Modernising Wills: Industry Response Whitepaper

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Executive Summary

The Law Commission's Modernising Wills report, and draft Bill mark the most comprehensive reform of Wills law since 1837. This once in a generation opportunity allows for the creation, execution, and storage of electronic Wills - a foundational step toward a digital Wills infrastructure in the UK. The goal is to make Wills more accessible, reliable, and secure, while maintaining the safeguards that underpin public trust.

This whitepaper sets out the industry's unified response to these reforms. It reflects the collective insights of leading practitioners, professional bodies, and technology providers gathered at the Arken.legal Industry Roundtable in October 2025. Together, we outline the principles, priorities, and practical steps needed to ensure successful implementation.

Our position is clear:

- Electronic Wills must be underpinned by robust standards for identity, signatures, and storage.
- Practitioners remain central as advisors and guardians of trust - technology should enhance, not replace, their role.
- Education and inclusivity are essential to prevent digital exclusion and maintain public confidence.
- Secure, auditable systems are non-negotiable to protect against fraud and undue influence.

This paper is not commentary; it is a call to action and a roadmap for collaboration. By working together, the industry will deliver a modern, resilient, and transparent Wills system that protects client wishes and reflects the realities of a digital age.

"Protecting client wishes - that's what these reforms are really about."

1. Introduction: A Pivotal Moment for Reform

Society has changed beyond recognition in the almost 200 years since the introduction of the Wills Act. People live longer, work differently and have complex family structures and digital assets. Yet the formalities of Will making have remained largely unchanged. The Law Commission's proposed reforms seek to bridge that gap, introducing modern safeguards and enabling electronic Wills for the first time.

The roundtable participants support the reforms for better access, consistency, and resilience. There is also the potential for the reforms to facilitate faster and more seamless probate by connecting electronic Wills registries to other government systems. The reforms must be implemented carefully to preserve public confidence while embracing innovation.

These changes align with broader modernisation and digitisation efforts across the justice system and reflect global shifts seen in Canada and Australia, where electronic Wills have been enabled since 2021. The roundtable discussion, highlighted a blend of excitement, caution, and pragmatism.

"The rise in probate challenges shows the Wills system is broken - this is our opportunity to fix it."

2. The Practitioner Response: Advisory Integrity and Education

Practitioners firmly emphasise that their role as advisors and protectors of client intent remains irreplaceable. While automation can streamline document production, it cannot replicate the nuance of legal judgment and advice, empathy, and professional responsibility.

"Our job is not to produce documents - it's to give advice."

Participants urge the creation of clear professional standards, particularly for digital witnessing, capacity checks, and identity verification. Practitioners are concerned that education is robust to avoid fostering risky self-service practices.

The industry is clear: technology must serve as a trusted partner, not a disruptor. Practitioners need education and training to understand how these systems work, what they record, and how to explain those assurances to clients.

Key practitioner themes:

- Professional engagement: early consultation to co-design standards and training.
- Advisory clarity: clients pay for expertise, not automation.
- Generational divides: younger practitioners are ready for reform; older practitioners may need reassurance and practical guidance.
- Ongoing education: mandatory CPD modules or Law Society guidance were proposed.

"We need gentle encouragement for practitioners to buy into this."

3. Technology, Security, and the Future Will System

These reforms are viewed in the wider context of digitisation initiatives across government. As such, they envisage electronic Wills as secure, auditable, and verifiable - supported by technologies that are already proven in other sectors. Practitioners are adamant that security and reliability must be the foundation of this innovation.

3.1 Electronic Wills

The proposed electronic Wills will be valid if they are digitally created in a "reliable system" (see appendix D), signed, and stored with suitable protections like encryption and verified identities. The industry believes these can be achieved using current, standards-based technology to enhance security and efficiency, allowing practitioners to concentrate on client advice and relationships.

"The tech is all there – we just need to bring it to this industry."

