

Fellowship of Professional Willwriters and Probate Practitioners



Willwriters and Probate Practitioner Rules 2009

1. Citation, Commencement and Interpretation

1.1 These Rules may be cited as Fellowship of Professional Willwriters and Probate Practitioners' Willwriters and Probate Practitioner Rules 2009 and come into force on . These Rules govern and regulate professional Willwriters and Probate Practices who are members of the Fellowship of Professional Willwriters and Probate Practitioners which exists to help provide confidence to the general public that it can have confidence in using the services of a professional, ethical and competent Willwriter or Probate Practitioner.

1.2 In these Rules:-

unless the contrary intention appears, words importing the masculine gender include the feminine, words in the singular include the plural and words in the plural include the singular;

"Applicant" any person who intends to apply for registration as a Willwriter and/or Probate Practitioner;

"Brokers" the insurance brokers responsible for organising an Indemnity Insurance Policy for a Willwriter and/or Probate Practitioner;

"Claim" a claim or circumstance whereby something has occurred or been omitted which may lead to a claim in respect of a Indemnity Insurance Policy;

"Client" a person or group that uses or seeks the professional advice or services of a Willwriter and/or Probate Practitioner, or is under the patronage of said Willwriter and/or Probate Practitioner.

"Continuing Professional Development" the minimum requirements of continuing education and training prescribed by these Rules;

"Evidence of Insurance" evidence that the Insured has suitable professional indemnity insurance cover in accordance with these Rules;

"Fellowship" the Fellowship of Professional Willwriters and Probate Practitioners and includes any of its committees;

“Indemnity Insurance Policy” the professional indemnity insurance policy authorised by these Rules;

“Member” an Applicant who has been accepted as a member of the Fellowship

“Membership Year” such 12 month period as the Fellowship may determine in relation to each Member;

“Membership Certificate” a licence issued by the Fellowship to a Willwriter and/or Probate Practitioner to provide Willwriting Services and/or Probate Services;

“Practice” a Willwriter and/or Probate Practitioner who is a sole practitioner; two or more Willwriters and/or Probate Practitioner in partnership; a Recognised Body, each providing Willwriting Services and/or Probate Services to the public;

“Practical Willwriting Training” has the meaning given by rule 3.15;

“Probate Practitioner” any person holding a Membership Certificate in force granted by the Fellowship;

“Probate Services” services limited to the drawing or preparation of any papers on which to found or oppose a grant of probate or grant of letters of administration and the administration of the estate of a deceased person;

“Qualifying Willwriting Assessments” the methods of assessment in accordance with the Fellowship’s Willwriting syllabus as determined by the Fellowship;

“Recognised Body” a body corporate recognised by the Fellowship to provide Willwriting services to the public;

“Regulatory Committee” a panel of persons appointed for the purpose of hearing and deciding issues of complaint and misconduct made against Professional Willwriters and Probate Practitioners

“Regulatory Committee Rules” the rules adopted from time to time by the Fellowships Regulatory Committee;

“Rules” Fellowship of Professional Willwriters and Probate Practitioners Will Rules 2009 and all other rules made by the Fellowship;

“Willwriter” any person holding a Membership Certificate in force granted by the Fellowship;

“Willwriter Candidate” a Member who sits or intends to sit the Fellowship’s Qualifying

Willwriting Assessments;

“Membership Certificate” a certificate issued by the Fellowship to a Willwriter to provide Willwriting Services; a “Full Membership Certificate” and a “Limited Membership Certificate” mean respectively a licence so endorsed under these Rules;

“Willwriting Services” services limited to the provision of or advice upon any Wills or other testamentary dispositions of powers of attorney of advance directives/advance decisions/living wills an agreement not intended to be executed as a deed or advice upon (but not drafting) of a document intended to be executed as a deed;

2. Application

2.1 Any application made to the Fellowship under these Rules shall be submitted to the Fellowship in such form and shall be accompany by such payment as is prescribed by the Fellowship from time to time.

