](#), 15 December 2016, paragraph 16.

2.46 In light of the above, we have retained this category in the list at paragraph 3.10 of the final guidance. In line with comments received, we have amended this sub-paragraph to include reference to membership of any self-regulatory bodies.

(ii) Qualifications

2.47 Some respondents raised concerns regarding paragraph 3.5(h)) of the draft guidance ('details of the qualifications of the individual(s) providing the relevant service(s) have for doing so (or an explanation that they are unqualified)').

2.48 The CMA considers that, in many circumstances, information about a provider's qualifications and experience will constitute material information. Such information is necessary for consumers to make an informed decision about whether an individual is a suitable person to assist with their legal needs.

2.49 We appreciate that formal qualifications are not the only route by which individuals can establish their suitability; we have heard from many respondents that experience and commitment to continued professional development are very important. For this reason, we have expanded sub-paragraph 3.10(h) to cover 'experience, membership of a regulatory or self-regulatory body, or professional training' in addition to formal qualifications.

2.50 Our final guidance does not set out specific details about the qualifications or training standards that unregulated providers should meet. While we recognise there may be particular qualifications or training standards – especially in the will writing sector – that may be viewed as more comprehensive than others, we do not consider it is appropriate for the CMA to give a view on what may constitute the relevant sector specific standard that providers should meet, outside of the legal provisions that are within our remit to enforce and provide guidance about.

(iii) Complaints handling / redress and insurance

2.51 Several respondents noted that it is important that consumers are provided with an explanation of the available options for redress in the event of substandard service or negligence. As noted above, stakeholders reported that consumers are frequently unaware of the differences between regulated and unregulated providers in this respect.

2.52 Relatedly, several respondents suggested that consumers ought to be aware of whether or not a provider holds professional indemnity insurance. In the

context of will writing, we were told that insurance is a requirement for membership in the applicable self-regulatory bodies.

- 2.53 The CMA agrees that, in the context of unregulated legal services, consumers will usually require information about the ‘risks’ of a potential service in order to make an informed transactional decision, including what options may be available to them in terms of compensation and support if things go wrong and/or they are unhappy with the service that they receive. Accordingly, we have updated the list at paragraph 3.10 of the final guidance to include ‘details of your complaints handling procedure and what (if any) other routes of redress are available to consumers’, and ‘an explanation of whether the business holds professional indemnity insurance’.
- 2.54 Finally, we do not consider it is appropriate for the CMA to prescribe the exact format in which material information is provided to consumers. Our guidance is already clear that material information should be provided to consumers in a clear, intelligible, unambiguous, and timely way before they make decisions. The law also requires businesses to provide certain pre-contract information in a clear and comprehensible manner. It is for providers to decide exactly how they meet this requirement.

Cancellation rights and refunds

- 2.55 We have amended the guidance to clarify that businesses that wish to provide services within the 14-day ‘cooling off’ period should ensure that they obtain an appropriate waiver that fulfils the statutory requirements.¹⁶
- 2.56 We have also added a footnote to clarify that if the consumer has requested early performance and then cancels during the 14-day period but before the service has been completed in full, the consumer would need to pay a proportionate amount for the service (for example, initial advice) that had been supplied.¹⁷
- 2.57 One stakeholder was concerned that it would not be practical for businesses to wait 14 days to start performing a service on receipt of an order. In this respect, we note that businesses can provide services within that period where the consumer requests them. But the relevant provisions of the CCRs (eg about the requirements for a consumer validly to waive their rights) apply,

¹⁶ [The Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013 \(CCRs\), Regulation 36.](#)

¹⁷ CCRs, Regulations 29 and 36.

with few exceptions, to all distance and off-premises contracts between a trader and a consumer and they must be met.¹⁸

- 2.58 We have not included suggestions for standardised language regarding waivers (as suggested by one respondent), as we consider this to be a matter for individual business to determine.

