

# Enhancing consumer protection, reducing regulatory restrictions: will- writing, probate and estate administration activities

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Impact assessment and market picture

Views on our approach are welcomed by Wednesday 16 July 2012 (*12 weeks from 23 April*)

# PART ONE

## IMPACT ASSESSMENT

### Summary

1. The rationale for intervention relates to both protecting consumers from detriment and ensuring that regulation for will writing and estate administration is fit for purpose, effective and consistent. Evidence shows that consumers suffer from detriments in the market, such as poor quality of wills and a variety of unethical practices including fraud during administration of estates. Quality problems occur across both regulated and unregulated providers and current regulation does not cover all purchases from providers. This leaves some consumers without minimum protections which are currently only available to consumers of solicitor firms.
2. Alternatives to regulation such as self-regulation are inadequate as they lack coverage of the whole market and have reduced enforceability, while consumer education is not feasible given that wills and estate administration services are infrequent purchases. At present there is no restriction as to who may deliver these services to the public and the regulatory protections enjoyed by customers of lawyers including redress through the Legal Ombudsman are not there for a portion of the market. Extending reservation to cover all firms ensures protections for all consumers regardless of what services are purchased or which firms are used, and allows regulators to test that only fit and proper persons can own or manage providers. Extending minimum protection ensures consistent regulation across providers. This allows a more effective functioning market that facilitates fairer competition. This will be accompanied by removing reliance on barriers to entry and any misaligned regulations, as regulators adopt a more risk-based approach to regulating providers. We anticipate that in the future regulators will be able to tailor their supervisory activities to target those areas of higher risk, ensuring better outcomes for consumers.

### *Approach to the assessment*

3. In assessing the impacts of reservation of will writing and estate administration, we would expect to see regulators taking a more risk focused and activity-based form of supervision of solicitor firms that mainly offer will-writing and/ or estate administration services. This focus would mean lower regulatory compliance costs and greater flexibility for low risk firms. It would also mean that the relatively small number of currently unregulated providers would come within the scope of regulation for the first time. They would incur some cost in doing so.

## Policy problem & context

4. The Legal Services Board (the LSB) investigations into the regulation of will-writing, probate and estate administration legal services have found that consumers were not adequately protected both at the time the will was written and at the time the estate is administered.<sup>1</sup> These include:
  - the quality of consumers' wills;
  - the safekeeping of their wills;
  - unethical sales practices and fraud (including failure to prevent proven wrong doers from setting up business in these markets);
  - the safekeeping of consumers' money and other assets;
  - shortfalls in service levels;
  - a failure to deliver effective redress when things go wrong and to provide access to the Legal Ombudsman as a second tier of redress;
  - market distortion created by only the probate application stage of estate administration being subject to mandatory legal services regulation resulting in added cost, disrupted service and opaqueness over safeguards.
5. At present there is no restriction on who can enter the market and deliver services outside of regulation.<sup>2</sup> Our best estimate is that there are around 5,484 firms offering will-writing products, of which 4,634 are solicitor firms and 850 are will-writing firms and members of trade bodies (IPW, SWW). Around 85 other firms also offer will-writing services but are not members of any professional body, regulatory arrangements or codes. These firms account for only about 1.5 per cent of all firms in the market.
6. While there is a diversity of suppliers in the market<sup>3</sup>, solicitor firms that are regulated by the Solicitors Regulation Authority (the SRA) are believed to account for at least two-thirds of the will-writing market.<sup>4</sup> Our research indicates that around 86 per cent of consumers purchasing estate administration services use solicitor firms, and around 14 per cent use non-solicitor firms which comprise mainly independent trust corporations, banks /

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<sup>1</sup> Submissions received to the LSB's *Call for Evidence: investigation into will-writing, estate administration and probate activities*: [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/submissions\\_received\\_to\\_the\\_call\\_for\\_evidence.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_call_for_evidence.htm)

<sup>2</sup> With the exception of the reserved activity of preparing the papers on which to found or oppose a Grant of Probate.

<sup>3</sup> For a snap-shot of the diversity of the supply-side of the market refer to the Market Picture document accompanying this impact assessment.

<sup>4</sup> Law Society 2010 survey results as submitted to Legal Services Consumer Panel Call for evidence indicate that 67% of wills are written by solicitors. An Office of Fair Trading survey of 2000 adults from February 2010 provided a figure of 88%.

building societies, accountancy firms and financial advisers.<sup>5</sup> Of the latter group about half – or 7 per cent – are not regulated by either a regulator, voluntary code or are members of a professional body. Anecdotal evidence points to a handful of independent trust firms being in this category, though exact numbers are difficult to quantify.

7. Problems have been discovered across both the regulated and unregulated markets but issues such as safeguarding of wills, unethical sales practices, absence of protections to safe-keep consumers' money, and failure to deliver effective redress are mainly restricted to the unregulated sector.

8. We propose two key ways to tackle these detriments:

- Improving the effectiveness of the existing legal services regulation that applies to the majority of providers delivering these services where it is not working well for consumers. This would involve regulators placing a greater emphasis on targeted, risk-based monitoring and supervision of regulated businesses and a lesser reliance on wider professional titles. We would like to promote competition in the market but to retain essential protections in order to have both a fair and competitive market for consumers;
- Recommending that the list of reserved activities be extended to include will-writing and estate administration activities. This would ensure that appropriate consumer protections, including access to redress, are in place no matter who delivers the service. Legal services regulation would apply to all providers rather than just those with professional titles. This would make it impossible for unscrupulous or poor quality providers to avoid regulation. All existing types of businesses active in these markets must sign up to regulation to continue to practice if they adhere to required standards.

9. The proposals will be assessed against three aspects:

- Ensuring that consumers have appropriate protections, access to redress and that the quality of wills is appropriate given the risks identified;
- Improving existing regulation;
- Maintaining the benefits of a plurality of supply;<sup>6</sup>

10. The LSB has considered the Government's approach to regulatory simplification and removing unnecessary regulatory barriers that can stifle

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<sup>5</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.11.

<sup>6</sup> On the supply side of the market see part 2 of this document: Market picture

innovation and competition. The LSB views the liberalisation of the legal services market to external ownership through the introduction of Alternative Business Structures (ABS) and helping Approved Regulators (ARs) to improve the way they regulate by focusing on outcomes, as essential to ensuring competition and innovation within a framework of consistent regulatory protections.

11. We propose that it is not the role of regulation to prevent consumers exercising their legitimate choice as to whether or not to seek professional assistance. We support the principle of individuals in a personal capacity being able to provide free advice to help others. We propose that these freedoms should remain without restriction or regulation. We do not propose restrictions or regulation of packages developed to inform and guide individuals over and above that provided by general consumer law.

## **Policy Options**

### ***Option 1***

#### ***LSB's proposed intervention – reservation & regulation***

12. The LSB's preferred option to tackle the identified detriments in the market is to improve the application of existing regulatory protections and extend reservation to encompass will-writing and estate administration activities provided by those outside of existing regulation.
13. The LSB takes the view that the legal activities that should be reserved are:
  - The preparation and drafting of a will and all ancillary legal activities;
  - The administration of an estate of a deceased person (including the preparation of the papers) and all ancillary legal activities.
14. Our proposal is that regulation should extend to all providers delivering will-writing, probate and estate administration activities and ancillary advice in expectation of fee, gain or reward. We believe that this should extend to any 'checking' or 'advice' activities provided by an advisor where this is a feature of a self-completion package. Consumers may legitimately believe that they are receiving tailored legal advice in these circumstances. This proposal includes holding providers to account for work that they produce, including where they have used software or other tools to deliver a service. We propose that where mistakes are derived from the software or another tool, ARs should not allow regulated providers to delegate indemnity responsibility to the provider of the software/other tool.
15. Any organisation wishing to regulate the activities will have to apply to the LBS under the *Legal Services Act 2007* (LSA) Schedule 4 process. We propose to issue guidance on the high level regulatory arrangements that will be required of any AR of these activities. This will set out the underpinning

requirements that all ARs should apply to all businesses active in these markets. These will be the minimum protections that we believe are needed to target the systemic detriments that we have found across these markets. Beyond this the onus will be on the ARs targeting regulation and enforcement activity based on risk indicators for each regulated organisation.

16. LSB's proposed regulatory intervention includes:

- A strategy and early action for consumer education;
- A mandatory register of authorised providers;
- Authorisation gateway checks including a fit and proper person test for ownership and control;
- Appropriate financial protection arrangements especially where a provider has access to consumers' money including indemnity insurance unless work from regulators and financial institutions avoids the need to hold consumers' money;
- An outcomes based code of conduct, with appropriate emphasis on sales practices;
- A requirement that providers have an appropriately trained workforce;
- A risk based supervision strategy that targets regulatory action to protect consumers;
- An enforcement strategy that incentivises and encourages compliance, deters non-compliance and punishes transgressions appropriately including the levying of financial penalties;
- Arrangements to ensure each provider has an appropriate in-house complaints process;
- Bringing all three activities within the jurisdiction of the Legal Ombudsman.

17. The LSB believes that focusing on risk-based regulation is the best way to deliver the regulatory objectives and the principles of better regulation in these markets. The focus, therefore, is on outcomes rather than uniform and prescriptive rule books. The proposed regulatory approach will be underpinned by the principles:

- Regulation must have a greater emphasis on the entity and how they operate rather than on the qualifications of individuals. The entity will

be held responsible for the outcomes achieved for clients and that the professional principles are adhered to;

- There may also be underpinning obligations set for individuals where the regulator has determined this is required but that would not be the starting point for all work;
- The LSB would expect regulators to consider the risks associated with any software used and make their supervisory arrangements based on their assessment of risk, in conjunction with their assessment of other relevant risks.

18. LSB takes the view that bringing unregulated providers into the scope of regulation will ensure that consumer expectations of all legal services, including the preparation of wills and the administration of an estate, are regulated and that this perception reflects reality. In a *YouGov* survey it was found that 84 per cent of consumers of probate and estate administration services assumed they were purchasing services from a regulated provider and a majority of consumers regarded regulation as important in providing essential safeguards.<sup>7</sup> As not all providers of estate administration services are currently regulated, there remains some disparity between consumers' perception of what is, and what in reality is not, covered by regulation.