2.2 Applicants must submit a either a satisfactory Standard Criminal Records Bureau Disclosure (where available) for vulnerable adults dated less than 12 months prior to membership, or the information and consent necessary to obtain one, to the Fellowship prior to commencement of Membership and then by every fifth anniversary thereafter.

2.3 Any application made or notice given to the Fellowship shall be addressed to the Fellowship’s offices at 21 ST. THOMAS STREET, BRISTOL, BS1 6JS or to such other address as may be designated by the Fellowship.

3. Training

Registration Conditions

3.1 An Applicant will be accepted as a Member if to the satisfaction of the Fellowship:-

- (a) he has submitted a duly completed form and paid the appropriate fee to the Fellowship;
and
- (b) he is a fit and proper person to be registered as a Member.

3.2 To enable the Fellowship to make decisions under rule 3.1 it may require the Applicant to support his application by a statutory declaration and may require the production of such other evidence as it sees fit.

3.3 The Fellowship may give reasons for refusing any application.

3.4 An Applicant who has not been accepted as a Member may within 28 days of being notified of that decision apply in writing to the Fellowship for the application to be reconsidered.

3.5 The Fellowship shall notify the determination to the Applicant not more than three months following receipt by the Fellowship of the application under rule.

Assessment and Qualifying Assessments

3.6 The Fellowship of Professional Willwriters and Probate Practitioners Training Specialists Ltd is the recognised organisation which will provide the Relevant Training to the Member

3.7 The Fellowship of Professional Willwriters and Probate Practitioners will provide the Member with:-

- (a) an assessment of various types and levels and at different times;
- (b) for limiting the number of times Members may attempt any Qualifying Willwriting and/or Probate Assessment and the effect of failure to achieve the required standard;
- (c) the maximum period during which Willwriter and/or Probate Practitioner candidates must successfully complete all Qualifying Willwriting and/or Probate Practitioner Assessments and the effect of failure to do so within that time limit.

3.8 Qualifying Willwriting and/or Probate Assessments shall be held on such dates as the Fellowship shall determine.

3.9 A Wills and/or Probate Practitioner Candidate having presented himself for a Qualifying Willwriting and/or Probate Assessment who, as a result of illness or exceptional circumstances, considers that his performance in any assessment has been adversely affected whether or not an answer is submitted may apply to the Fellowship within 14 days of the assessment concerned for a concession to be granted in respect of the consequences of such adversely affected performance. The Fellowship may in its absolute discretion make such determination as it thinks fit and shall give reasons for such determination.

3.10 Without prejudice to its general discretion the Fellowship may, in relation to the application of rule 3.9 to a Willwriter and/or Probate Practitioner candidate:-

- (a) grant a concession with or without conditions; or
 - (b) refuse the application
- 3.12 In order to make a determination under rule 3.10 the Fellowship may: -
- (a) require the Willwriter and/or Probate Practitioner candidate to support his application by a statutory declaration and may require the production of such other evidence as they see fit;
 - (b) require the Willwriter and/or Probate Practitioner candidate to attend for interview or oral assessment;
 - (c) take account of the results obtained by the Willwriter and/or Probate Practitioner Candidate in the assessment to which the application relates;
 - (d) require the Willwriter and/or Probate Practitioner candidate to take such other steps as the Fellowship may consider necessary.

3.11 A Member may be granted exemption by the Fellowship from such of the Qualifying Willwriting and/or Probate Assessments provided for in these Rules as the Fellowship may determine and subject to such terms and conditions as the Fellowship may impose

Ongoing Practical Willwriting Training

3.12 A Member must complete his Practical Willwriting and/or Probate Training and produce evidence to the Fellowship that he is doing or has done so at such times and in such form as it may require.