Broadly adopted standards are strongly recommended to build trust and encourage early adoption. While electronic Wills could become more dynamic and easily updated (by revoking the previous Will), this brings complexity that requires careful management and transparent safeguards.

The industry supports the Commission's recommendation to utilise:

- Qualified electronic signatures (QES) to bind identity and document. QES is the only form of e-signature that has the same legal standing as a handwritten signature under EU eIDAS. It requires:
    - A digital certificate.
    - Identity verification.
    - A secure signature creation device.
- Hashing and tamper detection to confirm integrity.
- Immutable audit trails, recording who did what, when, and on which device.
- Video witnessing and transcript evidence, especially in remote contexts.

"If we can trust digital banking, we can build digital Wills that are even safer than paper."

3.2 Registry and Storage Models

A key question centres on how electronic Wills will be stored and located. In some jurisdictions, a Will is not valid unless registered. Some participants favour this approach to prevent loss.

The following models were discussed:

Model	Description	Pros	Cons
Central Repository	Single national registry storing all Wills	Simplifies discovery and consistent oversight	Cybersecurity risk and concentration of sensitive data
Metadata Only Register	Central index showing existence and location	Balances privacy and accessibility	Depends on third-party vault integrity
Certified Vault Network	Distributed storage by accredited providers	Resilient and extensible; aligns with existing practice	Requires certification and interoperability standards

The industry favours the metadata only model supported by certified vault providers, mirroring models in Spain and Germany, where the Will itself is not centrally stored. In essence, this extends the current model where the record of a paper Will may be included in a registry, the physical Will may be stored by the testator's solicitor or by the testator themselves. Participants agree that further consultation is required as much depends on the specific implementation.

"A simple, extensible secure system will get us further than chasing perfection."

4. Safeguarding Capacity and Preventing Undue Influence

Capacity, undue influence, and fraud remain the most critical concerns. The growing elderly population and rise in dementia diagnoses are expected to lead to significant wealth transfers and increased litigation. Capacity-related disputes are rapidly increasing and often feature in Will claims.

There is consensus in favour of modernising testamentary capacity, unifying the test under the familiar MCA framework. This will make the law consistent across health care, finance, and succession, with the option of guidance from Banks v Goodfellow case law. The goal is a clearer, clinically informed test suitable across ages and conditions, preserving testamentary freedom and inclusivity for those less able to use tech.

Currently, there is a shortage of independent or professional capacity assessors. Participants are aligned that current assessment methods are outdated; new processes and technologies are needed to meet demand.
Reforms must introduce a structured, evidence-based process for capacity assessment and verification. The industry recommends a hierarchy of evidence approach:

- Professional medical or social work assessment (gold standard).
- Structured professional questionnaires supported by encrypted video.
- Self-certification in low-risk scenarios with audit trail capture.

4. Safeguarding Capacity and Preventing Undue Influence

Video witnessing is viewed as both a powerful evidentiary tool and a privacy challenge. Judges reportedly value video evidence, but recordings can also expose practitioner missteps. This underscores the need for clear retention and data protection policies. While there are concerns with video witnessing, including the possibility of "deepfakes", maintaining a secure audit trail, robust document retention policies and adhering to agreed standards and protocols will mitigate these risks.

AI based capacity tools are viewed as "not reliable, yet." They cannot explain conclusions to judicial standards, though they may become more reliable over time.
"Capacity must be documented, not assumed."

Most Royal Colleges, except the Royal College of Psychiatrists, advise members not to witness Wills due to court exposure and unpaid time. The industry wants to investigate a certificate provider model - a legal or medical professional verifies capacity and understanding before signing. This could mirror the safeguards used in Lasting Power of Attorney processes.

"Capacity must be documented, not assumed."

5. Inclusion, Accessibility, and Public Trust

Reform must widen participation, not create new barriers. Every testator must have the choice - digital or paper - supported by inclusive access routes and clear professional guidance. The industry agrees that electronic Wills should coexist with paper Wills, giving every testator choice.