19. **For will-writing, the costs of this option would mainly fall to those firms that are currently outside the scope of all regulation (including voluntary arrangements and codes). This will impact on around 85 firms or 1.5 per cent of the market.<sup>8</sup> These costs include extending the jurisdiction of the Legal Ombudsman, having in place regulatory compliance systems and appropriate insurance arrangements. Most of these unregulated firms offer will-writing activities only. Reservation will also put in safeguards in terms of authorisation gateways checks, and fit and proper person tests, which are particularly relevant for those unregulated firms who do estate administration work.**

20. **The main additional cost that will fall on providers who are members of voluntary schemes (850 firms or 18.3 per cent of the whole market) is the cost of extending the Legal Ombudsman to ensure that all consumers have a single redress option.**

21. **It is thought that about 7 per cent of providers who offer estate administration are outside the scope of all regulation.<sup>9</sup> Though it is difficult to determine with precision, it appears that these firms are primarily a handful of large independent trust corporations who**

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<sup>7</sup> *YouGov, The Use of Probate and Estate Administration Services*, Jan. 2012, p.21.

<sup>8</sup> The market consists of 5,484 firms offering will-writing products, of which 4,634 are solicitor firms, and 850 are will-writing firms and members of professional bodies (IPW, SWW). Around 85 other firms also offer will-writing services but are not members of any professional body or regulatory arrangements or codes. These 85 firms account for about 1.5 per cent of all firms in the marketplace.

<sup>9</sup> *YouGov, The Use of Probate and Estate Administration Services*, Jan. 2012, p.11.

**undertake both estate administration work and also write wills in large quantities (e.g. Trust Inheritance write 20,000 will a year, or 12 per cent of the independent will writing market in England and Wales).<sup>10</sup> Reservation would therefore only impact on a small minority of currently unregulated estate administration firms.**

## **Option 2**

### **Voluntary schemes & self-regulation**

22. The LSB considered non-mandatory regulatory options in the area of will-writing and estate administration. These schemes include voluntary arrangements and self-regulation, examples of which include the schemes run by the existing will-writing trade bodies.
23. When Parliament decided not to add will-writing to the list of reserved activities during the time when the LSA 2007 was being passed by Parliament, encouraging self-regulation through voluntary licensing schemes run by trade bodies as an alternative to reservation. Despite the promotion of voluntary schemes in the past few years and one trade body gaining Office of Fair Trading (OFT) Consumer Code recognition, the schemes still only have partial coverage of the market. The area of greatest weakness is that non-compliant firms may exit such arrangements at any times and escape facing enforcement action. This situation risks creating misaligned incentives in the market in terms of regulatory compliance and risks reducing the efficiency of enforcement action.
24. Alternatives to mandatory regulation such as self-regulation, because of their non-mandatory status, have proven to be partial in coverage. Partial coverage means that some consumers have no redress options other than the private right of action for breaches of consumer protection regulation which is costly and time-consuming. Partial coverage also results in some firms operating outside the scope of any regulation which can lead to different obligations (and therefore cost) falling to firms whether they are, or are not, regulated. This may result in an unfair competitive advantage on those firms who do not sign up to any regulatory arrangements.
25. It is generally not deemed sufficient to assume that consumers would drive demand for greater levels of regulation, as consumers are confused as to whether will-writers and estate administration were already under the same mandatory regulatory obligations as solicitor firms. Also, the voluntary nature of self-regulation among will-writers creates incentives for non-compliant firms to exit voluntary regulatory arrangements and continue trading.
26. In assessing self regulation, the Consumer Panel decided it was not sufficient and that only mandatory regulation would have the effect of introducing sufficient protections and redress mechanisms for consumers.<sup>11</sup> The

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<sup>10</sup> Trust Inheritance submission to the LSB's Call for Evidence in Will-writing, 2011.

<sup>11</sup> Legal Services Board Consumer Panel, *Regulating Will-writing*, July 2011, pp.66-68.



Consumer Panel recommended that regulation must be mandatory regulation of all will-writing and estate administration.

27. Under this option there may be additional and on-going costs in dealing with remedial ways to reduce detriments where consumers use businesses from outside of voluntary jurisdictions. Without having in place a redress scheme that covers all consumers, the costs of seeking redress by consumers who experience detriment may be high as many would have to use the Courts to seek redress from unregulated providers. This is likely to be costly to individual consumers in terms of financial costs and delay. This would also be costly to HM Courts Service in terms of increased caseload.
28. Non-regulatory approaches have the effect of maintaining a 'non-level' playing-field whereby some providers are unregulated and do not need compliance systems in place, while others do. This can impose a cost to some consumers and deter fair competition across the market which can distort prices for legal services.
29. The LSB considered the non-mandatory regulatory option of encouraging unregulated providers become part of the voluntary regulatory schemes e.g. those established by IPW and SWW. Membership of voluntary regulatory schemes, however, would be akin to the cost of extending reservation to these firms as they would be required, anyway, to establish compliance systems and monitoring.
30. However, they would still be able to exit regulation should they wish, thereby reducing the efficacy of regulation to safeguard consumers. In this situation deterrence through having in place enforcement mechanisms would be weak as non-compliant firms could exit.
31. Further, the success of promoting membership of voluntary schemes has been partial since the then government recommended this approach in debates during the passage of the Act and before that creation of the OFT's Consumer Codes Approval Scheme (CCAS) which was established in 2001 to safeguard consumers' interests and raise standards in markets through self-regulatory business-to-consumer codes of practice. There is no evidence to indicate that continuing down this route will lead to nearer complete market coverage. There would be no additional costs on unregulated providers. But also no change in current detriments for consumers of unregulated sector
32. Since 2001 the OFT has been operating the Consumer Codes Approval Scheme (CCAS) which aims to safeguard consumers' interests and raise standards in markets through self-regulatory business-to-consumer codes of practice. The OFT is moving away from the Code of Approval role and this will impact upon self-regulation among will-writers as IPW have achieved OFT approval and the SWW code has been submitted for scrutiny as part of the application process approval. This will limit the efficacy of self-regulation going forward.

### Option 3

#### Consumer education

33. The LSB considered the non-regulatory option of improving transparency and consumer guidance as a viable option for addressing the policy problem. Better guidance and enhanced consumer education could have the effect of reducing the risk of fraud and helping consumers make an informed purchasing decision.
34. Fraud occurring during the estate administration process has been identified as a risk by the LSB. Greater awareness by consumers as to what protections are in place, and also alerting consumers as to the risks such as the fact that beneficiaries are not entitled to inspect the will, may have a positive effect of encouraging consumers to purchase will-writing and estate administration services from providers who have appropriate protections in place, including redress and compensation arrangements.
35. Consumer education could be targeted towards vulnerable consumers who, evidence shows<sup>12</sup>, are targeted by poor sales practices such as pressure selling. Lessons drawn from consumer education strategies in financial services is that improvements in the level of financial capability require a long-term change in attitudes, habits and behaviour towards money and that measuring the impact is fraught with difficulty. Considerable resource is also needed to affect changes, which takes a long term commitment on behalf of the regulator. Such strategies take a long term view and involve changing behaviours in the work-place, among parents and even school children.<sup>13</sup>
36. Consumer confusion around what is and what is not regulated, as well as the process of writing a will and the estate administration process – all of which often represent one-off purchases made under stress – could be partially offset by better access to information. Research has shown that consumers do not understand the differences between regulated and unregulated providers and believe that all services are underpinned with the same level of protections<sup>14</sup>. According to research by *YouGov* it was found that 84 per cent of consumers believed they were purchasing services from a regulated provider and a majority of consumers regarded regulation as important in providing essential safeguards.<sup>15</sup> It has been considered that consumer information could be delivered through providers themselves (though this would require a regulatory action through mandating the provision of basic consumer information) or through professional bodies.
37. Currently, members of professional and trade bodies such as IPW and SWW have a code of practice which includes requirements to disclose fees for executor services and that consumers must be notified by letters of

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<sup>12</sup> Legal Services Board Consumer Panel, *Regulating Will-writing*, July 2011, pp.34-44.

<sup>13</sup> See Financial Services Authority, *Evidence of impact: an overview of financial education evaluations*, July 2008.

<sup>14</sup> See Steve Brooker, Legal Services Consumer Panel Manager, The consumer's role, Legal Services Board, Understanding the economic rationale for legal services regulation -A collection of essays, March 2011 for a summary of research.

<sup>15</sup> *YouGov, The Use of Probate and Estate Administration Services*, Jan. 2012, p.21.

engagement for purchasing additional services. Greater transparency around cost may help facilitate a better functioning market and empower consumers in their purchasing choices. For providers of probate and estate administration services, research suggests that some firms thought that educating consumers would be the most appropriate method of protecting them so that they were aware of the process involved in probate and estate administration services.<sup>16</sup>

38. The LSB takes the view that consumer education, and the provision of greater market information, such as cost of services and types of protections in place would not, in itself, solve the key issue of improving quality of wills or providing better protections in place for consumers. General consumer advice is already available on the internet (DirectGov, Citizens Advice Bureau and Professional Bodies' websites) and some price information is available on comparison websites.
39. Identified problems in the market which cause consumer detriment such as the poor quality of wills and the occurrence of fraud during the estate administration process would not, under this option, be robustly tackled. Detriments relating to service issues and overcharging may, however, be lessened but consumer education is unlikely to make any substantive impact on these without firms being mandated to supply consumers with information at the point of purchase, which in itself constitutes a form of regulation.
40. Under this option there may be additional and on-going costs. While there may be some benefits in changing consumer behaviour, this would be limited if voluntary, and probably would not extend much further than what is already offered. The issue of poor quality wills and mistakes found in wills after the death of the client would not be altered, nor would the issue of no access to the Ombudsman for non-solicitor firms. This is likely to be costly for consumers in terms of seeking private redress and has cost implications for HM Courts Service due to increased caseload. This is especially true for cases that go to court where the losing party pays the costs of both sides. In the case of poor sales practices, this may be in breach of Consumer Protection Regulations, but consumers do not have a private right of action, as individuals cannot take companies to court, only public authorities can do this. This places a heavy reliance on public enforcement and the constituent costs associated with this.
41. Also, there may be ongoing costs in the form of remedial action for detriment caused by unregulated providers in the market. By relying solely on consumer education and information it is likely that only some consumers will benefit, especially those who can easily access information to inform their purchasing decisions. Vulnerable consumers, however, are less likely to be influenced by consumer education and information campaigns (particularly if it is not mandatory and not at the point of purchase) will still be the chief cause of concern for this group of consumers.

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<sup>16</sup> IFF Research, *Probate and Estate Management Services Survey*, 2012, p.45.