3.13 Practical Willwriting and Probate Training required by rule 3.14 is that stage of training: -

(a) when the Member is engaged in the provision of Willwriting and/or a Probate Practitioner for a period to be determined by the Fellowship under the supervision of a person accepted by the Fellowship as suitably experienced in the provision of Willwriting and/or Probate Services; and

(b) which in the opinion of the Fellowship is current and relevant and of an adequate standard. The Fellowship will judge the standard to be adequate if the Member has gained practical experience as certified in any 'Final Checklist for Practical Willwriting and/or Probate Training' which may be issued by the Fellowship.

Annual Membership

3.14 A Member shall pay to the Fellowship on such other date as the Fellowship shall determine in each year such annual membership fee as the Fellowship may prescribe.

4. Continuing Professional Development

Continuing Training

4.1 Subject to rule 4.2 a Willwriter and/or Probate Practitioner must, in each licence year in which he holds a Membership Certificate, complete the required number of hours of ongoing training for that level of membership, as set out in the member handbook, or any other such amount that the Fellowship may require, provided by a training provider recognised as adequate by the Fellowship.

4.2 In respect of each Membership Year in which he holds a Membership Certificate a Willwriter and/or Probate Practitioner shall inform the Fellowship in such form as the Fellowship may prescribe whether or not he has complied with the Fellowship's requirements for Continuing Professional Development as they apply to him.

4.3 Evidence of training shall be provided to the Fellowship, and records of individual training shall be held by the Fellowship for a minimum of six years, available for inspection during working hours by prior arrangement, following a reasonable notification period.

4.4 Willwriters and/or Probate Practitioners shall only act in accordance with their level of training, and shall not provide services which in anyway go beyond their levels of competence. Competency shall be judged entirely upon the level of training undertaken by the member in

question.

General Provisions

4.5 The Fellowship may refuse to renew the Membership Certificate of a Willwriter and/or Probate Practitioner or may issue the Membership Certificate subject to conditions where he has failed to comply with rules 4.1 to 4.4. A Willwriter and/or Probate Practitioner may within 28 days of being notified of that decision apply in writing to the Fellowship Regulatory Board for the application to be reconsidered by the Regulatory Committee

4.6 In an individual case the Fellowship may, where satisfied that the Willwriter and/or Probate Practitioner concerned has undergone sufficient ongoing training in the current year, vary the operation of these Rules in such ways as it thinks fit.

4.7 The Fellowship shall have power to approve, for the purposes of these Rules, courses of study provided by educational institutions and other bodies.

4.8 The Fellowship shall have power to require a Willwriter and/or Probate Practitioner to attend a stated course of training notwithstanding that he may at that time have satisfied the provisions of rule 4.1 for the current year.

4.9 The Fellowship may provide its own courses of study for the purposes of these Rules and may make a charge to a Willwriter who is obliged to attend or who applies to attend or undertake such a course.

5. Membership

5.1 No person shall be entitled to apply for a Membership Certificate for the first time unless he has or is immediately entitled to a licence to practise as a Willwriter and/or Probate Practitioner and has either:

- (a) (i) passed the Qualifying Willwriting and/or Probate Assessments;
- (ii) completed the ongoing Willwriting and/or Practical Probate Training; and
- (iii) in respect of any period exceeding three months following the conclusion of his Ongoing Training, provided to the satisfaction of the Fellowship evidence of having undergone relevant Willwriting and/or Probate experience; or
- (b) has demonstrated to the satisfaction of the Fellowship, in accordance with such terms and conditions as it may prescribe, that he has the relevant educational and professional qualifications and experience in the provision of Willwriting Services and/or Probate Services.