5.1 Inclusive Access

- Digital and existing paper methods should both be valid.
- Assisted digital services must support those with limited technical ability.

Clear guidance for practitioners to identify when in person support is needed.

"Electronic Wills must be as well as, not instead of."

5.2 Public Understanding and Confidence

Public education is vital. Many consumers equate "online Wills" with unregulated DIY platforms. The industry must clearly distinguish between existing online templates and the forthcoming legally recognised electronic Wills governed by formal safeguards.

An industry-wide communication campaign could explain key principles: secure identity verification, digital witnessing, and encrypted storage. Transparency and simplicity will be central to public acceptance.

6. Implementation and Next Steps

Effective implementation will depend on collaboration and careful phasing. The industry calls for clarity on timelines, interoperability, and practical guidance.

Proposed next steps:

1. Develop shared standards for electronic Will formats, digital signatures, and storage.
2. Establish accreditation for certified storage and identity providers.
3. Integrate probate workflows to handle electronic Wills seamlessly.
4. Publish best practice guidance for digital witnessing and capacity checks.
5. Create educational programmes for practitioners and consumers.
6. Launch pilot projects to test registry and interoperability models.

There is strong industry enthusiasm for beginning pilot work now to build trust and momentum.

"Even if we fall short, we'll still be further ahead than we are now."

Conclusion

The modernisation of Wills law is not simply a legal reform - it is part of the wider digitisation of government services and the foundation of a new national infrastructure for testamentary trust. The proposed reforms, properly implemented, can make the process safer, faster, and more inclusive than ever before. But this will require shared standards, strong safeguards, and partnership between practitioners, technology providers, and regulators.

Arken Legal will take an active role in this process - facilitating industry collaboration, developing compliant technology, and supporting practitioner education. Together, the UK industry can deliver a modern, inclusive, and secure Wills system that leads the world in secure, digital testamentary infrastructure.

"The digital future of Wills will be defined by a collaborative process across the industry."

Modernising Wills:
Appendix

Appendix A - Participants

Name	Organisation	Title
Mev Dzihic	Verify365	Chief Technology officer
Karl Taylor	Norrie Waite & Slater Solicitors	Head of Wills, Trusts & Probate
Oliver Asha	Digilegal Limited Capacity Vault	Founder/Director
Michael Culver	Culver Law	Managing Director
Anna Marie Knipe	Birchall Blackburn Law	Partner
Kristina Smith	Birchall Blackburn Law	Partner
Louise Sackey	PPL Solicitors	Director and Founder
Anthony Belcher	Society of Will Writers	Managing Director
David Sutton	Actionstep	Senior Account Executive
Jake Redford	OneAdvanced/National Will Register	VP Legal and Education Categories
Ian Bond	Farewill	In-house counsel
Pippa Shepherd	Arken Legal	COO
Anthony Philips	Arken Legal	CEO
John Black	Arken Legal	Head of AI and Innovation

Appendix B - Open Policy Questions

1. Legal definition of an “electronic Will”.

2. Agreed technical standards for electronic signatures, witnessing, and document encryption.

3. Registries:

- Centralised vs Decentralised
- Certification and oversight of vault and registry providers.
- Probate Registry integration processes.

4. Capacity

a. Standards for identity, capacity, and undue influence safeguards.
b. Accessibility provisions for vulnerable or non-digital users.

5. Data retention and evidentiary admissibility for recordings.

6. Standardisation and trust: no agreed standards yet for electronic Will formats, attestations, and storage; without common methods, client trust and adoption may be limited.