## **Option 4**

### ***Do Nothing Option (enforcing existing legislation)***

42. The LSB considered the 'do nothing' scenario. This means that the market for will-writing and estate administration services would continue to only be partially regulated either through ARs such as the SRA and CLC, regulators or professional bodies from different sectors overseeing providers where the majority of their work is in that sector e.g. accountants<sup>17</sup>, or through voluntary regulation via bodies such as IPW and SWW, who have voluntary regulation in place around estate administration and probate services. Some providers would, however, remain outside the scope of regulation altogether.
43. This approach would tackle some of the poor quality of wills and services by solicitors through improving regulation by targeting at risks in these markets and being more conducive to encouraging competitive pressures between solicitors as well as with currently unregulated providers. Better regulation would lead to benefits for consumers and would go some way in tackling detriments for most consumers in the market who purchase services from regulated firms.
44. However, improving existing regulation will not address the identified detriments and lack of redress options for consumers of non-solicitor firms. We take the view that consumer detriment would remain in will-writing and estate administration, especially among unregulated firms, and no immediate remedy would be in place to mitigate future risks by those unregulated providers. Consumers of unregulated firms would not have coverage of Legal Services Ombudsman (LeO) and therefore would have to resort to expensive private means (the Courts) to seek redress.
45. However, while research has shown that around a quarter of wills in that sample do not pass a quality check, it should be noted that around three quarters of wills are fit for purpose. The risk is that doing nothing creates incentives in the market for the small number of unregulated providers (around 1.5 per cent of total firms) to provide services which have little in way of protections in place for consumers. These risks are likely to remain if no intervention takes place. The role of ABS in increasing compensation will not, in itself, adequately reduce risks for consumers of poor quality wills and fraud during the estate administration process. It is equally possible that an increasingly competitive market with lower barriers to entry because of the lifting of external ownership requirements for law firms, could exacerbate the risk of detriment occurring as a competitive advantage could favour some providers in stepping outside the scope of regulation.
46. It was considered that a 'do nothing' scenario would not remedy all of the current detriments, nor reduce the risk posed by future consumer detriment. The LSB takes the view that to do nothing would see detriment occurring

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<sup>17</sup> Provider will be regulated but regulation may not explicitly cover will-writing and estate administration activities

among consumers of unregulated firms continue, and risk impacting negatively on consumer confidence in legal services.

47. There would be no option for redress for consumers of unregulated providers through the LeO. Under this option consumers of unregulated providers could only seek redress through the courts, which is likely to be expensive and have the negative effect of increasing the caseload of the courts. Using the courts for redress may also potentially increase delays for consumers seeking redress, and therefore risk compounding the level of detriment experienced by them.
48. Under this option there would be no additional compliance costs on unregulated providers as regulation would not be expanded to include them, but there may be additional and on-going costs. Costs will be imposed on consumers of unregulated providers who will have to resort to the Courts to privately seek redress for detriments. This is likely to be costly to individual consumers in terms of financial costs and delay. This also has costs for HM Courts Service due to increased caseload. Also, there may be ongoing costs in the form of remedial action for detriment caused by unregulated providers in the market.
49. As in the non-regulatory option, there would also be costs in doing nothing and maintaining what would be a 'non-level' playing field among providers because not all providers would be within the scope of regulation. This can have the effect of maintaining a non-level playing field whereby some providers are unregulated and do not need compliance systems in place, while others do. This can impose a cost to some consumers and deter fair competition across the market which may distort prices for legal services.

## Survey of regulatory protections for regulated & unregulated firms<sup>18</sup>

	Insurance (PII)	Compensation arrangements	Handling client money [separate client account]	Complains handling	Legal Service Ombudsman	Education & training	Will storage	On-going monitoring	Mandatory regulation
SRA	✓	✓	✓	✓	✓	✓	✓	✓	✓
CLC	✓	✓	✓	✓	✓	✓	✓	✓	✓
IPW	✓	<p>✓</p> <p><b>Firms contribute 10% of fee income from estate administration activities to a bond<sup>19</sup></b></p>	✓	<p>✓</p> <p>Independent arbitration</p>	✗	<p>✓</p> <p>Entrance exam.</p> <p>CPD (20 hours for full members)</p>	<p>✓</p> <p>Fire and flood resistant premises and insurance</p>	<p>✓</p> <p>Requests made in regard to complains handling</p>	✗
SWW	✓	✗	✗	<p>✓</p> <p>Independent arbitration</p>	✗	<p>✓</p> <p>Entrance through College of Will –writing or self certification of CPD (16 hours)</p>	<p>✓</p> <p>Fire and flood resistant premises and insurance</p>	<p>✓</p> <p>All members to receive a personal visit at least every three years</p>	✗
Banks & Fin. Inst.	✓	Most banks use SRA regulated firms which are covered for SRA compensation	Not Known	FMSA via Financial Services ombudsman	Most banks use SRA regulated firms and in scope for LeO	✓	✓	✓	Under SRA and FSA rules
Accountants	✓	<p>✗</p> <p>Compensation arrangements do not currently cover will writing &amp; estate admin.</p>	✓	✓	✗	✓	Not known	✓	<p>✓</p> <p>set standards for reporting, monitoring &amp; enforcement</p>
Non regulated providers	<p>✗</p> <p>Individual firms may have private arrangements</p>	✗	✗	<p>✗</p> <p>Individual firms may have internal processes</p>	✗	✗	✗	✗	✗

<sup>18</sup> This table represents only a simplified approximation of general regulatory protections in place for consumers of a range of provider types and is subject to verification.

<sup>19</sup> This is understood to be a compulsory obligation for members holding client money

## Impacts & costs/benefits of reservation

### Option 1 (preferred LSB option)

#### *Rationale for reservation as a means to extend regulation*

50. The issue of regulating will-writing was last considered during the passage of the *Legal Services Act 2007* (the 'Act'). Parliament decided there was insufficient evidence of consumer detriment to justify adding will-writing to the list of reserved activities. The Act, however, did include flexibility to bring new activities into regulation without the need for primary legislation, by giving the LSB power to recommend such a step to the Lord Chancellor (under section 24).
51. Reservation is the most expedient way to make mandatory regulation and works within the parameters of the Act. An alternative approach in delivering regulation is to use primary legislation to create a new, bespoke regulatory regime. The merits of such an approach was looked at by the Consumer Panel who rejected it on the basis that, 'multiple regulatory regimes could be costly and might create an unlevel playing field between providers operating under different arrangements'.<sup>20</sup> A bespoke regulatory regime would have fewer benefits while having significant costs. These costs include the practical issue of establishing such a regime through primary legislation involving lengthy timescales and a commitment of Parliamentary resources. By contrast, the Act includes flexibility to bring new activities into regulation without the need for primary legislation, and for this reason we consider reservation the best, and least cost, way of delivering regulation.
52. Reservation is the most likely way to tackle the identified detriments. Reservation would affect all providers – but particularly those not currently subject to regulation – thereby bringing all providers within the scope of regulation and providing assurance to all consumers.
53. We set out below how reservation would tackle three key areas that have been identified as causing detriment to consumers: (1) quality problems, (2) sales practices, and (2) redress options.

#### *Improving Quality*

54. The poor quality of wills has been demonstrated through the shadow shopping exercise commissioned by the LSB and undertaken by IFF Research.<sup>21</sup> The LSB's preferred policy option of introducing reservation and bringing into scope formerly unregulated providers, is intended to improve quality having in place a requirement that providers have an appropriately trained workforce will also help ensure that quality is improved across providers. Also, having in place an easy to navigate redress mechanism can

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<sup>20</sup> *Legal Services Consumer Panel Regulating Will-Writing*, July 2011, p.76.

<sup>21</sup> A summary of results can be found in the report: *Legal Services Consumer Panel Regulating Will-Writing*, July 2011, pp.19-29.

ensure to resolve problems for consumers when they have complaints about quality issues.

### *Improving Sales Practices*

55. Problems associated with poor sales practices centre on using unfair practices such as pressure selling and bait tactics to cross-sell additional services and features to unsophisticated consumers. Examples of services include probate and estate administration services and more complex wills containing unnecessary features. Research shows that vulnerable consumers such as the elderly or those grieving a family death have been the target of these tactics. For example, in the IFF consumer survey, 25 per cent of those who bought extra services felt some degree of pressure to buy them (17 per cent using solicitors and 36 per cent using will-writing companies).<sup>22</sup>
56. Introducing reservation includes gateway checks that will filter out many rogue operators that may seek to target vulnerable consumers through selling tactics. Also, reservation will ensure that appropriate financial protection arrangements are in place where a provider (usually during the estate administration process) has access to consumer's money. The LSB also proposes the introduction of an outcomes focused code of conduct with appropriate emphasis on sales practices in order to mitigate some of the sharper selling practices that risk causing detriment to consumers.

### *Improving Effective Redress*

57. The lack of appropriate in-house complaints process among unregulated firms, and the fact that the jurisdiction of the Legal Ombudsman currently covers only solicitor-regulated firms, means that some consumers have to rely on private means to seek redress when things go wrong. Private means of redress can be expensive and in some cases seeking redress through the courts can result in delays, causing additional detriment to consumers and costs to HM Courts due to potentially higher caseloads. It is also possible that the difficulty faced by some people in seeking redress through private means may dissuade people from attempting to seek redress in the first place.
58. Introducing reservation will have the effect of ensuring that the jurisdiction of the Legal Ombudsman will cover all purchases of wills or estate administration from any provider. All consumers, therefore, will be covered by this minimum protection so that they may use a single mechanism to resolve disputes, bringing into line current expectations by consumers that legal services are already regulated.

### *Impacts*

59. Depending on the nature and type of reservation, the likely impacts will, in the first instance, be unregulated providers (1.5 per cent of firms) being subject to external regulation and its requirements for the first time. By setting minimum

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<sup>22</sup> *Ibid.*, p.40.



standards of quality, service, and ongoing compliance, unregulated providers will be subject to a minimum quality standard in the market.

60. There are likely to be costs imposed on formerly unregulated providers in complying with regulation, but equally there may be a reduction in cost for those providers already regulated (SRA, CLC, Bar, Notaries, etc) as the adoption of a greater risk focus in regulation can mean that those regulated firms who are deemed low risk can be subject to more proportionate levels of supervision.
61. Reserving will-writing and estate administration will also create a level regulatory playing-field which will eliminate regulatory non-compliance by rogue firms and provide a straightforward safeguard on quality and service for consumers.
62. Extending reservation also brings into scope redress through the LeO for all consumers irrespective of which type of provider they purchase their services from. Having a level playing field, and consistent regulation, will help facilitate new entry into the market rather than unnecessarily distort firms' decision making.

#### *Impacts of Reservation on Estate Administration*

63. Extending reservation to will writing and estate administration will impact on such activities differently. According to IFF Research, solicitor firms dominate the estate administration partly because of the necessity to use an authorised person to lodge papers for a grant of Probate.<sup>23</sup> Consumers also appear to choose a firm to do their probate and estate administration on the basis of its location and having a past relationship with the client or members of their family.<sup>24</sup> Cost does not appear to be a key driver in people's choice of service provider when it comes to probate and estate administration (although it does impact on choices of whether or not to use professional services at all).<sup>25</sup>
64. Solicitors tend to acquire their probate and/or estate administration work through their existing client base or, as mentioned above, from referrals from non-solicitor firms. Solicitors are clearly dominant in the market<sup>26</sup> and comprise 86 per cent of estate and administration services purchased.<sup>27</sup> Therefore the number of non-solicitors such as will-writers, accountants and Trust Corporations who administer estates comprise a comparatively small part of the overall market.