5.2 Every Membership Certificate shall be in such form as the Fellowship may prescribe.

5.3 An applicant for a Membership Certificate shall deliver or cause to be delivered to the Fellowship's offices:

- (a) a written application in the form prescribed by and obtained from the Fellowship, correctly completed and signed by the applicant;

- (b) the appropriate fee as confirmed by the Fee Rules displayed on the fellowship's website from time to time;
- (c) evidence that he is a member of, or otherwise subject to, a scheme which has been established (whether or not exclusively) for the purpose of dealing with complaints about the provision of Willwriting Services and/or Probate Services; and
- (d) any contribution which the Fellowship may require an applicant to make to any fund or funds as to compensation maintained by the Fellowship; and
- (e) any report, certificate or other document as the Fellowship may require.

5.4 In addition to the requirements of rule 5.3 an applicant for a Willwriting and/or Probate Practitioner Membership Certificate shall deliver or cause to be delivered to the Fellowship's offices:

- (a) evidence of appropriate and current insurance cover as required by rule 7.3;
- (b) such further or composite contribution which the Fellowship shall require an applicant to make to any fund or funds as to professional indemnity maintained by the Fellowship by virtue of Section 21(3) of the 1985 Act; and
- (c) where applicable, evidence that the Applicant has satisfied the requirements of rule 4.3.1 Fellowship of Professional Willwriters and Probate Practitioners Probate Rules.

5.5 An application for a Membership Certificate shall be deemed to have been made on the day on which the applicant has complied with rule 5.3 and, if appropriate, rule 5.4.

5.6 In considering an application for a Membership Certificate the Fellowship may require the applicant to attend for interview.

5.7 If the Fellowship is not satisfied that rule 5.3 or rule 5.4 as the case may be has been fully complied with or, with or without having interviewed the applicant, that the applicant is a fit and proper person to be granted a licence, it may refuse an application for a Membership Certificate.

5.8 A Willwriter and/or Probate Practitioner must as a condition of being issued with a Membership Certificate comply with these Rules

5.9 A Willwriter and/or Probate Practitioner may, when applying for a Membership Certificate, apply in addition for a duplicate Membership Certificate which, if issued, shall be free of charge. A Willwriter and/or Probate Practitioner may at any other time apply to the Fellowship for a duplicate Membership Certificate on tendering the fee payable and the Fellowship may issue such a Membership Certificate .

Endorsement of Membership Certificates

5.10 The Membership Certificate issued to a Willwriter and/or Probate Practitioner shall remain the property of the Fellowship until it has expired.

5.11 Any Membership Certificate may, at the time of its grant or subsequently, be endorsed with such conditions as the Fellowship thinks fit to impose. Any such conditions imposed may be removed by the Fellowship at its discretion at any time.

5.12 Where any conditions are imposed, amended or removed during the currency of a Membership Certificate, the Willwriter and/or Probate Practitioner shall immediately upon request submit his Membership Certificate to the Fellowship for endorsement, amendment or removal. The Fellowship shall also record in the register the endorsement or amendment of the Membership Certificate, or the removal of the endorsement of a Membership Certificate.

5.13 When, during the currency of a Membership Certificate, the Fellowship agrees to the removal or amendment of all or any of the conditions imposed, those conditions shall remain effective until the Membership Certificate is delivered to the Fellowship's offices together with the fee payable.

5.14 When, during the currency of a Membership Certificate, the Willwriter and/or Probate Practitioner either ceases to comply with rule 7 or for any other reason ceases to be eligible to hold a Membership Certificate, he shall immediately surrender the Membership Certificate and any duplicate Membership Certificate issued to him by delivering them or causing them to be delivered to the Fellowship's offices.

Fees Payable in Respect of Membership

5.15 Fees payable under the provisions of these Rules shall (unless otherwise provided) be such as are prescribed by the Fellowship in force at the time of application.

6. Recognised Body

6.1 The Fellowship may issue a certificate of recognition to a Recognised Body to provide Willwriting services in accordance with these Rules provided:

- (a) at least one director of that Recognised Body has a Membership Certificate or is a person or within a class of persons in respect of which the Fellowship gives express approval;
- (b) the objects clause in the Memorandum of Association shall include the provision of Willwriting Services and/or Probate Services; and
- (c) the fee payable as specified in the Fellowship Rules is paid
- (d) in addition to the circumstances specified in the Fellowship
- (e) Rules the recognition of a Recognised Body shall automatically cease in the event that rule 6.1(a) no longer applies.