Subscriptions

- 2.59 We have updated the guidance to include further details about the relevant provisions of the DMCC Act which will, once the relevant provisions commence,¹⁹ introduce new obligations for traders offering services on a subscription basis.
- 2.60 We have not amended the guidance to specify what would (and would not) constitute ‘reasonable steps’ in the context of informing consumers about upcoming subscription renewals. What is reasonable will vary depending on the situation (including, for example, the duration and price of the subscription), and it is for businesses to decide how they best meet this requirement.

Use of prepayments

- 2.61 We have amended the final guidance to clarify that the primary concern around prepayment terms is where businesses seek prepayment of large sums of money upfront in return for services to be delivered at a later time.
- 2.62 We have also included a new footnote with a link to the CMA’s guidance on unfair terms in consumer contracts. That guidance (which is summarised in footnote 57) states that there is unlikely to be an objection to partial prepayments, which fairly reflect the business’s expenditure in carrying out the contract.

Reasonable care and skill

- 2.63 The statement at paragraph 3.57 of the draft guidance intended to convey that, in the specific circumstances where unregulated providers offer substantively the same service as regulated providers, the same standard of care and skill will be expected. This does not, however, amount to an obligation on unregulated providers to supply the same services.

¹⁸ CCRs, Regulation 27. The relevant exceptions are set out at Regulation 27(2)–(3).

¹⁹ See paragraph 1.16 and footnote 7 above.

2.64 We have revisited this paragraph in light of the comments received. In this context, the comparison between regulated and regulated providers is not essential to the key point, which is that providers must use reasonable care and skill. To avoid confusion, we have therefore amended paragraph 3.64 in the final guidance to remove the reference to regulated and unregulated providers offering the same service.

Aggressive sales practices

2.65 As respondents have identified, in most circumstances the use of disclaimers is unproblematic.

2.66 Our specific concern, which reflects complaints data we have reviewed, is that some businesses may be requiring consumers to sign disclaimers as a means of pressuring them into purchasing services that are unnecessary and unsuitable. In this scenario, the use of a disclaimer may be considered to be an aggressive commercial practice. We have amended the final guidance to make this clear.

2.67 The wording in the draft guidance regarding exploiting a consumer's misfortune in order to influence their purchasing decisions was intended to reflect the language in regulation 7 of the CPRs. Regulation 7(2)(c) states that, in determining whether a commercial practice uses harassment, coercion or undue influence, account will be taken of the exploitation by the trader of any specific misfortune or circumstance of such gravity as to impair the consumer's judgement, of which the trader is aware, to influence the consumer's decision with regard to the product. We have amended the text at paragraph 3.68(e) to better reflect the statutory wording and to frame this in the context of the relevant services.

2.68 We would highlight that the guidance includes a reference to Chapter 8 of the [Guidance on the Consumer Protection from Unfair Trading Regulations 2008](#). Respondents who are concerned about whether their selling practices may be considered aggressive may wish to review this guidance.

The draft guidance sets out a number of 'do and don't' checklists for businesses to follow. Are these the right ones? If not, what others would help businesses comply with consumer protection law and why?

2.69 The majority of respondents stated that the checklists in chapters 4 and 5 of the draft guidance were clear and helpful, or made no comment.

2.70 In general, given the overlap between them, many of the comments outlined above, in relation to the legal principles within the guidance, were also relevant to the 'do and don't' checklists and vice versa.

- 2.71 One respondent suggested that we expand the checklists within chapter 5 of the guidance (Online divorce) and that we should add checklists to chapter 6 of the guidance (Pre-paid probate).
- 2.72 Some respondents asked that we clarified certain points, or made suggestions on additional information to be included.
- 2.73 We received a number of suggestions for additional issues that should be included in the 'Do' column of the checklists, including, for example, to make it clear to traders that they should:
- provide details of their complaints processes and any redress mechanisms available to consumers;
 - display the total cost of their services inclusive of VAT (as opposed to quoting prices 'plus VAT');
 - ensure the services they offer meet the requirements of the consumer, and of the legal system where they will be provided; and
 - not only advise consumers of how they can cancel any subscription services, but also ensure it is easy for consumers to do so in practice.
- 2.74 Respondents also made suggestions for points to be added to the 'Don't' column of the checklists in the guidance. For example, making it clear that traders should not:
- advertise 'unrealistically low prices' such as wills for £20 or less;
 - use the purchase of a one-off service to 'opt-in' a consumer to a subscription service;
 - use terminology in promotional or sales materials that cannot be objectively supported, for example 'lawyers', 'legal team', 'experts' and 'specialists'; or
 - use the company name on client documentation in a misleading manner giving the incorrect impression that company is regulated when in fact it is not.