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<sup>23</sup> IFF Research, *Probate and Estate Management Services Survey*, 2012, p.5.

<sup>24</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.20.

<sup>25</sup> *Ibid.*

<sup>26</sup> Solicitors tend to acquire their probate and/or estate administration work through their existing client base or from referrals by non-solicitor firms. IFF Research, *Probate and Estate Management Services Survey*, 2012, p.14.

<sup>27</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.11.

65. It is common for firms (especially solicitor firms) to combine reserved and unreserved services, for example by offering will-writing and a full estate planning service including probate activities. Among non-solicitor firms, research suggest that the majority of such firms that offer probate and/or estate administration conduct most of the work themselves, but contracting out specific tasks such as the reserved activity of applying for a Grant of Probate to solicitors.<sup>28</sup> In a minority of cases firms such as charities and specialist will-writing firms instruct solicitors to carry out the majority of the probate and estate administration work on their behalf.<sup>29</sup>
66. The extension of reservation would only impact on a minority of firms as solicitors are already regulated by SRA rules. The extension of reservation would impact on those non-solicitor firms who are not members of professional or trade bodies and therefore do not have in place entry or operational requirements designed to screen suitability of firms offering estate administration and holding client money. In terms of estate administration only half of non-solicitors reported that their probate and/or estate administration activities were regulated by an external body.<sup>30</sup>
67. Our research found that firms who are not solicitors offering estate administration services were likely to be accountants/financial advisers or banks/building societies and trust corporations. Only a small minority of firms who carried out probate/estate administration practices were wholly outside the scope of any regulation, including voluntary codes and membership of professional bodies. It is this group that most of the impact(s) of reservation is expected to fall on. According to *YouGov* research, the estate administration market is made up of 86 per cent of solicitors<sup>31</sup> and 14 per cent of non-solicitors. If around half of the non solicitors are wholly outside the scope of regulation, then about 7 per cent of firms (mainly trust corporations) would be the primary firms affected by the extension of reservation to cover all estate administration activities.
68. Reserving estate administration means that the regulatory protections that we propose to put in place for will-writing would also apply for firms undertaking estate administration. In particular, authorisation gateway checks which include a fit and proper person test, and a mandatory register of authorised providers, would ensure that owners and managers of firms and authorised persons are checked for criminal history and past convictions. Given that fraud and mishandling of client monies tend to occur during the estate administration process, basic requirements to practise would help reduce the

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<sup>28</sup> IFF Research, *Probate and Estate Management Services Survey*, 2012, p.13.

<sup>29</sup> *Ibid.*, p.14.

<sup>30</sup> IFF Research, *Probate and Estate Management Services Survey Research Report*, p.33.

<sup>31</sup> *YouGov, The Use of Probate and Estate Administration Services*, Jan. 2012, p.11.

risk of rogue firms and individuals operating in the market and in handling client monies at the vulnerable estate administration stage. The requirement to have appropriate financial protection arrangements especially where a provider has access to consumers' money would help reduce detriment and have in place safeguards for clients' money.

69. The impact of these requirements for estate administration providers would be felt by those firms that operate outside the scope of current regulation, including those outside voluntary codes set down by professional bodies. The number of such firms is not thought to be many, possibly around 7 per cent of those firms that do estate administration work. We believe that these firms are primarily large trust corporations who may also offer will writing services. Of course firms outside the scope of current regulation but who have in place appropriate compliance systems, etc, will be able to transfer into the regulatory regime with little extra cost. The majority of firms that offer estate administration in the market place are solicitor-firms (86 per cent) and other providers such as accountants/financial advisers (7 per cent of firms) which have some form of regulation in place. In the case of solicitor firms they are regulated by the SRA while accountants are regulated by their professional body, e.g. Institute of Chartered Accountants in England and Wales (ICAEW) or the Association of Chartered Certified Accountants (ACCA) and financial advisers are regulated by the Financial Services Authority (FSA).

70. In a survey of firms that offer probate and estate administration services, IFF Research noted that on the whole firms believed that despite some possible increases in costs, regulation would have a positive impact on the market, increasing consumer protection, reducing fraud and ensuring quality of services are being delivered.<sup>32</sup>

### **Marginal cost of reservation**

71. For will-writing, the additional costs of reservation would chiefly fall on the 85 or so firms who are wholly outside the scope of regulation currently. For estate administration, the additional – or marginal cost of reservation – will fall on the 7 per cent of unregulated firms that offer estate administration services, many of which are trust corporations may also write wills, as well as handle the administration client's estates.

72. These firms make up around 1.5 per cent of all will-writing firms in the market, the rest of which are members of professional and trade bodies (such as IPW, SWW). The type of costs that are likely to fall to them include:

- Cost of establishing an inclusive compensation and PII scheme for the previously unregulated part of the market (1.5 per cent of firms); 19.8

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<sup>32</sup> IFF Research, *Probate and Estate Management Services Survey Research Report*, 2012, p.44.

per cent of firms (18.3 per cent members of IPW or SWW and 1.5 per cent outside of voluntary regulation);

- Cost for firms in establishing complaints handling processes and the cost of extending the coverage of LeO for these firms (about 19.8 per cent of firms in the market, including 18.3 per cent who are members of professional bodies and 1.5 per cent outside of voluntary regulation);
- Cost of establishing regulatory compliance systems for the previously unregulated part of the market (1.5 per cent of firms);
- Cost of monitoring, by regulators, compliance of the previously unregulated part of the market (1.5 per cent of firms).

73. These costs are necessary to ensure that this small number of firms are compliant with regulation and have in place the same protections that are offered by firms which are members of professional and trade bodies.

#### ***Where the costs will fall***

74. The costs of the above will only fall to those firms that are currently outside of regulation. This is defined as:

- Firms that offer will-writing services and estate administration outside of the scope of *any* professional or trade membership body. The number of such firms is around 85 and account for about 10 per cent of will-writing firms<sup>33</sup>, or around 1.5 per cent of the market. These firms are not members of a professional trade body and so consumers do not have the same level of quality guarantee or redress mechanisms as they have with self-regulated firms. It is for these reasons that some costs will fall on these firms as they will need to upgrade protections for consumers and have in place compliance systems.

**75. The cost of reservation will therefore affect a fraction of firms in the market which are not regulated by any organisation or code.**

76. If the current regulatory protections in place for self-regulated firms who are members and firms regulated in other sectors are adequate, extending reservation will not place additional costs on these firms. These firms will be subject to regulatory arrangements that ensure complaint handling procedures and they also have in place systems and controls that provide basic levels of quality and training standards among members. Arrangements for will storage and mandatory insurance for IPW and SWW members means that these firms are likely to have sufficient protections in place for consumers.

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<sup>33</sup> Consumer Panel Report, p.18.

77. The only cost that will fall to those firms that are already members of bodies such as IPW and SWW is the levy cost for the running of LeO. This cost is £385 for solicitor or CLC firms. LeO costs also depend on the volume of cases opened, the costs of which are apportioned across regulators. Extending reservation also means extending the scope of redress for consumers to pursue complaints, and therefore this cost will need to be met by all firms.

### ***Costs for unregulated firms***

#### *Cost of compensation and PII scheme for unregulated firms*

78. The cost of insurance varies between firms and products purchased. Comparing the cost of contributions for the compensation fund and PII for SRA is not useful as the risk premiums for these firms reflect a broad range of legal services rather than a singular activity such as will-writing. Currently, IPW and SWW firms, which specialise chiefly in providing will-writing, pay an average of £480 and from £290 per annum respectively for insurance<sup>34</sup>.

79. It is thought that if a market was developed for insuring only will-writing activity (excluding estate administration) the premiums may be low for firms as the activity itself is not considered particularly high risk. Having in place effective on-going monitoring and supervisory arrangements between firm and regulator is seen as key to having lower premiums for will-writing firms.

80. For unregulated providers, putting in place insurance to ensure that consumers are properly protected could mean costs of around £480 per annum for firms. This figure is the current average cost of PII for IPW firms, the majority of which offer will-writing but not estate administration service. Firms that undertake estate administration services are likely to face higher insurance costs than those that do not. This reflects the increased risk of insuring against client's estates and fraud. It is not possible at this stage to quantify future costs of insurance.

#### *Cost of extending the coverage of LeO for unregulated and self-regulated firms*

81. The cost of extending the current redress mechanism for consumers to unregulated and self-regulated firms is difficult to accurately quantify. However, using the current costs of using LeO for CLC firms we can arrive at an approximate cost for extending LeO coverage to will-writing firms. This cost is £385 per annum and is based on the current LeO levy for existing ARs. This figure may be subject to change when LeO review their levy rules in 2013/14.

82. Any additional costs of extending the LeO scheme will fall to the sector of the market not currently subject to legal services regulation, which accounts for around 19.8 per cent of firms (18.3 per cent members of IPW or SWW and 1.5

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<sup>34</sup> Exact amounts will vary between firms

per cent outside of voluntary regulation) and 14 per cent of the estate administration market.

83. This cost represents the *main additional cost* that would fall to those firms that are currently members of professional bodies.

84. We have used the CLC figures as a proxy for the LeO costs and probable future cases. This would mean that around 1.6 per cent of claims going to the LeO would be from these firms, and based off the costs of cases for the CLC, totals £328,000, or £385 per firm (assuming 850 will-writing firms in a static market) per annum.

85. This cost would be borne by both firms who are regulated by professional bodies but have not previously had LeO arrangements in place before (about 850 firms or 18.3 per cent of market), and those 85 firms (1.5 per cent of market) who are outside the scope of regulation.

#### *Cost of regulatory compliance by unregulated firms.*

86. We have no way of accurately calculating the cost of regulatory compliance by unregulated firms. We can, however, describe what such compliance may entail:

- Governance and risk management;
- Compliance in data requests by regulators (including financial information);
- Costs incurred by developing a system-based complaints register at the firm level.

87. While the above costs are not known with certainty for unregulated firms, we have assumed that they would probably be similar to those additional regulatory costs that have been estimated for ABS firms in the context of Outcomes Focused regulation (OFR) and establishing new compliance systems. The SRA estimates that such costs would be, on average across all different sizes of firms, £1669 per annum.<sup>35</sup> This figure includes any practising fee that an entity pays.<sup>36</sup> We have taken this figure as an assumed upper cost estimate that covers set-up cost for establishing compliance processes and for on-going monitoring costs. For firms offering a simpler range of business services, the on-going costs would probably be lower reflecting their lower insurance costs.

