

Institute of Professional Willwriters

Consumer Code Audit

April 2014

Background information

The Institute of Professional Willwriters (the Institute) started in 1991. It was created after a will writing franchise was closed by the Department of Trade and Industry and the franchisees lost their indemnity insurance.

One of the objectives of the Institute is to set competence levels for Willwriting and set examinations, so members can prove competence and so obtain affordable indemnity insurance.

In 2005 there was a government investigation into Willwriting, as the sector is unregulated. The outcome from the review was that self regulation under the Office of Fair Trading consumer codes approval scheme (OFT CCAS) was the most suitable route and the sector should aim to be self regulating.

The Institute gained full OFT CCAS approval in 2010. Another government investigation in 2013 came to the same conclusions but statutory regulation of the sector has not been ruled out in the future.

The Institute currently has 900 members, employed by 260 firms of Willwriters. The Institute is not a traditional trade association and is owned by its members.

The Willwriting sector is a micro sector with 2000–3000 people providing these services, most of who work part time.

Audit Process

A qualified trading standards professional from the Trading Standards Institute (TSI) completed an onsite audit split over two days. The audit focused on the following areas:

1. Member application process including checks carried out on prospective businesses
2. Member auditing – content and process (including general compliance with the code, staff training and dealing with consumer complaints)
3. Sanctions for non-compliant member businesses
4. Marketing and advertising by member businesses – terms and conditions and pre-contractual information (including cancellation rights, deposits, delivery times and guarantees and warranties)
5. Customer service provisions (including support for vulnerable consumers)
6. Consumer complaints process (including ADR)

7. Customer satisfaction, information/complaints from enforcement agencies and how this information is used to develop and improve the code.

Audit Summary

Membership Application Process

Institute of Professional Willwriters (the Institute) has a comprehensive member database, with all records kept electronically, as well as complete paper files.

The audit examined:

- The procedure for appointing new members
- The records of audit of existing members
- The process for completing inspections of members
- The process of membership withdrawal

Summary

The member database was comprehensive, data was easily retrievable and no issues were found with missing records.

New Members

New applicants apply to join, either online or by completing a paper application form. The Institute completes comprehensive checks on all applicants, including financial checks and complete character reference checks and requires evidence of identity. All new applicants are Disclosure and Barring Service checked. The Institute also checks if the applicant is a struck off solicitor.

If the applicant is not already an experienced Willwriter, they are encouraged to complete a one day course followed by a three day intensive course. All applicants have to complete an entrance exam, written and practical. Exams are independently marked and include written exams plus a role play test for interview skills and document drafting skills.

There is also the qualified practitioner route for Willwriters with more than five years experience. They have to submit four case studies, including the Wills, for assessment.

If Willwriters have relevant STEP (Society of Trust and Estate Practitioners) or CILEX (Chartered Institute of Legal Executives) qualifications, or are qualified solicitors they are exempt from the entrance examination.

When the applicant has passed their exams, or provided suitable evidence of their qualifications, they then start their compliance route. New members are sent a compliance pack, which

includes a new membership declaration form. They have to supply details of how they store their legal documents and if they take pre-payment, how this is protected. Their websites are checked for compliance. They are provided with a model terms of engagement, as part of their welcome pack, which must be returned for checking and approval by the Institute.

New members have to obtain indemnity insurance and send proof of cover. The Institute has an agreed scheme with an insurer, but members can make their own insurance arrangements, if preferred. The minimum required is £2m professional indemnity and £2m public liability.

Only once the new member is deemed fully compliant is their membership approved. The Institute has 50+ new members a year. Typically it takes three months to complete all checks and the training required.

Several new applications were examined. All checks had been completed and evidence of compliance with the code terms provided. This was retrievable in a paper file and also on the member database. All outstanding actions were flagged and followed up, and signed off once complete. One application had been refused due to the applicant's previous convictions for fraud.

Best Practice:

The Institute's rigorous application process ensures that members are both qualified and competent to operate as Willwriters. The entrance examination tests not only theoretical knowledge but the practical skills required to draft a Will and interviewing skills to ensure the Willwriting service meets the expectations of the customer.

Existing Member Inspections/Audit

Membership is renewed annually. Existing members are sent a membership declaration to check and resign each year. If anything has changed, such as marketing material the member has to resubmit supporting information for approval.

Physical onsite audits are completed annually on those members who have been selected for auditing. Members receive a letter four weeks ahead of their audit, accompanied by an audit checklist. 25% of members are targeted annually to ensure at least 20% are actually audited each year. The Institute has a five year auditing cycle.

A comprehensive checklist is completed, which asks for supporting information and evidence of compliance. After the audit, the member is informed in writing if they have passed or failed the audit. If the member fails the audit, they are given two weeks to submit revised documents and make changes to bring themselves into compliance. The Institute will revisit the member if necessary, or ask them to provide evidence that the identified area of non-compliance has been rectified, e.g. non-compliant business stationary must be amended and resubmitted for

approval and compliance. Once a member has been brought into compliance, they are informed in writing.

Members are selected for audit based on risk. This can include: lack of client feedback, poor client feedback, complaints, those that take pre-payments are risk rated higher, plus the Institute completes some randomly selected audits.

Several audits were examined. The members had been selected based on risk and they had been flagged for audit on the member database. The paper files were all complete, including the auditors' paper checklist and accompanying paperwork from the audit. The member database had been correctly updated with the outcome and any issues. Any issues had been confirmed in writing, followed up and signed off as complete, accompanied by the required evidence of compliance.

Membership Withdrawal and Sanctions for Non Compliant Member Businesses

Non-compliant members face a range of sanctions, including suspension of membership or expulsion. Only one member has been expelled since the code was approved.

