

Institute of Professional Will Writers Consumer Code

Audit January 2015

Background information

The Institute of Professional Willwriters (the Institute) was formed in 1991 as a self-regulated body to safeguard the public from unqualified practitioners and unethical business practices. 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 is continuing to campaign for a statutory regulatory scheme for all willwriters in order to protect the general public and to help give the sector and Institute members wider recognition and credibility.

The Institute currently has 1098 members, an increase of 22% in membership compared to last year. The institute is an organisation that is owned by its members and is managed by a Council of eight members who are elected by the membership. The Willwriting sector is a micro sector with 2000–3000 people providing these services, most of whom work part time.

Audit Process

Two qualified Trading Standards professionals from the Trading Standards Institute (TSI) completed an onsite audit split over a full day. 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

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

New Members

Prospective members apply to join either online or by completing a paper application form. The institute conducts rigorous checks on all applicants including identity, financial, court judgement, bankruptcy and character reference checks. In addition, all applicants are Disclosure and Barring Service checked and those found to have committed certain serious offences such as fraud and dishonesty are automatically rejected.

Applicants are encouraged to attend a one day course 'Introduction to Willwriting' followed by a three day intermediate course run by Willwriting Academy Limited, a subsidiary company of the institute. Currently the training courses are not accredited, however the institute is in the process of building an accredited training qualification in partnership with an examination board.

All applicants must pass an entrance exam consisting of both written and practical aspects before enrolling to be a member. There is an exemption where applicants are qualified solicitors or hold a recognised qualification from the Chartered Institute of Legal Executives or the Society of Trust and Estate Practitioners. Experienced willwriters with more than 5 years of practising can elect to complete four written assignments based on their actual work as an alternative to the entrance exam.

Examinations are held quarterly, consisting of a one and a half hour written paper and a role play, including taking will instructions and a will drafting exercise. Exam papers are independently marked and all applicants must obtain a pass mark of 70% or above.

Successful applicants are then sent a welcome compliance pack, which includes the code of practice, model letter of engagement, in house complaints procedures, complaints log, client questionnaire and a declaration form.

Members are given a self compliance check list covering all areas of business such as identity collection, money laundering, document storage, cancellations, payment protection scheme and business literature. This check list must be returned along with proof of indemnity insurance covering a minimum of £2m professional indemnity and £2m public liability. The self compliance

checklist is then verified by the institute's compliance team and only once deemed fully compliant is their membership approved.

During the course of the audit, two new applications were examined on the electronic member database and paper files. All records including business literature checks and evidence of indemnity insurance were up to date and signed off accordingly. Outstanding actions were appropriately marked for further attention.

Best Practice

The member database was found to be comprehensive with all records kept both electronically and paper files. Information in both forms were easily retrievable and no issues were identified concerning missing data.

Existing Member Inspections/Audit

Existing membership is renewed annually via a self declaration form with the submission of relevant supporting evidence. Practising members are also required to update their knowledge and skills annually through a programme of Continuing Professional Development (CPD) in order to retain their practising certificate.

The institute audits around 25% of members per year and this is done on a risk basis. High risk members will always receive a visit as soon as they are identified whereas medium risk members will receive a compliance visit at the first opportunity. Low risk members will only be visited when it is financially and /or logistically convenient to do so. Members classified as high risk could be due to poor feedback, complaints or have completed four hours or less of structured CPD in a year.

Onsite audits are carried out by the Compliance Team using a standard comprehensive compliance checklist, which asks for supporting information and evidence of compliance.

A successful audit will result in a reclassification of the member as low risk where appropriate. Members who fail any aspect of the compliance audit will be given four weeks to address the concerns or issues identified. Failure to do so will result in the matter being referred to the Chairman of the Compliance Board.

A number of audits were examined. The audits were found to be comprehensive and well recorded. All audit documentation was present including supporting evidence from members concerning some minor non-compliance issues.

Best Practice

Onsite audits are conducted using a simple, but comprehensive checklist. As part of the audit, random inspections of wills written by members are checked to ensure they are of the required high standards set by the institute.