CMA response

2.75 As we note in the next section below, the ‘do and don’t’ checklists are not intended to be an exhaustive list of practices for traders to follow. As such we have not included all of the suggestions made within the checklists set out in our final guidance. Nonetheless, we have expanded on and added to the ‘do and don’t’ checklists, specifically to build on the principles set out in chapter 3 of the guidance, to further support businesses to quickly and easily consider how they can comply with their obligations and what changes they might need to make.

2.76 In particular, we have:

- clarified the wording in relation to a trader’s obligations to perform the service with reasonable care and skill;
- clarified the wording in relation to misleading comparisons for online divorce providers;
- amended the wording in relation to providing consumers with material information to include the qualifications of the provider and their employees; and
- added an explanation that the provider should ensure the products and services it supplies should be suitable for the jurisdiction they are marketed for.

In any event, are the ‘do and don’t’ checklists clear and easy to follow? If not, how can they be improved?

2.77 The majority of the respondents felt that the checklists were both clear and easy to follow or did not comment.

2.78 A couple of respondents suggested that the layout of the ‘do and don’t’ checklists could be improved. One suggestion was to integrate the checklists, currently in chapters 4 and 5 of the guidance, into chapter 3 (for example, as a quick-reference summary of key points following each section, or sub-section). Another suggestion was for the checklists to be split into different tables.

2.79 We also received a suggestion to add the use of visuals and colour to the presentation of the checklists to encourage greater engagement among providers with the guidance.

2.80 Finally, we also heard from a respondent that some businesses may view the checklists as being exhaustive lists and thus may fail to be mindful of other practices and the over-riding principles of consumer protection law.

CMA response

2.81 The CMA is pleased that most respondents found the checklists in the guidance to be helpful. We are also grateful for the specific suggestions we received about how we might improve them.

2.82 We are conscious that the majority of businesses in the sector are SMEs who may have a limited prior understanding of consumer protection law. We have therefore amended the format and presentation of the final guidance to make it more accessible and easier to navigate. We hope this will mean that every business can easily understand their obligations under consumer protection law and what they must do in order to comply with those obligations.

2.83 As part of the changes we have made, we have used a different layout and style to make the 'do and don't' checklists easier to follow.

2.84 We have also amended the wording in paragraph 4.4 of the final guidance to reflect the fact that the 'do and don't' checklists are not exhaustive.

Questions on case studies

To help businesses engage with the compliance guidance and with consumer protection law compliance more generally, we have included a range of case studies. Are the illustrative examples provided in the draft guidance helpful? If not, why not? How could they be improved?

2.85 The majority of respondents stated that they thought the case studies were clear and helpful, or did not comment.

2.86 Some respondents raised specific queries and drafting suggestions in relation to some of the examples in the draft guidance, including suggestions about how the case studies could be improved. For example:

- One respondent highlighted that in 'Wills example 1: Misleading claims regarding involvement of solicitors and regulatory oversight' the case study gave two statements, but only discussed one of these and why it was potentially misleading.
- Some respondents commented on the case study 'Wills example 4: potentially unfair term enabling price increases'. For example, one respondent commented that the difficulties of pricing executor services

many years in advance of a testator's death, and the factors which might alter a reasonable fee, should not be underestimated. The same respondent noted that hourly rates are not an appropriate mechanism for calculating the price a customer pays, and could rarely result in fair value being delivered.

CMA response

2.87 The CMA is pleased that most respondents found the case studies in the guidance to be helpful. We are also grateful for the specific suggestions we received about how we might improve the illustrative examples.