88. The figure of £1669 is only borne by those 1.5 per cent of firms currently outside the scope of any regulation. This is because extending reservation would require these firms to have in place adequate compliance and on-going

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<sup>35</sup> The average cost for a small firm was estimated at £1,368 and for a larger firm at £2,077. See SRA: *CBA: Outcomes Focused Regulation* (Nov. 2010).

<sup>36</sup> Practising fees are based off firm turnover and hence are variable, making them difficult to accurately quantify.

monitoring arrangements. Specifically, these firms would need to have in place minimum requirements such as:

- A mandatory register;
- Authorisation gateway checks – a fit and proper person test;
- A code of conduct with outcomes with an emphasis on sales practices;

89. Compliance and enforcement approach that incentivises and encourages compliance, deters non-compliance and punishes transgressions appropriately, including the levying of financial penalties.

90. Significant additional costs would not fall on those firms that are members of other regulatory schemes such as those administered by IPW or SWW. This is because these firms, as part of their membership duties, are deemed to have fit-for-purpose compliance arrangements. IPW's regulatory arrangements are monitored and assured under an approved code with the OFT (SWW is currently seeking a Code of Practice with OFT under the CCAS scheme for Stage One approval).<sup>37</sup>

91. Therefore, costs for regulatory compliance chiefly fall on the 1.5 per cent of firms outside the scope of any regulatory arrangements.

#### *Cost of monitoring, by regulators, compliance of previously unregulated firms*

92. It is not possible to quantify the additional costs that monitoring and compliance may have to regulators. Any additional costs will only be incurred by those bodies which begin to regulate the previously unregulated 1.5 per cent of firms outside the scope of present regulatory arrangements. For these regulators, there may be a one off cost of registering and authorising these firms, which is likely to be recouped through membership/practising certificate fees.

93. The cost for regulating these firms that constitute about 1.5 per cent of the market is not thought to be high. On-going costs to regulate these affected firms is equally thought not be high as the marginal cost of supervision would be extended to around 85 firms (1.5 per cent of the market). Most of the costs incurred would be absorbed within a regulator's on-going current regulation and would draw from the same databases and risk based interventions as those set up for other firms. This is not expected to result in material additional costs.

94. The costs to regulators will depend on whether the regulator is already accustomed to regulating and has in place the requisite supervisory arrangements. For example, a large regulator already operating in the market place and regulating hundreds of entities is unlikely to incur high costs for

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<sup>37</sup> OFT's oversight of CCAS will end in the near future and no other suitable body has yet been identified to replace them.

bringing into scope and regulating the activities of 85 will-writing firms. However, a new entrant regulator with no prior experience in regulation may face additional set up costs and other costs associated with approval of their regulatory code by the LSB.

95. There should not be any costs for firms subject to self-regulation or regulation in other sectors as these firms pay membership fees which already cover the scope and extent of the necessary regulatory activities such as supervision and monitoring. The table on page 25 sets out the marginal costs that will fall to firms if reservation was extended. For clarity, the marginal costs are highlighted in red.

### ***Summary of Costs of reservation***

96. The costs of reservation include:

- Cost of compensation and PII scheme for unregulated firms;
- Estimated cost is £480 per firm per annum (will impact 1.5 per cent of firms);
- Cost of extending the coverage of LeO for unregulated and self-regulated firms;
- Estimated cost is £385 per firm per annum (will impact 850 firms or 19.8 per cent of firms in the market, including members of professional bodies);
- Cost of any regulatory compliance by unregulated firms (will impact 1.5 per cent of firms);
- Estimated cost is £1669 per firm per annum (will impact 1.5 per cent of firms);
- Cost of monitoring, by regulators, compliance of previously unregulated firms;
- Costs not quantifiable but likely to be low. (will impact 1.5 per cent of firms).



## Marginal Costs & Benefits of Reservation (costs show in red)

Regulator	No. of Firms providing will-writing & estate admin.	Insurance	Extend LeO service	Compliance Costs		Cost of monitoring	Indicative costs	Benefits summary
				Compliance Costs	Other costs			
<b>IPW</b>	200	No additional costs but costs may go down if a market for will writing insurance is developed	£385 per firm	Governance & risk management Compliance in data requests Developing system-based complaints register Membership fees cost £265 and fully fund regulatory compliance	N/A – Compliance costs covered by current arrangements with IPW.	Current membership fees which fund current regulatory activities should fully fund monitoring and compliance	<b>FIRM COST</b> <b>£385 per firm for LeO</b> <b>PRACTITIONER COST</b> No additional costs	All consumers have redress through LeO.  <b>Reduced supervisory costs for low risk firms with robust compliance systems in place</b>
<b>SWW</b>	600	No additional costs but costs may go down if a market for will writing insurance is developed	£385 per firm	Governance & risk management Compliance in data requests Developing system-based complaints register Membership fees cost £ 275 and fully fund regulatory compliance	N/A – Compliance costs covered by current arrangements with IPW	Current membership fees which fund current regulatory activities should fully fund monitoring and compliance	<b>FIRM COST</b> <b>£385 per firm For LeO</b> <b>PRACTITIONER COST</b> No additional costs	All consumers have redress through LeO.  <b>Reduced supervisory costs for low risk firms with robust compliance systems in place</b>
<b>Banks &amp; Fin. Institutions</b>	Mainly solicitor firms	No additional costs as covered through solicitor insurance	No additional cost	No additional costs as solicitor firms regulated by SRA	N/A	No additional costs as solicitor firms regulated by SRA	<b>N/A</b>	<b>Reduced supervisory costs for low risk firms with robust compliance systems in place</b>
<b>Accountants</b>	Not known	No additional costs as covered through own insurance	£385 per firm	No additional costs as firms regulated by professional body	N/A	N/A	<b>FIRM COST</b> <b>£385 per firm For LeO</b> <b>PRACTITIONER COST</b> No additional costs	All consumers have redress through LeO.
<b>SRA firms</b>	4,634	No additional costs as covered through solicitor insurance	No additional costs as firms already covered	No additional costs as solicitor firms regulated by SRA	N/A	No additional costs as solicitor firms regulated by SRA	<b>N/A</b>	<b>Reduced supervisory costs for low risk firms with robust compliance systems in place</b>
<b>Other firms not currently members of professional bodies</b>	c.85 (1.5% of market) of unregulated providers)	£480 per firm  £35 per firm for PLI	£385 per firm	Governance & risk management Compliance in data requests Developing system-based complaints register All new systems needed in place  £1,669 (based off SRA estimate and includes practitioner fee)	Additional costs in establishing: (1) A mandatory register (2) Authorisation checks (3) Code of conduct	Some additional cost involved in implementing new arrangements not previously in place to ensure effective supervision	<b>FIRM COST</b> <b>£1,669 for regulatory compliance</b> <b>£480 per firm for insurance and £35 per firm for PLI</b> <b>£385 per firm for LeO</b> <b>PRACTITIONER COST</b> Unknown but potentially some cost for re-	<b>All consumers have minimum protections in place, including gateway checks to deter fraud, PLI, and extension of LeO.</b>  <b>Reduced supervisory costs for low risk firms with robust compliance systems</b>

							training	
<b>Total Population</b>	c.850 firms c.2,200 individuals							
<b>No. of firms affected by cost of reservation</b>	c.85 firms (1.5 per cent of firms in the market)							

## Benefits of reservation

97. It is not possible to fully quantify the benefits of reservation. In economic assessments cost tends to be concentrated while benefits are diffuse and harder to quantify. We can, however, describe some general benefits to consumers, businesses and market functioning, and also to regulators.

98. According to the responses to the LSB's 'Call for Evidence', most stakeholders were supportive of regulation in raising quality standards. The Law Society views regulation as an important element in tackling detriment faced by consumers. This view is supported by the main will-writing organisations, IPW and SWW, who see regulation as a means to raise the quality of wills written and the confidence of customers in the market improved.<sup>38</sup>

### *Benefits to consumers*

99. The marginal benefit of reservation is to ensure adequate quality standards are adhered to and enforced across the market. It is expected that the reservation of will-writing and estate administration will make compliance mandatory and bring *all* firms into the scope of regulation. Of particular concern is to bring into the scope of regulation those firms that have not been subject to any regulation. As already mentioned, these firms constitute around 85 firms or 1.5 per cent of the total market.

100. The Consumer Panel in their report identified wide ranging types of consumer detriment relating to the writing of wills. The respondents to the LSB's *Call for Evidence: investigation into will-writing, estate administration and probate activities*<sup>39</sup> reported substantial consumer detriment occurring due to poorly drafted wills and the risk presented by fraud, lack of insurance and redress mechanisms for consumers. The LSB's preferred regulatory approach is expected to deter potential non compliant firms from operating in

<sup>38</sup> Submissions received to the LSB's *Call for Evidence: investigation into will-writing, estate administration and probate activities*: [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/submissions\\_received\\_to\\_the\\_call\\_for\\_evidence.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_call_for_evidence.htm)

<sup>39</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/submissions\\_received\\_to\\_the\\_call\\_for\\_evidence.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/submissions_received_to_the_call_for_evidence.htm)

the market while introducing regulation to ensure adequate standards and consumer protections. Deterring non compliant behaviour among firms has a direct benefit to consumers in terms of time and cost, as well as to the aggregate quality of services across the market.

101. Extending reservation across all will-writing and estate administration firms will ensure that all have the same basic level of protections in place. This is particularly important for the 1.5 per cent of providers who currently operate outside the regulatory schemes, the consumers of which currently have no redress options in place to protect against poor quality services and detriment, beyond private redress through the Courts.

102. Extending regulation to these firms will go a long way to mitigate poor quality wills and the types of detriments found in the Consumer Panel's shadow shopping exercise. Examples include:

- Having a mandatory register in place and authorisation gateway checks for firms will ensure that regulators will have details about which firms operate in the market and will be able to undertake fit and proper checks to ensure that individuals previously involved in fraud and other serious crimes are barred from practicing in the market;
- Ensuring all firms are regulated also exposes firms to the possibility of undergoing regulatory interventions and therefore should act to encourage compliance and dissuade non-compliant firms entering and operating in the market;
- Having a code of practice that is recognised and enforced across all firms helps ensure that vulnerable consumers are not exposed to unnecessary risks, such as aggressive sales practices.

103. The benefits of greater supervision and registration of firms undertaking the reserved activities means that consumer problems, and any continuing detriments, can be more easily identified and monitored by regulators. The LSB will also have better access to regulatory information via regulators supervising these firms and can monitor developments in the market against the regulatory objectives in the Legal Services Act (2007). Such market information can be used to inform regulatory intervention to reduce risks of detriment occurring across all types of providers in the market.