Appendix C - Proposed Engagement Timeline

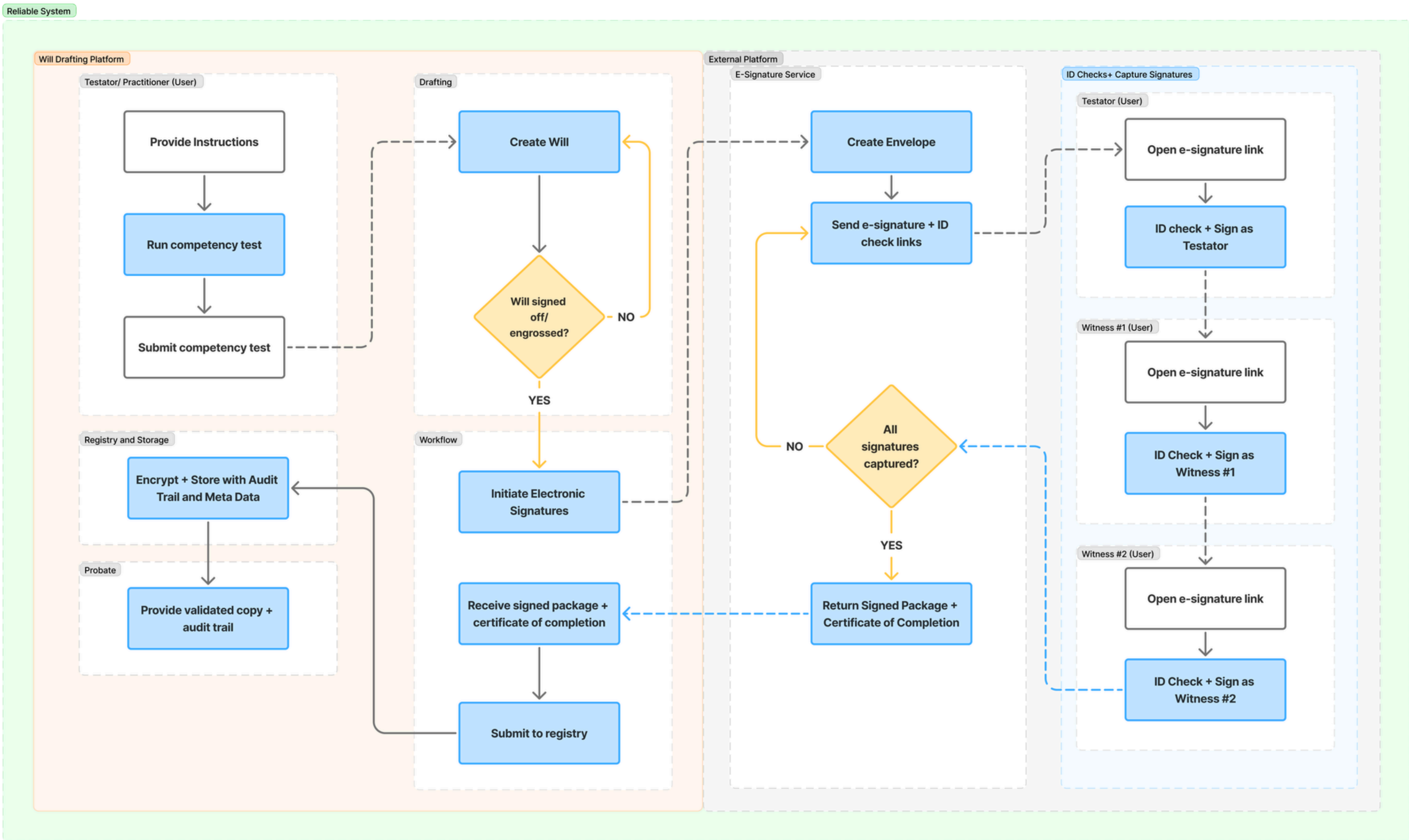
Q4 2025
Circulate expanded white paper to participants for comment.

Q1 2026
Convene follow up roundtable to co draft industry standards.

MID 2026
Propose draft standards and definitions.