2.88 We have made changes to some of the examples to reflect amendments made to the relevant corresponding principles and specific comments from respondents. This includes:

- amending wills example 1 to explain why both the statements in the example are likely to mislead consumers;
- clarifying the language used in wills example 2 about pressure selling techniques;
- removing the original wills example 5, and expanding wills example 4 instead to emphasise the most important points (for example, the need to give consumers clear and accurate information about the fees that will be charged for professional executor services);
- adding a new wills example 6 to provide an illustrative example of where an unregulated provider uses a third party to carry out services; and
- making minor changes to clarify the language used in the online divorce example 1.

Are there any additional or different illustrative examples that would help businesses to understand how to comply with their obligations under consumer protection law? If so, what would these cover and why? If possible, provide examples of when these issues would arise.

2.89 The majority of respondents did not have any comments regarding any additional case studies or did not comment.

2.90 A couple of respondents stated that the case studies did not represent the cases or complaints that they had seen or dealt with, offering to work with the CMA to develop alternatives.

- 2.91 Some respondents requested additional case studies on specific issues, such as cancellation rights, upselling of additional services and about unregulated businesses which share a similar trading name and come under the same company group structure as a regulated business.
- 2.92 We also received comments from one respondent who felt that whilst the will writing chapter contained many useful case studies, there was a lack of comparable examples within the online divorce and pre-paid probate chapters.

CMA response

- 2.93 To ensure that the guidance is easy to understand, it focusses on the key principles that businesses need to be aware of, and follow, supported by practical illustrative examples of how they can be applied in different situations.
- 2.94 The case studies set out in the draft guidance were based on the information and evidence we gathered during our investigation. While we recognise they may not cover all of the potential types of issues that have occurred or do occur, our intention is not to provide an exhaustive or comprehensive list of examples, but rather to illustrate for businesses some of the practices that would, in the CMA's view, fall foul of the law.
- 2.95 As set out above, we have opted to remove what was previously 'wills example 4', and to add a new 'wills example 6' in relation to third party providers.

General and additional issues

Are there any aspects of the draft guidance that you consider need further clarification or explanation, and why? In responding, please specify which section of the draft guidance (and, where appropriate, the issue) each of your comments relates to.

- 2.96 The majority of respondents either did not feel further clarification or explanation was required, or made no comment.
- 2.97 Some respondents made suggestions for expanding and clarifying the guidance. These are summarised below.

Pre-paid probate

- 2.98 A few respondents highlighted the problems which exist in relation to pre-paid probate services, echoing the concerns identified in chapter 6 of the guidance.

Respondents encouraged the CMA to take firmer line in relation to these services, for example by advocating for them to be banned or subject to regulation (as happened previously in relation to funeral plans).

- 2.99 One respondent suggested that the chapters on pre-paid probate and divorce within the draft guidance were too limited and should be expanded, in a similar manner to the guidance chapter on will writing.
- 2.100 Another respondent highlighted that where providers refer to fees for 'lifetime' services the guidance should require firms to be clear that 'lifetime' means the lifetime of the firm, not the consumer. It was suggested that the guidance chapter on pre-paid probate be expanded to include other 'lifetime' services.

Differences between UK nations

- 2.101 Some respondents noted that there were differences within the United Kingdom as to the specific legal detail and terminology used when discussing wills, divorce and probate services. This was particularly relevant to Scotland, but also applied to Northern Ireland.
- 2.102 These differences also extend to the relevant legal regulatory bodies operating in these jurisdictions. Respondents asked if the CMA could provide additional clarity and reflect any national differences throughout the guidance, including to ensure providers are selling products fit for each different jurisdiction or making it clear within their marketing materials where this is not the case.
- 2.103 Scottish stakeholders also highlighted the Regulation of Legal Services (Scotland) Bill, which proposes to introduce a register for unregulated service providers and provide additional powers to the Scottish Legal Complaints Commission (SLCC) to handle complaints by consumers of unregulated providers.

Other issues

- 2.104 A few respondents sought clarification on:
- a) cases where unregulated providers subcontract and/or provide additional services through third party firms or to companies in the same corporate group as them – including the information providers should give consumers in these situations; and
 - b) the section of the guidance which discussed online reviews and in particular the reference to businesses deciding to 'cherry-pick' positive consumer reviews over negative ones.