104. Consumers will benefit by having access to LeO guaranteed no matter if they purchase services from a solicitor firm or a will-writing firm. This is expected to boost consumer confidence in will-writing as well as meet

consumers' expectation that these services are regulated and that protections are in place for all consumers of these services.

105. Reducing consumer detriment by improving quality and standards of will-writing also has beneficial effects on consumer confidence and may positively influence the repeat purchasing decisions of consumers. Increasing consumer's confidence to access and purchase legal services supports the effective functioning of the legal services market and improves access to the market for consumers. Reducing the amount of people dying intestate is also a significant benefit that will be realised by beneficiaries.

#### *Benefits to businesses and market functioning*

106. Extending the scope of regulation across all providers of will-writing and estate administration services should ensure consistency and a level playing field for firms. This is because all regulated firms will be required to have in place appropriate insurance arrangements and other arrangements for handling client money. This means that the same barriers to entry will apply to solicitor and non solicitor firms supplying will and estate administration services.
107. Having a 'hard floor' of regulation that is consistent across, and applicable to, all firms in the market encourages competition above that level. There is a public benefit here as all services provided above that level are delivered in a way that does not risk creating detriments to consumers and serve as a basic standard which safeguard protections that are agreed to be essential to have in place. This is so that consumers can expect a minimum standard of service and quality no matter which provider they chose to use. Having the basic threshold for standards and protections creates benefits also for businesses by ensuring a consistent level of regulation across the market rather than having different barriers to entry (and different protections in place) for essentially the same activity. This should assist in eliminating any price distortions for services resulting from different regulatory burdens faced by businesses.
108. By ensuring consistent regulation across all firms the supervision of firms can concentrate on firms' risk profile due to the nature and type of activities which they undertake. This can allow regulators to focus resources on the most risky firms while reducing the supervisory burdens on those firms or areas of the market which are assessed as lower risk. While it is not possible to quantify what the market-wide benefit of better targeted supervision would be, it is expected to achieve:

- Lower compliance and supervisory costs in the form of information provision and on-site inspections for low-risk firms (including lower costs for solicitor firms – the majority of firms);
- More responsive regulation that pro-actively mitigates emerging risks by identifying those risks and targeting resources;
- Lower costs for the regulator.

109. The approach taken in assessing the impacts of reservation of will writing and estate administration is that for most of the market which comprises solicitor firms, we would expect to see regulators taking a more focused activity-based form of supervision of solicitor firms that offer will-writing services. This focus would generally mean lower regulatory compliance costs for the majority of firms in the market. This is because the costs of ongoing regulatory burdens will be lower for a single activity business for those firms that primarily undertake will-writing and estate administration.

110. In particular, we would expect that the ongoing lower regulatory costs for solicitor firms doing a single business activity such as offering a will writing service would be due to:

- Lower insurance costs;
- Easier risk analysis (e.g. fewer risks and associated issues);
- Easier business assessment;
- Easier quality assessment.

111. We would expect that lower supervisory costs would accrue to solicitor firms for the above reasons. Lower costs may feed through to end price for consumers, making will-writing and estate administration services for the majority of providers in the market more affordable, benefiting consumers of these services.

#### *Benefits to regulators and market governance*

112. Regulation also means that approved regulators will have a greater understanding of how the market is functioning and can responsively deal with issues that arise through their ongoing supervision and data collection. These regulators will be in a position to positively influence consumer education through providing information about the market and improving transparency. Consumer education can inform the purchasing choices of consumers and make them better empowered and more confident in access services and shopping around.

113. While it is not possible to quantify benefits, increased quality across the market is expected to lead to lesser errors and invalid wills which has wider benefits that may be realised. Benefits resulting from this include reduced costs for HMRC in collecting inheritance tax through more efficient processing of applications. Reduced delays for arranging estates benefit beneficiaries as monies are paid more promptly. Consumer surveys show that the principal area of dissatisfaction for probate and estate administration services is delay, with 71 per cent of consumers surveyed admitting that delay featured as the foremost problem, followed by 57 per cent agreeing that mistakes during the process was reason for dissatisfaction.<sup>40</sup>

### ***Summary of Benefits of reservation***

114. The benefits of reservation include:

- Extending proportionate regulation to prevent regulatory avoidance and regulatory gaming is expected to make the regulatory landscape easier for consumers to navigate and guarantees minimum regulatory protections for all consumers irrespective of the type of firm they use;
- Mandatory coverage of regulation means that rogue or non-compliant firms cannot walk away from regulation and that a 'hard floor' of regulatory protections are in place and enables competition above that level;
- Elimination of competitive advantage for firms to remain outside the scope of regulation;
- Authorisation gateway checks will screen for rogue persons, reducing the risk of fraud and other detriment occurring (especially) during estate administration;
- Supervision of firms can concentrate on the most risky firms while reducing the supervisory burdens on those firms assessed as lower risk. Better aligned supervision will mean less regulation and compliance for the majority of firms that have compliance systems in place (e.g. solicitor firms which form the majority of firms);
- Our proposals represent largely liberalising reform. Extending reservation to will-writing and estate administration will be accompanied by better focusing regulation that already exists and thus reducing the regulatory burdens that can act as a barrier to innovation in the market for will-writing and estate administration.

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<sup>40</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.36.

## Equality Impact Assessment

115. The equality impact assessment of the possible impacts of regulating will writing and estate administration will be prepared in advance of the next stage of LSB consultation. We would welcome any initial views by different groups about the high level proposals set out in this paper. In particular we would welcome views of the risk of negative impacts on particular groups and how they may be mitigated.
116. In general it has been considered that the proportion of people with a will is around 48 per cent in England and Wales, and that the proportion of people with a will increases markedly with age and around 1.8 million wills are prepared annually. Around 82 per cent of people over 75 years have a will and research points to the level of financial worth and also a change in family circumstance as chief drivers behind the purchase of wills. For example, research points to financial worth as a key determinant in demand as 80 per cent of people with assets valued above £500,000 have a will, while only 9 per cent of those with assets valued at £10,000 or less have a will.<sup>41</sup> It has been observed that low income groups tend not to purchase wills. As Black and Minority Ethnic People (BME) have a greater risk of comprising lower income groups, it can be assumed that this group are underrepresented in purchasing wills.
117. While there has not been systemic evidence collection, anecdotal evidence suggests that some unregulated providers of will-writing services employ sales practices that target more vulnerable clients, including pressure-sale techniques in people's homes. For consumers who do experience problems with unregulated providers, it is plausible that those least able to pursue redress are those lower incomes. The LSB's preferred approach of making existing regulation more effective and introducing a safety net of minimum protections for all providers (including for redress) will have a positive impact for all consumers, including those on lower incomes.
118. An equality impact assessment will accompany any economic impact assessment to the Lord Chancellor and will investigate whether any particular group (race, sex, gender, religion, etc) will be disproportionately negatively impacted upon as a result of the proposal to reserve will-writing and estate administration activities.

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<sup>41</sup> Consumer Panel, *Regulating Will-Writing*, July 2011, p.12.

## Concluding remarks

119. Ensuring that minimum protections are in place is likely to boost confidence of consumers, including vulnerable and low income consumers who do not currently have wills, in accessing services. While the costs of reservation have been identified to chiefly fall on only 1.5 per cent of firms in the market (around 85 firms) there does remain some risk that the price for some will-writing and estate administration services may be increased due to regulation. The LSB takes the view that any such increase in cost would be relatively small and spread across many firms and is being balanced by other changes in the regulatory architecture of the legal services market over the last 12 months. The combination of liberalising ownership arrangements for law firms and implementation of proportionate and targeted regulation by regulators are expected to reduce cost and barriers to entry. Therefore any additional costs that may be imposed by reservation are likely to be balanced by the extra consumer benefits and protections that reservation introduces as well as the downward pressure on costs from liberalisation and better governance of the market.



# PART TWO

## MARKET PICTURE FOR WILLS & ESTATE ADMINISTRATION

### Introduction

1. In September 2010 the Board asked the Consumer Panel to provide advice about the problems and resulting harms experienced by consumers wishing to write a will. The Consumer Panel published its advice on 14 July 2011.<sup>42</sup> The Consumer Panel recommended that will-writing should be made a reserved legal activity, but its review did not cover estate administration and probate activities. On 5 September 2011 the LSB issued its call for evidence which sought views on both the Consumer Panel's recommendations and also on issues relating to probate and estate administration.<sup>43</sup> The call for evidence asked for details about problems currently in the market and what stakeholders thought the potential solutions should be.
2. This market picture sets out the headline details of what we know about the market and also the cost and benefits associated with potentially reserving elements of this activity. A fully quantified approach to market analysis is not possible due to limitations in data. Therefore a descriptive approach is adopted with quantification used where possible.
3. Assessing the impact of reserving a legal service activity involves identifying, in the first place, consumer detriments and investigating whether reservation reduces such detriments while not creating unexpected detriments or inefficiency elsewhere. Assessing the impact therefore must start with setting out how the market is currently set up and then investigating how proposed regulation will likely change the operation of the market, to either the benefit or otherwise, of consumers and suppliers.
4. The market for wills, probate and estate administration functions as a sub-market of the much larger legal services market. It is characterised by a similar set of suppliers and consumers as the market for wider legal services, and for this reason cross-selling and referral arrangements<sup>44</sup> are common.

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<sup>42</sup> [http://www.legalservicesconsumerpanel.org.uk/publications/research\\_and\\_reports/documents/ConsumerPanel\\_WillwritingReport\\_Final.pdf](http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/ConsumerPanel_WillwritingReport_Final.pdf)

<sup>43</sup> [http://www.legalservicesboard.org.uk/what\\_we\\_do/consultations/closed/index.htm](http://www.legalservicesboard.org.uk/what_we_do/consultations/closed/index.htm)

<sup>44</sup> Referral arrangements operate in the market and research points to half of specialist will-writers take referrals from other organisations – typically from independent financial advisers, and a small

5. The principal consumer detriments that have been identified by the LSB investigation into will-writing include: quality; sales practice and missing wills. Typically these impact negatively on consumers in the following ways: financial detriment; financial detriment to beneficiaries; emotional detriment; and consumer confidence. The LSB's Call for Evidence, along with the Consumer Panel mystery shopping exercise, showed that these problems exist across the regulated and non regulated sector.
6. For probate and estate administration the identified consumer detriments include: fraud; service issues; cost and sales; and fragmentation. Preliminary evidence from HMRC also indicates that over £200 million additional tax revenue is collected annually as a result of HMRC's compliance work that arises from incorrect valuations, fraud and errors.
7. Probate and estate administration is an area that the LSB is undertaking further research through consumer and business surveys to better understand the key issues in the market.