2027 ONWARD
Launch practitioner training and support during legislative rollout.

Appendix D - Reliable System



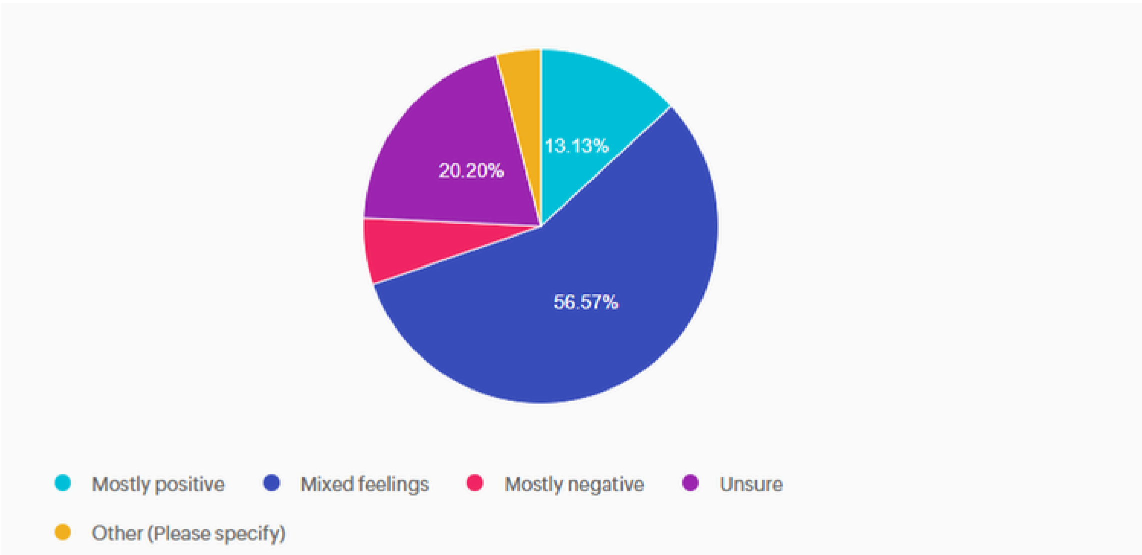
- Practitioner collects instructions from the testator and prepares data for drafting.
- Testator completes and submits a competency test.
- Practitioner drafts the Will in the Will drafting platform and engrosses it when ready for signing.
- Practitioner initiates the electronic signing workflow, triggering creation of a signing envelope via the e-signature provider.
- Testator and both witnesses receive links to complete ID verification and signatures synchronously (each party signs independently but in parallel).
- Once all signatures are captured, the completed signing package and certificate of completion are returned to the Will drafting platform.
- Practitioner submits the fully signed Will to the registry.
- Registry encrypts and stores the Will with metadata and a full audit trail.
- For probate, the registry provides a validated copy of the Will along with its audit trail.