7. Indemnity

7.1 Members shall provide the Fellowship with proof that they hold Professional Indemnity Insurance of at least £2million that covers the areas of business in which they operate that are

covered by these Rules.

7.2 Each Practice shall pay the applicable annual premium in respect of every annual Indemnity Insurance Policy and promptly Evidence of Insurance to the Fellowship.

7.3. No Membership Certificate will be issued to a Willwriter and/or Probate Practitioner unless the applicable Evidence of Insurance for his Practice has been produced to the Fellowship.

7.4 The Fellowship shall be entitled to:-

7.4.1 Require a Willwriter and/or Probate Practitioner to produce to it such information as it may demand concerning any Claim.

7.4.2 Exchange information concerning any Claim with the Authorised Insurers, their representatives or the Brokers.

7.4.3 Receive notification from the Authorised Insurers or the Brokers when any Evidence of Insurance is avoided.

8.0 Member's conduct with regard to vulnerable Clients.

8.1 Clients may be vulnerable for a number of reasons, they may be elderly, infirm, disabled, distressed or they may have a learning difficulty. This list is indicative and not exhaustive.

8.2 Willwriters must take extra care when dealing with Clients they know or objectively ought to know are vulnerable.

8.3 Willwriters must take any extra measures necessary to ensure that vulnerable Clients fully understand all aspects of any service or product they propose to provide and to ensure that Clients are making an informed and appropriate decision.

9.0 Clients must be helped to make their own informed decisions.

9.1 Willwriters must establish to their complete satisfaction that the Client is acting freely and is not subject to any coercion, duress or undue influence and that the Client fully understands the product or service on offer and is making an informed decision. Whether that decision relates to the provision or cancellation of products or services.

9.2 Willwriters shall explain all documents they have provided to the Client's satisfaction. A Client may decline any document they do not understand and receive a refund in respect of the said document and any advice or further documents related to the said document. In order to receive such a refund the Client may be requested to return all documentation received, including drafts and copies and may also be requested to enter into a binding agreement not to enter into any other document based on the declined document.

9.3 Willwriters must have regard to the Mental Capacity Act 2005 when assessing whether a Client has capacity to make a decision.

9.4 Willwriters must inform Clients of all the implications of their decisions including, but not limited to costs, timescale and tax implications.

9.5 A Willwriters shall not make the appointment of a specific person or organisation as executor a condition of accepting instructions.

9.6 Willwriters must take instructions from a Client face-to-face unless the instructions relate to amendments being made to existing documents. If a Client declines face-to-face communication the Client must be informed in writing of the limitations of the proposed method of communication and of their rights under the Distance Selling Regulations 2000.

9.7 Willwriters must not take will instructions from a Client which give the Willwriter or any person connected or associated with them any benefit.

10. Accounts Rules

10.1 So far as is applicable, the Fellowships Accounts Rules 2009 apply to Willwriters and Probate Practitioners in the provision of Willwriting Services and Probate Services and in addition any transactions relating to any activity which is not regulated by the Fellowship must not be recorded on a ledger or accounts system maintained in accordance with the Fellowship's Rules.

10.2 Willwriters shall not under any circumstances receive or agree to hold any money on behalf of a Client and a Willwriter is liable to disciplinary proceedings and sanction for failing to comply with this rule.

11. Inspection and Disciplinary Consequences

11.1 In order to monitor compliance with these Rules, a Practice must at the time and place fixed by the Fellowship produce to any person appointed by the Fellowship all information held by the Willwriter or Probate Practitioner relating to that Willwriting Practice or Probate Practice (to include its records, papers, files and financial accounts) reasonably required to enable the preparation of a report to the Fellowship.