### **This document comprises**

- Market overview
- Supply side
- Solicitors
- Probate market
- Market share
- Services provided
- Will-writers
- Market share
- Services provided
- Independent trust corporations
- Other providers: banks/financial institutions and charities
- Accountants
- Demand side

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minority (around 5 per cent) take referrals from solicitors. IFF Research, *Research Report: Understanding the consumer experience of will-writing services*, prepared for the LSB, 2012, p.18.

- Key demand issues

## Market Overview

8. The legal services market for wills and estate administration is complex and characterised by segmented service processes such as the preparation of a will, its storage and, after the death of the client, the application for probate and the administration of the estate. Historically, the preparation of wills and executorship of the estate fell chiefly to solicitors or other authorised persons. Despite the entry of will-writing firms and greater competition in the market, the majority of wills are still prepared by solicitors. Will-writers, constituting the unregulated side of the market, account for about ten per cent of all wills prepared.
9. Probate, as it is a reserved activity, is only undertaken by solicitors and in 2010 there were 250,000 grant applications to the Probate Service. Few firms appear to offer only the reserved element of probate services. It is more common for firms to offer combined reserved and unreserved elements, generally in conjunction with other services such as will-writing to full estate planning services. For this reason, the market is driven by different services segmented by process.
10. Currently there are believed to be five main routes to write a will in England and Wales: solicitors; specialist will-writers; banks; affiliate groups (such as trade unions and industry bodies); or by self completion, using an online service or published will-writing pack. Of these routes, only wills written by solicitors and financial services providers are subject to regulation (i.e. SRA and FSA regulation respectively). Activities undertaken by specialist will-writers may come under voluntary quality standards through membership of a Professional Trade Body, but this is not always the case.
11. The will-writing market is further complicated by its connection to other services such as estate administration and probate. Indeed, the way wills are stored by solicitors, much repeat business and further additional services are entered into on the basis of the initial purchase of a will. Executors are required as, when a person dies, it is necessary for somebody to deal with their estate. A will can identify the executor(s), which may be an individual or corporate body and often the executor is the original firm or individual who wrote the will in the first place.
12. Will preparation is offered by regulated and unregulated providers. Regulated providers are predominantly solicitor firms of varying sizes and generally offer a will-writing service, in addition to other legal services such as probate and estate administration services. Regulated providers are regulated by the SRA and are authorised, along with others who benefit from specific exemptions as

a trust corporations, apply for a Grant of Probate and handle the probate application process. Many solicitor firms have the provision to offer will and probate services, however, due to legal specialisation and low profit margins in will preparation, the actual number of firms regularly offering wills and probate administration is comparatively smaller than overall numbers suggest. Regulated providers also get involved in post-death services such as probate and estate administration, including the executorship of wills and handling of personal trust accounts, etc.

13. Unregulated providers are more difficult to define because they are outside of the scope of regulation. Significant portions of the market are members of professional bodies such as Institute of Professional Will-writers (IPW) and Society of Will-writers (SWW). However not all will-writers are members of these voluntary membership bodies. Most providers in the unregulated side of the market specialise in will-writing services and, in conjunction with solicitors whom they contract to do probate application, a small minority offer estate administration services as well. It is estimated that around 14 per cent of firms offering estate administration services are non-solicitor firms, and these include will writing firms, accountancy firms and independent trust corporation.<sup>45</sup> Only half of these firms are covered by some form of regulation (ICAEW, FSA), while the remainder are essentially unregulated, as in the case of some large trust corporations, but do produce a high volume of products.
14. Like solicitor firms, will-writing companies also commonly offer will storage solutions, and evidence suggests they tend to be more proactive in identifying potential clients through marketing strategies.<sup>46</sup> Because of their unregulated status will-writers are not under the same requirement as SRA regulates solicitor firms to have in place succession planning and client compensation fund arrangements. Among those non-solicitor providers offering probate and estate administration services, around half (or 7 per cent of providers offering these services) were members of a compensation fund. Usually this consisted of banks/building societies, and financial advisers, but not independent trust corporations however.<sup>47</sup>
15. The size and type of will-writing firms vary, but also includes large companies and financial institutions which are increasingly cross-selling legal services and making use of technology to lower margins. All of the banks which offer legal services do so through the use of solicitor firms in order to be able to

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<sup>45</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.11.

<sup>46</sup> Will-writing firms tend to advertise in directories, such as the Yellow Pages, advertise in local media and have a website or social media presence. By contrast, solicitors are more likely to rely on word of mouth promotion. IFF Research, *Research Report: Understanding the consumer experience of will-writing services*, prepared for the LSB, 2012, p.18.

<sup>47</sup> IFF Research, *Probate and Estate Management Services Survey Research Report*, 2012, p.37.

offer a complete probate service. On account of their large capital base and requirements under FSMA, banks have in place insurance and succession strategies.

16. Other providers such as third sector unions and charities, if they provide wills, (some charities only supply legal advice) it is generally through approved solicitor firms.
17. The growth in unregulated providers in the market has intensified competition, especially for will-writing. Consequently, technological innovation has impacted on the market and lowered marginal cost in the preparation of most wills. On line provision of wills is now a popular method of delivery for clients and is being offered by both small and large will-writing companies.
18. The key economic issues facing the market for will-writing, probate and estate administration include:
  - Impact on the provision of legal services for will-writing by (especially corporate) ABS;
  - Emergence of large scale providers such as banks and financial institutions;
  - Impact of new regulations on those providers already regulated, and on those unregulated providers;
  - Technology and shifts in consumer preference changing the delivery and provision of will-writing services;
  - Impact on regulators in terms of regulating new reserved areas of activity.

## Supply side

19. This section outlines the main providers on the supply side of the market. Supply of will-writing, probate and estate administration services has changed markedly in recent years with larger providers entering the market and providing a range of services, some of which are crossed-sold with other products such as financial services.
20. In terms of unregulated suppliers, the market is characterised by large and small firms, many of which offer standard on-line wills. Additional services include will storage and various levels of customer service including: telephone advice; drafting advice; or full drafting services.

21. Taking the supply of wills the list of various providers are extensive, including:

- Solicitors;
- Conveyancers;
- Independent will-writing companies;
- estate planning (and trust) companies;
- trust corporations;
- executor support services;
- barristers;
- notaries;
- legal executives;
- membership organisations and charities;
- accountants;
- banks and building society;
- private individuals.

22. The supply of will-writing, probate and estate administration services is dominated by solicitors analysis is commonly broken down between solicitor and non-solicitor providers. However we set out below the key characteristics of several different types of provider.

### **Solicitors**

23. Solicitors constitute the largest cohort of suppliers in relation to both will-writing and probate and estate administration. This is largely due to their historical market dominance, strong brand and the fact that only an authorised person can make an application for probate (i.e. the preparation of papers to apply for a Grant of Probate).

24. The number of solicitors across England and Wales stood at 119,641 in May 2011<sup>48</sup>, and 11,026 law firms as at 30<sup>th</sup> June 2011.<sup>49</sup> According to the SRA

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<sup>48</sup> The Law Society, *Trends in the solicitors' profession - annual statistical reports*, [various years: 1996-2010] and information provided to the LSB (May 2011) by approved regulators in accordance with *The Legal Services Act 2007* (Levy) (No.2) Rules 2010.

the number of law firms in England and Wales that provide services relating to wills, trusts and tax planning consisted 4,634. As of 1 February 2012, 13,685 solicitors indicated on their PC renewal form that they worked in area of wills and probate. These accounted for 11.8 per cent of solicitors out of a total of 115,475 practising solicitors. Of this number 7,983 solicitors were male and 5,702 were female.<sup>50</sup> The majority of law firms in this category are small, with 2-4 partners, followed by sole practitioner firms. The total split can be shown as follows:

<b>Firm Size</b>	<b>No. of Firms</b>
Sole practitioner	1,605
2-4 partners	2,125
5-10 partners	580
11-25 partners	212
26-80 partners	91
81+ partners	21
<b>Total</b>	<b>4,634</b>

#### *Probate market*

25. In terms of probate and estate administration, research conducted by IFF for the LSB confirms that solicitors dominate the probate and estate administration market in terms of the number of businesses offering such services and the number of estate administered annually.<sup>51</sup> On average, solicitors undertaking estate administration administer around 130 estates per year. The number is far lower for non-solicitors who average around 10 per year, with the exception of a minority of Trusts and the probate arms of Banks/building societies where probate and estate administration are the core business activity. Research points to the latter categories dealing with around a thousand estates a year.

26. Solicitors are clearly dominant in the probate market due to the fact of historical precedent. Only solicitors and other authorised persons such as banks, building societies, insurance companies, barristers, licensed conveyancers, public notaries and chartered accountants can apply for a Grant

<sup>49</sup> Information supplied to the LSB by the SRA on 22 July 2011.

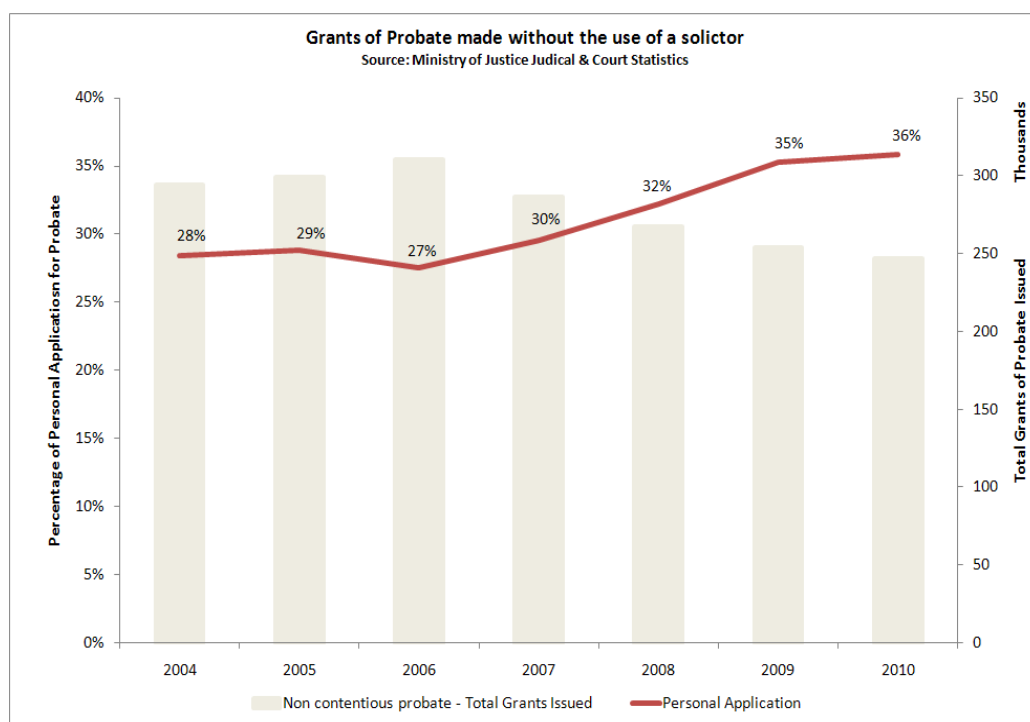
<sup>50</sup> Law Society, Fact Sheet Series 2012 *Categories of Work undertaken by Solicitors*, <http://www.lawsociety.org.uk/secure/file/185304/e:/teamsite-deployed/documents/templatedata/Publications/Research%20fact%20sheet/Documents/catsofwork10-v1.pdf>.