Appendix E- Industry Survey

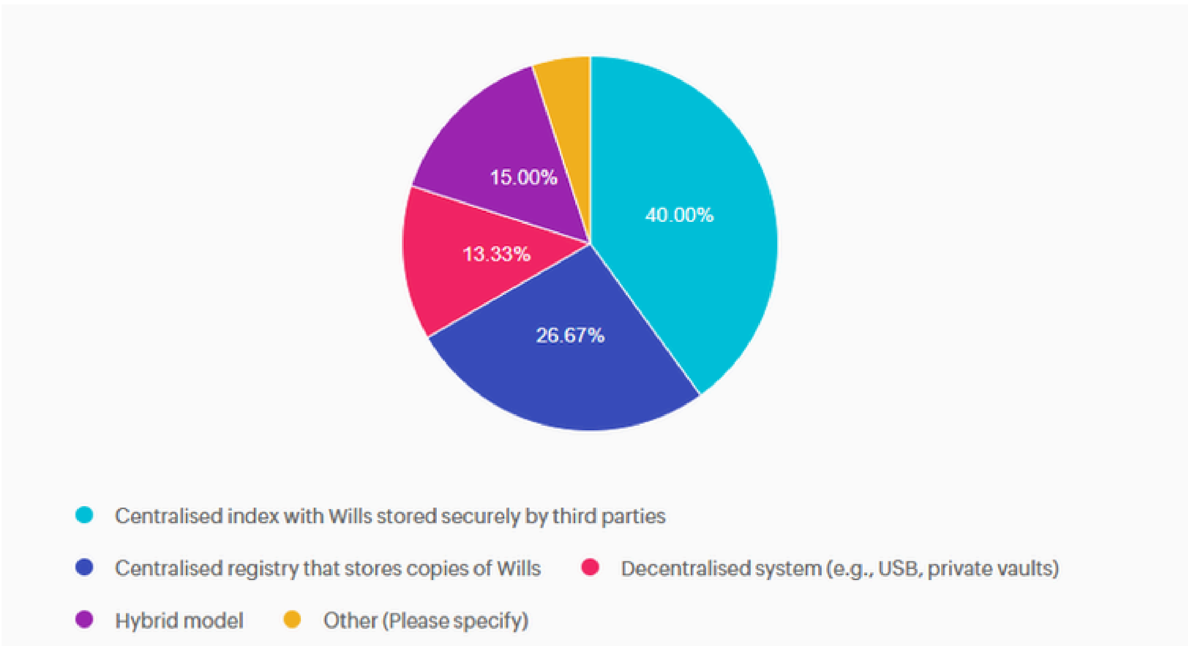
To better understand how private client practitioners are preparing for, responding to, and feeling about the upcoming modernisation reforms, we recently conducted an industry-wide survey. A total of 208 professionals took part, offering valuable insight into current awareness levels, perceived challenges, opportunities for digital transformation, and the support firms feel they need as the landscape evolves.

The following appendix summarises the key findings from this research and highlights the themes shaping practice readiness as the reforms progress.

How do you percieve the proposed reforms?