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 members who had cancelled their membership had been removed from the institute's website and their records amended accordingly.

Members leaving the institute would receive a letter requesting them to remove the institute and TSI logos from all business and promotional materials. It was noted that very little or in some cases no follow up checks are carried out on ex-members after the initial letter.

Recommendation:

Making an unauthorised claim of membership with the institute and TSI is a criminal offence as well as having a detrimental effect on existing members. It is recommended that the institute have a robust and swift process in place in order to secure compliance by ex-members and where appropriate escalate the matter to the local Trading Standards department.

Marketing and Advertising by members businesses

The institute provides ongoing support to their members including guidance and standard documents relating to marketing and advertising. Members have to submit all marketing materials and advertisements for assessment of compliance against consumer law and the code of practice.

As a result of an observation from the last audit, the institute added further questions in the audit checklist relating to direct marketing. This is to ascertain the amount of business their members gain from direct marketing activities. The audit found no members were involved in the practice of direct marketing.

It was noted that no members are currently engaged in direct marketing activities. However, the institute should consider having a policy in place where members who are involved in direct marketing should be categorised as high risk for auditing purposes.

Terms and conditions, Pre-payments and other Pre-contractual information

The institute provides standard terms and conditions and pre-contract information to their members.

Members who accept any payment made in advance are required to take part in an approved prepayment protection scheme such as a client account or the institute's payment protection scheme.

Several member files were examined and all terms and conditions including pre-contractual information and cancellation rights were found to be clear, reasonable and complied with relevant consumer protection legislation.

Observation:

The Institute's Code of Practice makes references to the Cancellation of Contracts Made in Consumers Home or Place of Work etc. Regulations 2009. This will need to be updated in light of the recent implementation of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.

Customer Service Provisions (Including support for vulnerable consumers)

One of the institute's objectives is to ensure that the services provided by its members are delivered professionally, ethically and competently.

The institute provides training and guidance on dealing with vulnerable consumers. Members are given a risk assessment matrix as part of the compliance pack, outlining guidance and steps to take when dealing with vulnerable consumers on various issues such as undue influence and testamentary capacity.

Best Practice

The institute's rigorous application process, the CPD programme, the ongoing support and monitoring for compliance ensures that only members who are qualified, compliant and competent can operate as Willwriters.

Consumer Complaints Process (including ADR)

Members are provided with guidance on setting up and running an in house-complaints procedure. Consumers are directed to the trader in the first instance, to resolve the issue. If the complaint cannot be resolved then the consumer can refer the issue onto the institute to investigate.

The Institute's CEO, who is a qualified solicitor 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 the 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 with the report.

Several complaints were examined and were all properly recorded, up to date and progressed in a satisfactory manner. In one complaint it was noted that the institute awarded the consumer with a full refund, which all parties accepted the outcome.

The alternative dispute resolution process was examined and found to be satisfactory. No complaints have ever progressed to ADR. The Institute pride themselves on this, and consider

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 a feedback questionnaire form directly to consumers who can complete and post it to the institute using a free post address. Members can also signpost consumers to complete the questionnaire online.

The Institute record results per month on a pivot table and the programme will automatically analyse levels of compliance across total membership. 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. Members are also flagged for audit if the monthly pivot tables show customer dissatisfaction with the service or non-compliance with the consumer code.

Subjected to the consumers' permission, around 10% of feedback received will be subjected to a telephone interview by the institute to ensure all feedback is genuine.

Several feedback questionnaires were examined and the audit noted that some forms did not have an IPW membership number attached, making it impossible to link the feedback to a business. The institute has reminded all members to insert the business name or the IPW membership number on the forms.

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.

Overall an excellent code of practice that is well run and effectively managed. The institute has a comprehensive and stringent application process, ensuring that only applicants who are fit and competent can enrol onto their membership. The ongoing support and robust auditing programme results in low levels of complaints and a high level of customer satisfaction.