The member database was examined and all subscribers who had cancelled their membership, had been removed from the website and their records amended accordingly.

No issues were raised with the sanctions procedures.

Marketing and Advertising by Member Businesses

Members are provided with marketing leaflet templates when they join, that they can use and personalise for their own business.

All marketing material and advertisements are checked by the Institute, both at the application stage and at any subsequent new member marketing campaigns. Marketing materials, both in paper format and online, are also checked on the audits.

Some members do engage in direct marketing. The Institute does check marketing scripts as part of the audit.

Observation:

The Institute intends to amend the audit check sheet to ask further questions relating to direct marketing, to establish the amount of business their members gain from direct marketing activities to enable the Institute to monitor for instances of possible pressure selling.

Terms and Conditions, Pre-payments and other Pre-contractual Information

The Institute provides model terms and conditions. All members must submit their terms of engagement to ensure they are compliant with relevant legislation and the code.

Members who take pre-payments must also provide proof to the Institute on joining and when audited, that they are using one of the five approved methods of pre-payment protection, such as a client account, or participation in the Institute's payment protection scheme.

The code states that there must be a 14 days turn around for Willwriting services unless agreed otherwise with the client. Members must try to meet a shorter deadline if there is particular urgency, as requested by the client.

Several member files were examined and their model terms of engagement had been submitted and checked for accuracy by the Institute.

Best Practice:

The Institute closely monitors all marketing, advertising and terms and conditions of their members. Members are supplied with standard templates they can use. Members have to submit all marketing material and terms of engagement for assessment for compliance with both consumer law and the code of practice – both at the point of application to the Institute and on an ongoing basis.

Customer Service Provisions

Members must be trained and competent. There are some exemptions if applicants have legal qualifications; otherwise they have to pass the Institute's entrance examination.

Members have to complete 12 hours structured continual professional development (CPD) annually, plus 8 hours unstructured CPD – 20 hours in total. Fellow members have to complete 8 hours structured and 12 hours unstructured annually. Members can be invited to become a Fellow member after five years in the sector and two years as an Institute member, as long as CPD is maintained and no complaints about them have been upheld.

The Institute provides training on dealing with vulnerable consumers, especially in situations where time is of the essence for the client. The Institute's members do try to meet the client's requirements and complete their Will in a short period of time.

As part of the member audits, the auditor looks for any evidence of regular occurrences of clients waiving their seven days cancellation rights, which could be a warning sign for pressure selling.

Consumer Complaints Process

The customer complaint process was examined and found to be comprehensive and clear. The Institute receives very few complaints each year. Consumers are asked to try to resolve their complaints with the trader in the first instance, before submitting a request to the Institute for arbitration and investigation of their complaint.

The Institute's CEO personally oversees the investigation of any complaints. A report is compiled and if a consensus on the outcome is agreed, the complaint is closed. If there is an unresolved dispute, a report is prepared and is submitted to the Institute's Council. The Council may either endorse the report or make changes to the recommendations. The final report is then sent to member and complainant.

If the complainant is still not satisfied with the outcome, they may request for their complaint to be referred to the Estate Planning Arbitration Scheme (EPAS), who provide ADR for the Institute. Details of how to proceed with an ADR claim are included in the report.

Several complaints were examined. They were properly recorded, up to date and progressed in a satisfactory manner. The outcomes were recorded, the files closed and follow up letters from the members confirmed that any refunds rewarded to consumers through the conciliation process had been made.

The alternative dispute resolution process was examined and found to be satisfactory. No complaints have ever progressed to ADR. The Institute prides itself on this and considers their complaints process to be responsible for consumers being satisfied with the outcomes of the arbitration, whether their complaints are upheld or not.

Customer Satisfaction and Feedback

Members are required to give their customers a feedback form when their Willwriting service is completed. Customers can return the feedback form to the Institute using a freepost address or complete the questionnaire on the Institute's website. The Institute records results per month on an annual spreadsheet. There are around 150 – 200 feedback forms returned each month. All data and results per question, per month are put into a spreadsheet and pivot table to analyse levels of compliance across the total membership.

Each form has the membership number on it, so the Institute knows which member the feedback relates to. Records are kept of those members who only generate a few returns of customer feedback and they are flagged for audit.

Members are also flagged for audit if the monthly pivot tables show customer dissatisfaction with the service or non-compliance with the consumer code, for example: no terms of engagement given. In one example, the business had been correctly flagged on the member database for audit.

Results of customer feedback are recorded against each member on the member database. The results are also displayed on the Institute's website member directory listing, including any good or bad comments and feedback. Those members with the highest scoring feedback are displayed first when a consumer searches the online directory for a Willwriter in their area

Where the feedback forms state that the customer does not mind being contacted, the Institute will ring a sample and conduct a telephone interview to ensure that the member hasn't completed the form themselves. Around 10% of feedback received is cross-referenced with consumers each month. The March 2014 customer additional feedback telephone questionnaire records were examined and no issues were found.

Recommendation:

The Institute has no formal process in place for following up poor feedback or adverse comments, although this does happen informally. It is recommended that this process is formalised to include a record of the follow up activity with the member on the member database, following up with the issue with the consumer directly, where possible and consideration of the negative feedback as part of the member's audit risk rating.

Conclusions

Institute of Professional Willwriters are fulfilling their obligations as a code sponsor and their membership is compliant with the CCAS core criteria and the Institute of Professional Willwriters Consumer Code.

The Institute has a comprehensive and rigorous application process and an ongoing auditing programme for their members. The effectiveness of the Institute's consumer code results in very low levels of complaints about members and none to date have progressed to the ADR stage. The high level of member compliance and very low level of members ejected from the scheme again reflects the comprehensive auditing programme enforced as part of the code monitoring arrangements.