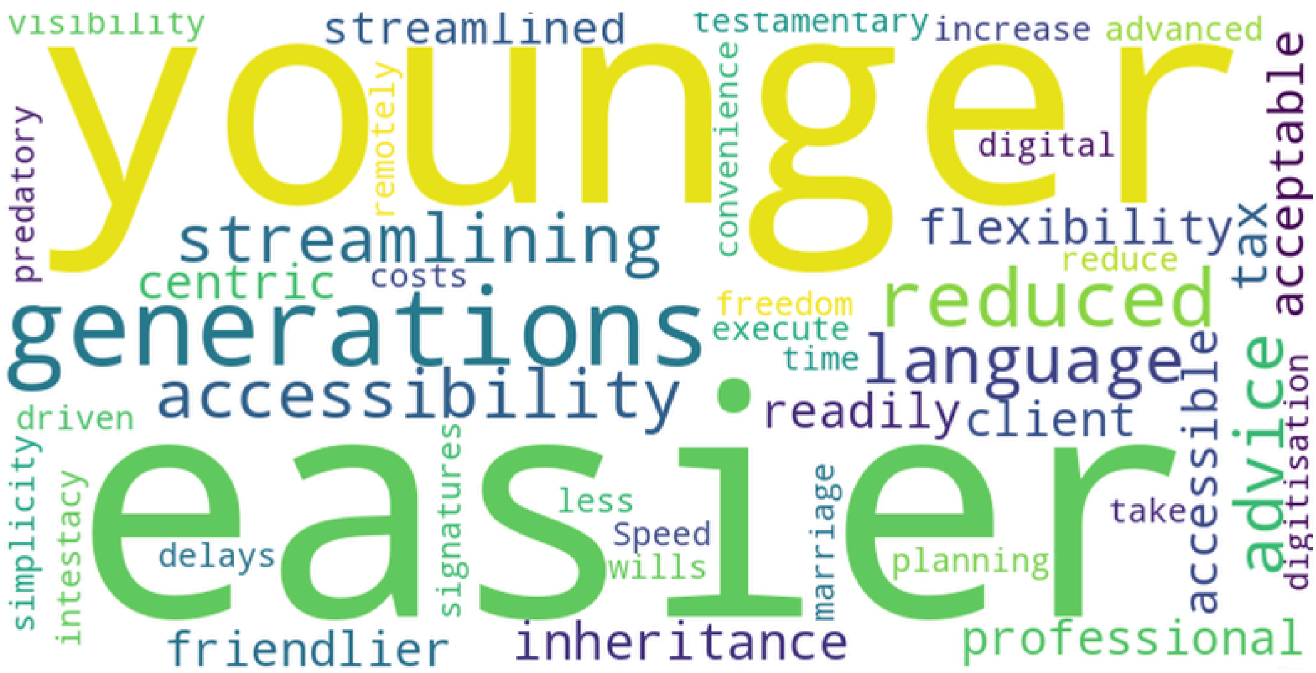


What type of Will registry system do you believe is most appropriate?

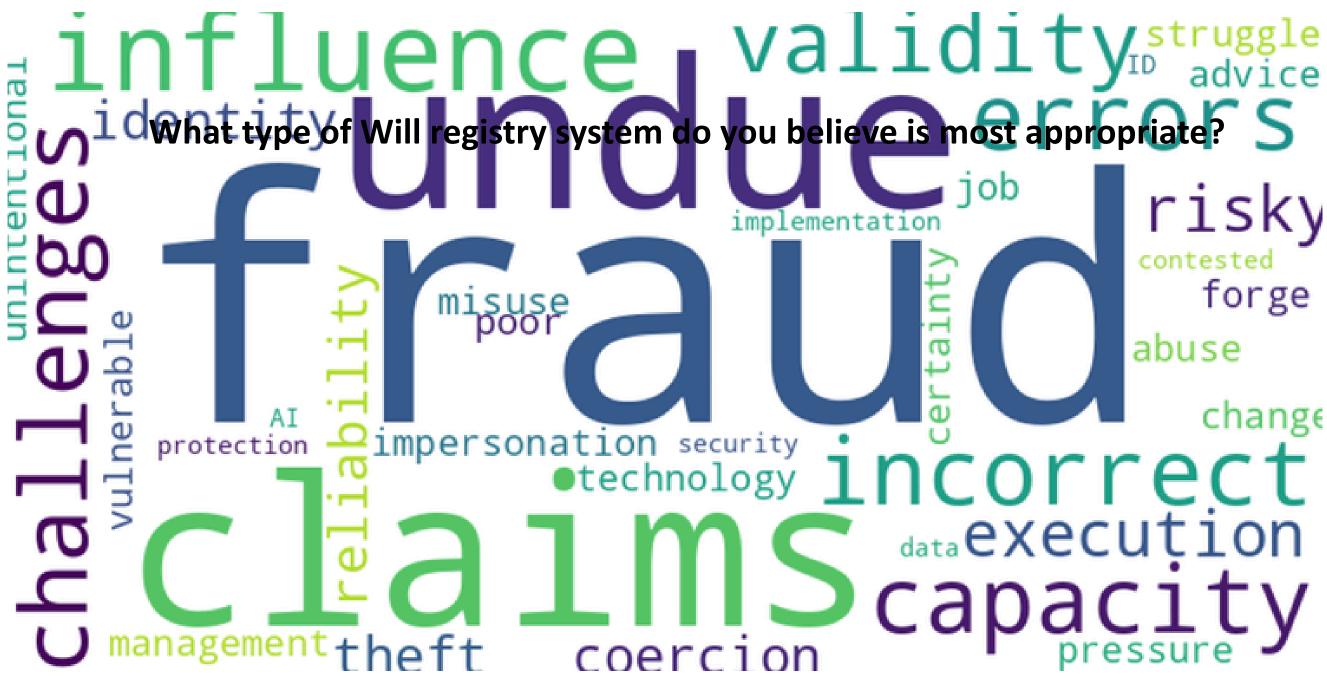


Appendix E- Industry Survey

Where Firms See Opportunity:



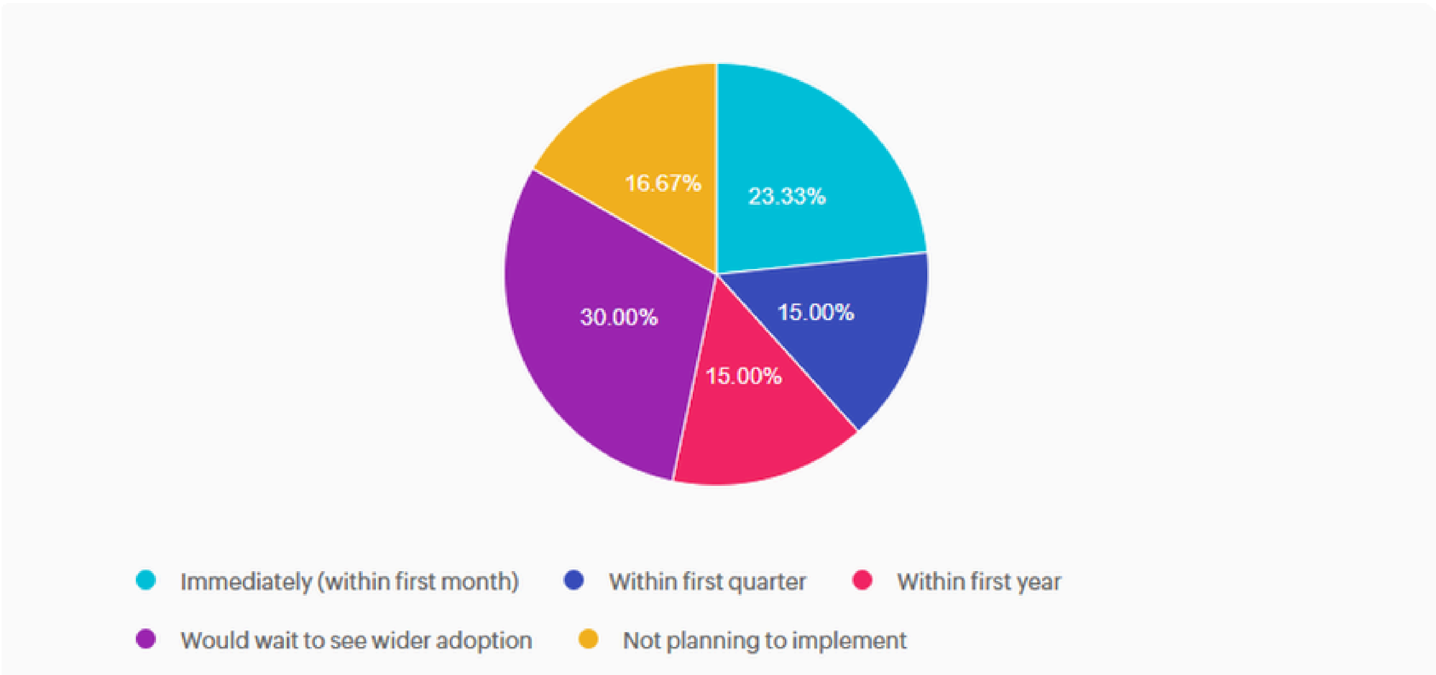
Key Risks Identified:



What type of Will registry system do you believe is most appropriate?

Appendix E- Industry Survey

How quickly would you look to implement electronic Wills once legally recognised?



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