CMA response

Pre-paid probate

- 2.105 We have made minor changes to the pre-paid probate chapter (chapter 6) of the guidance, as we have done more generally in the guidance, to reflect the fact that the DMCC Bill is now the DMCC Act.
- 2.106 In our view, the guidance already sets out the key issues in relation to pre-paid probate and the practices which would likely be a breach of consumer protection law. The scope of the different guidance chapters reflects the findings of our investigation and the issues we believe are important to highlight to providers in relation to each of the different services.
- 2.107 As per paragraph 2.17 above, we have not included additional details about services outside of those that we discussed in our draft guidance, as these are not within the scope of our investigation.
- 2.108 With respect to whether pre-paid probate should be banned or regulated – this is a matter for Government. We have outlined in the guidance the way we think consumer protection law applies to these services, including the difficulty in providing them in accordance with the law at all. We will continue to monitor the pre-paid probate market, including as part of any compliance review that we may carry out and consider what if any further steps may be appropriate.

Differences between UK nations

- 2.109 In light of the comments received we have amended the guidance, where relevant, to better reflect differences across the UK. In particular, we have highlighted within the ‘Reasonable care and skill’ section of the guidance that providers must ensure that their products meet the requirements of the jurisdiction they will be used in.

Other issues

- 2.110 We have made some changes to the guidance in relation to the use of third party firms and the details consumers should be provided with in such situations. This includes adding a new case study within the will writing chapter.
- 2.111 We have also made some changes to the online reviews section of the guidance, in particular to clarify the reference to businesses deciding to ‘cherry-pick’ any reviews.

Overall, is the draft guidance sufficiently clear and helpful for the intended audience? Is the language and terminology helpful? In particular, we are mindful that the majority of businesses in the unregulated legal services sector are small and medium enterprises (SMEs), many of which are micro-businesses.

2.112 The majority of respondents thought that the guidance was clear and easy to follow or made no comment.

2.113 Some respondents expressed some concern with the language the CMA had used when discussing the differences between regulated and unregulated providers, suggesting that this was in some cases subjective.

2.114 In particular, we heard from respondents that the labelling of services provided by regulated businesses as ‘bespoke’ or as a ‘personal service’ implied a higher level of care and skill and risked downplaying the possible advantages of using a specialist unregulated provider of will writing, for example. We also received a small number of similar comments to the effect that the CMA was effectively promoting or favouring regulated providers over unregulated businesses.

2.115 One respondent commented that the guidance could be viewed as being too wordy and a few respondents made suggestions to improve the layout and accessibility of the guidance – particularly in reference to the ‘do and don’t’ checklists, which we have discussed above.

2.116 Another stakeholder highlighted that any reserved activity is exempt from being reserved if the person who carries it out does so not ‘in expectation of, any fee, gain or reward’.

2.117 One stakeholder thought that the reference in paragraph 2.19 of the draft guidance to ‘in-house’ solicitors did not properly reflect reforms introduced by the SRA in 2019.

CMA response

2.118 At the outset of our investigation into unregulated will writing, online divorce, and pre-paid probate services we highlighted the benefits of the unregulated sector.²⁰ We did the same in our past legal services market study work.

²⁰ [CMA investigates will-writing and other legal services - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

- 2.119 Nonetheless, we have amended the guidance to ensure we are not giving the impression that regulated professionals necessarily offer a more bespoke or higher quality service as compared to unregulated providers.
- 2.120 In response to specific comments from respondents, we have modified some of the language used in the guidance and provided further explanatory text to help businesses understand their obligations.
- 2.121 For example, the draft guidance included (at paragraph 2.18) an explanation that unregulated legal services providers are prohibited from providing certain 'reserved' categories of legal services, and businesses that provide reserved services in contravention of these rules may commit an offence; this has been amended to specify that it applies to businesses providing services for a fee.
- 2.122 We have also removed the previous reference to 'in-house' within paragraph 2.19 of the draft guidance to avoid confusion, and added a footnote to published guidance from the Solicitors Regulation Authority, which explains what unregulated businesses can employ solicitors to do, and what their regulatory duties are (see footnote 22).