11.2 A report made following an inspection under rule 11.1 may be used as part of any investigation.

11.3 If it appears to the Fellowship that there has been a contravention of any of the Fellowship's Rules a Willwriter and/or Probate Practitioner is liable to disciplinary proceedings and sanction.

12. Storage of Documents

12.1 Willwriters or Probate Practitioners who store Client documents shall do so in a fire and water resistant facility with suitable security.

12.2 The above mentioned facility may or may not be on the Willwriters or Probate Practitioners premises, the Fellowship shall be advised in writing of the location of the storage.

12.3 Willwriters or Probate Practitioners storing Client documents shall keep and maintain up-to-date records of the documents held and their location.

12.4 Willwriters or Probate Practitioners shall maintain sufficient insurance to cover the replacement value of all Client documents held. Evidence of this insurance shall be provided to the Fellowship.

12.5 Willwriters or Probate Practitioners are entitled to charge for the storage of documents provided that Clients have been made aware of the fee for doing so beforehand.

12.6 Documents shall only be released to the following persons, upon written request, after verification of identity:

12.6.1 In the case of a Power of Attorney; to the Client or their attorney acting in accordance with the Power of Attorney itself.

12.6.2 In the case of all other documents; the Client, their attorney (acting in accordance with a valid Power of Attorney) or all of the Client's Personal Representatives, provided that the request is accompanied by the Client's death certificate.

12.7 Willwriters or Probate Practitioners must provide for the free collection of documents from their premises but may charge for the delivery of documents elsewhere.

12.8 Willwriters or Probate Practitioners are only entitled to deliver documents elsewhere if they are able to do so while also satisfactorily verifying the identity of the recipient. Willwriters or Probate Practitioners may charge a fee to cover their reasonable costs of delivery in such cases.

12.9 Before returning any documents in storage Willwriters or Probate Practitioners are entitled to recover any unpaid storage fees and any cost of delivery.

12.10 Willwriters or Probate Practitioners shall update the Fellowship as to the arrangements for stored documents in the event of the death, illness or incapacity of a Willwriters or Probate Practitioners or the cessation of the Willwriters or Probate Practitioners Practice.

13. Estate Administration

13.1 Probate Practitioners must:

13.1.1 obtain satisfactory evidence of the identity executors or administrators whom he is working on behalf of.

13.1.2 obtain satisfactory proof of the identity of the deceased and proof of their death.

13.1.3 make enquiries to obtain the deceased's last will (and any codicils) or to establish that there is not will.

13.1.4 obtain details of the assets and liabilities of the estate

13.1.5 obtain details of all beneficiaries or potential beneficiaries.

14. Advertising and Promotion

14.1 Members shall not do anything or omit to do anything which would cause the Member to be in breach of the Disability Discrimination Act 2005 and the Race Relations Act 1976 as amended

14.2 Members shall comply with the legal requirements of the Telephone Preference Service, Mailing Preference Service and the Fax Preference Service

14.3 Members shall comply with statutory requirements and any relevant code of advertising including, but not limited to:

14.3.1 The British Codes of Advertising and Sales Promotion

14.3.2 OFCOM

14.3.3 The Advertising Standards Authority

14.4 All business stationary and where appropriate, all advertising and marketing (including telephone sales calls) by or on behalf of the Member should include the logo of the Fellowship (or a statement to the effect that they are a member of the Fellowship) and a statement that the Member complies with these Rules.

14.5 Where VAT or other taxes are applicable, any prices quoted in advertising must include such taxes or specify the amount of tax, or clearly indicate that they are subject to tax at the prevailing rate.

14.6 Where Members advertise products, services or solutions to problems, accompanying prices should be the full amount the Client might reasonably expect to pay them for providing the product, service or solution.

14.7 A copy of all advertising material must be supplied promptly to the Fellowship upon request.