Are there any other comments that you wish to make on the draft guidance?

- 2.123 The majority of respondents did not have any additional comments beyond those expressed above.

Enforcement action

- 2.124 Several respondents emphasised that monitoring and enforcement of consumer law was key to ensuring good compliance within the sector. Some respondents went further and stated that the CMA should be considering enforcement action against infringing traders (regulated and unregulated) immediately.
- 2.125 A few respondents suggested that letters to non-compliant businesses backed up by enforcement action would be a better approach and alternative to the issuing of guidance and/or consumer advice.

Other issues

- 2.126 Some respondents noted that while the guidance focuses on consumer law, it should also reference additional tools such as consumer codes and the Fraud Act 2006.
- 2.127 One respondent suggested that the guidance should highlight compliance with general data protection regulation (GDPR) and in particular the need for

secure record keeping, data storage and retention. This, in their view, was essential as it is the closest unregulated providers come to offering client confidentiality.

2.128 Several respondents raised issues relating to charities:

- (a) One respondent suggested that providers should, as best practice, ensure that consumers have the information and opportunity to consider leaving a charitable gift in their Will, including highlighting the tax benefits of doing so.
- (b) The same respondent also suggested amending the wording of paragraph 4.4 of the draft guidance to clarify that although charities may hope that a gift is left to them, this is not an expectation or a requirement.
- (c) Another respondent suggested the guidance should be clear where charities pay a provider in exchange for a consumer receiving a 'free' will - with an implied obligation to leave the charity a legacy in the will.

2.129 Some respondents highlighted the role played by the self-regulatory bodies, particularly within the will writing sector, noting that there could be a wider role for these bodies. A couple of stakeholders suggested that membership of a self-regulatory body could be made compulsory.

2.130 In contrast, we also heard that consumers can be misled about the protections available to them. Likewise, that they can be unaware of the voluntary nature of self-regulatory bodies, which means providers are not legally bound by any decisions such bodies make and can choose to end their membership at any point.

CMA response

Enforcement action

2.131 The CMA agrees that enforcement plays an important role in ensuring compliance with consumer law within all sectors of the economy. So, too, does businesses taking account of advice and guidance on their legal obligations and taking steps to comply. As we have stated in the guidance, we took the view that, given the nature of the market, and the fact that a lot of providers were SMEs, issuing guidance was a proportionate first step.

2.132 Nonetheless, and as noted in paragraph 1.23 above, the CMA will continue to monitor businesses' compliance, as part of its general intelligence-gathering functions. Should infringements be identified, the CMA may decide to take action, in accordance with its prioritisation principles.

Other issues

- 2.133 We have opted not to include references to consumer codes and/or the Fraud Act in this Guidance, in order to avoid creating confusion about consumer protection law and the CMA's remit in enforcing it.
- 2.134 We have amended the reasonable care and skill section of the guidance to reflect the fact that all businesses must ensure that, as part of the requirement to provide services of an appropriate standard, they comply with data protection law.
- 2.135 The CMA does not consider that compliance with consumer law requires businesses to ask consumers if they would consider leaving a charitable gift in their will. We have therefore not included this suggestion in the final guidance. We have, however, referenced initiatives such as Free Wills Month and Will Aid, in our consumer guide explaining what to consider when buying will writing services.
- 2.136 We have also amended paragraph 4.5 of the guidance to clarify that will writers that partner with charities may encourage consumers to consider leaving a charitable bequest (rather than 'expect' them to).
- 2.137 In relation to the comment on mandating membership of self-regulatory bodies by will writers, we do not consider this to be appropriate or within our remit.

The CMA is also considering publishing a consumer advice document at the same time as the final compliance guidance. Do you think that a consumer advice document is required in this market, and do you think the CMA would be the best placed body to provide such advice? If so, what should the scope and content of such a document be: for example, is there a need to help consumers better understand their rights and the steps they can take to address problems?

- 2.138 Most respondents supported the CMA developing consumer advice in this market, with some commenting that consumer advice is the key document that the CMA could issue. We were encouraged to keep the consumer advice very short.
- 2.139 The majority of respondents which responded focussed on advice for consumers of will writing services – again reflecting the prominence of this sector.
- 2.140 One respondent did not support the CMA publishing consumer advice at this stage. They stated that consumer advice which takes as its starting point

‘regulated good and unregulated bad’ will destroy trust in new entrants, driving innovation out of the legal market and damaging unregulated providers.

2.141 We also heard from stakeholders who invited the CMA to work with consumer organisations, trade bodies and regulators to develop and disseminate the consumer advice. One respondent suggested that businesses should signpost the consumer advice as well to raise levels of compliance.

2.142 Finally, one respondent highlighted that the CMA should assess the success and effectiveness of previous consumer advice published in other areas of unregulated services.

2.143 We received a number of suggestions on what consumer advice should cover. This included, for example:

- clarification of the differences between unregulated and regulated providers;
- the options for redress available to consumers and information about who consumers can speak to if things go wrong and/or how to make a complaint;
- the differences in consumer protections and insurance requirements between different types of providers;
- details of consumers’ cancellation rights; and
- a glossary of key words and phrases.

CMA response

2.144 The CMA has taken account of the views of stakeholders on this issue and decided that consumer guides – in particular, for will writing and divorce services – would be helpful.

2.145 We have not developed a consumer guide about pre-paid probate services. In our view, the consumer warning on pre-paid probate plans published by the Financial Conduct Authority²¹ already sets out the key issues for consumers to be aware of in relation to this service. We also remain of the view that it may be difficult for businesses to provide pre-paid probate services at all without falling foul of the law.

²¹ [Consumer warning on pre-paid probate plans | FCA](#)

- 2.146 The purpose of the consumer guides is to empower consumers to get the information they need to make informed decisions, to inform them of their legal rights, and to help them recognise when they may be treated unfairly. We have sought to make the guides accessible, and have also published a video which signposts consumers to the written guides.
- 2.147 We have not sought to provide advice to consumers on all aspects of making a will or getting a divorce – as this is beyond the scope of our work in this area. Where appropriate, we have signposted existing resources such as, for example, information on the gov.uk website.
- 2.148 In developing the consumer guides, we shared early drafts with some stakeholders – including consumer organisations, self-regulatory bodies and regulators. We thank all respondents for their constructive engagement with us on this. We will aim to work with these organisations, and others, to disseminate the consumer guides as widely as possible.
- 2.149 We consider that it would be good practice for businesses also to make consumers aware of the CMA's guides, for example on their websites or other marketing materials. However, there is no specific obligation under consumer law for businesses to signpost this in their complaints procedures or terms and conditions.

3. List of respondents

Respondents that submitted a formal response to the consultation:

Applied Legal Services Ltd
Association of Consumer Support Organisations (ACSO)
Bristol Trading Standards
Central England Trading Standards Authorities
Chartered Trading Standards Institute
Chartered Institute of Legal Executives
Citizens Advice Scotland (oral submission)
Consumer Scotland
Council of Licensed Conveyancers
Co-operative Legal Services Ltd
The Divorce Surgery Ltd
Easy Online Divorce Ltd
E-Negotiation Ltd t/a Amicable
Essex Trading Standards
Farewill Ltd
Funeral Expert Solutions Ltd
Faculty of Advocates
Hackney Trading Standards
Institute of Professional Willwriters
The Law Society
The Law Society Scotland
Legal Ombudsman
Legacy Wills & Estate Planning Ltd
MW Legal Services Ltd
Octopus Legacy Ltd
Passmore Consulting Ltd
Portcullis Legals Ltd
Remember A Charity and the Institute of Legacy Management (joint submission)
Scottish Legal Complaints Commission
Simpler Law Ltd
Society of Trust and Estate Practitioners (STEP)
Society of Will Writers
Society of Will Writers Professional Standards Body

Submissions from four individuals.