<sup>51</sup> Information obtained by the LSB from discussion with the Probate Service.

of Probate on behalf of clients. However, the vast majority of Grants of Probate are made to solicitors rather than to other authorised persons.

27. In terms of the probate market, in 2006 there were 255,190 grants issued to solicitors, up a third from 2003. However, in 2010, out of a total 246,635 grants, 158,192 (64 per cent) were made by solicitors, notaries or barristers.<sup>52</sup> Some of the grants made to solicitors are likely result from referral relationships with will-writing firms.

28. In terms of personal grants 88,443 or 36 per cent were issued in 2010.<sup>53</sup> Personal grants were up from previous years possibly on account of the increased usability and access to on-line probate forms, as well as the rise of DIY estate administration offered by on-line providers, a tougher economic climate and a greater number of estates falling below the threshold requiring a grant. Consumers may use a £12 form checking service provided by the Probate Service which facilitates straightforward DIY estate administration. The graph below illustrates the rise in personal grants over a six year period.



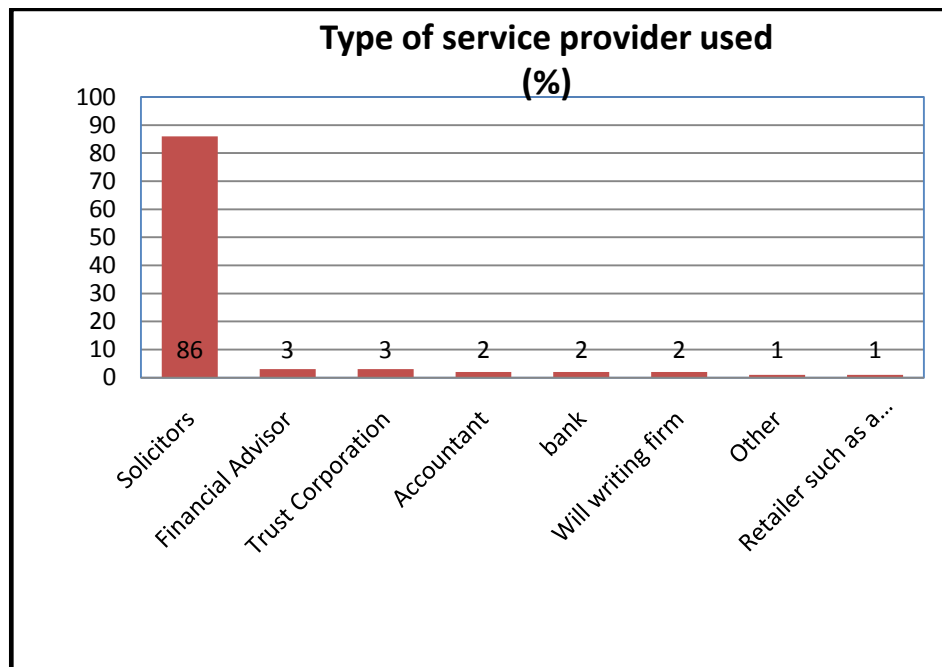
29. For non-contentious probate, published HMCTS figures show that over one in three probate applications were made by individuals in 2010, rising from 28% of all non-contentions probate applications in 2004. At the same time the total volume of non-contentious probate applications fell from 294k to 246k, while the number of contentious probate applications remained largely constant at around 0.05% of all Probate Application.

<sup>52</sup> Probate Service 2010 data – <http://www.justice.gov.uk>

<sup>53</sup> *Ibid.*



30. This demonstrates lower demand for legal services in probate over time driven by lower incidence and fewer consumers entering the market. It may also point to more estates falling under the threshold requirement due to a decline in asset values in recent times.
31. These figures are broadly reflected in a LSB-commissioned survey *YouGov* (2012).<sup>54</sup> The survey found that 54 per cent of respondents used professional probate services during the process. The survey also found a correlation with a higher value estate and the usage of a professional service.
32. A look across the total share of the probate market confirms that solicitors are clearly dominant and comprise 86 per cent of services purchased.<sup>55</sup> The figures also suggest that when a solicitor is used, they are generally instructed to undertake the entire process for the client rather than just aspects of it.



33. The above table<sup>56</sup> shows the dominant market position of solicitors compared to other service providers operating in the probate and estate administration market. The *YouGov* survey also found that 49 per cent of clients who paid for a service – the vast majority of those who instructed a solicitor – did so on the basis that they ‘wanted the reassurance’. A further 35 per cent chose professional help because they ‘had never been through this before’.<sup>57</sup>

<sup>54</sup> *YouGov, The Use of Probate and Estate Administration Services*, January 2012.

<sup>55</sup> *Ibid.*, p.11.

<sup>56</sup> The table is taken from *Ibid*, p,13.

<sup>57</sup> *Ibid.*

34. Research conducted by IFF found that Probate and/or estate administration accounts for around one fifth of the time of those solicitors' involved in undertaking these activities, whereas among non-solicitors the proportion varied significantly between firms.<sup>58</sup> Financial Advisers and Accountants tend to spend the lowest proportion of their working time on probate and estate administration (5 per cent or less). While Trusts and most specialist will-writers tend to spend more time on probate and estate administration accounting for between 25-75 per cent of their time.
35. According to the Law Society, the majority of solicitor's firms in England and Wales that provide probate are high street firms and typically offer range of services which include probate. The Law Society estimates that 5-10 per cent of law firm income is derived from probate, wills and trust work.<sup>59</sup> It should also be noted that a significant proportion of the upper figure of 10 per cent would consist of fees from trusts work that is necessarily derived from probate work.
36. The Law Society estimates that in 2008 the value of probate for solicitors was around £40m which related to the preparation of papers, and a further £400 million comes from the associated and often 'follow on' work of administrating estates.<sup>60</sup> Of course, these figures are only for solicitors who are authorised persons and exclude notaries and barristers, as well as personal applicants for a Grant of Probate.
37. It is reasonable to conclude that consumer preferences in relation to probate and estate administration are partly driven by the privileged position of solicitors and other authorised persons to make an application for a Grant of Probate and also because of relative uncertainty of the process for many people. Historical reasons that solicitors have tended to deal with probate matters and also the requirement for solicitors to have succession planning arrangements in place and therefore often store wills, is a contributing factor in the high continual usage by people of their services.
38. HMRC advised that about 70% of estate returns use a professional representative and 30% are submitted by the individual<sup>61</sup> Professional representatives are mainly made up of solicitors and accountants. Will-writing firms and independent estate administration companies tend not account for large volumes of applications that require IHT returns.

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<sup>58</sup> LSB – *Probate and Estate Administration Research Summary of Interim Findings*, prepared by IFFF Research, 2012, p.2.

<sup>59</sup> Law Society Strategic Research Unit [http://www.lawsociety.org.uk/dcs/pdf/solfirm01\\_v2.pdf](http://www.lawsociety.org.uk/dcs/pdf/solfirm01_v2.pdf) . Also see 'Annex A' of the Ministry of Justice, *Explanatory Memorandum to The Probate Services (Approved Bodies) Order 2008*.

<sup>60</sup> *Ibid.*, pp.5-6.

<sup>61</sup> Information supplied to the LSB by HMRC.

39. Anecdotally, it appears that in terms of compliant applications lay applicants and professional applicants that specialise in inheritance tax matters are the most successful. In general it appears that less specialist firms tend not to be so familiar with the process and the details of the estate, and are sometimes reluctant to follow instructions from HMRC. Lay administrators are more focused on getting it right first time around and tend to be better at following instructions. This could in part be explained by the relatively easy and accessible information by HMRC and the Probate Service on how to go about making an application for a Grant of Probate including dealing with inheritance tax requirements and the time that they commit to the process.
40. In terms of headline figures, HMRC recovers around £200 million annually in compliance take, from a total inheritance take of £1.5 billion per annum. Compliance activity for HMRC costs £1 for every £37 recovered and HMRC employs about 250 people in its inheritance tax department.<sup>62</sup>
41. Most applications for probate are processed within a few weeks, with more complicated cases being generally completed in a matter of months. While the primary consumer detriment is delay, it is not possible to quantify the detriment. Delays occur where incorrect information is provided, calculations are incorrect and the process is not properly followed. The main detriment concerns delay in accessing assets for beneficiaries. Once an application is deemed compliant a clearance letter is provided by HMRC where it is believed that adequate and accurate information has been provided and that there are no tax issues to investigate to allow an estate to be finalised. An estate should not be distributed until this final confirmation has been obtained.
42. Often is at the probate process where fraud relating to estate administration is detected and mistakes in valuation rectified. HMRC recovers around £200 million annually in compliance take, though it is not possible to apportion the amount due to mistakes in the application such as incorrect valuation or inaccuracy of information, or those due to fraudulent activity. The role of HMRC is to assess inheritance tax owed by deceased persons' estates and the Inheritance Tax Toolkit indicates the key risks faced by HMRC in the process.
43. Four categories of risk are identified by HMRC in relation to assessing inheritance tax<sup>63</sup>. These are: Omissions; valuations; applying the correct legislation, rules and practices; and recording keeping. Anecdotal evidence points to valuations as being the highest area of risk for fraud. In terms of identifying and mitigating the risk of fraud, HMRC notes several methods used to reduce the possibility of risk such as:

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<sup>62</sup> *Ibid.*

<sup>63</sup> HMRC, *Inheritance Tax Toolkit*, [6 April 2010]: <http://www.hmrc.gov.uk/agents/toolkits/iht.pdf>

- Obtaining an open market valuation at the relevant date for each asset;
- Using an independent valuer and providing specific instructions to them, including an awareness on behalf of the valuer of areas of risk;
- HMRC determining the domicile of the deceased and surviving partner

44. The HMRC inheritance Tax Tool Kit is a way to identify the sorts of risks encountered during the estate administration process and indicates those types of risks which do materialise.

### Market share

45. Limited data makes it difficult to meaningfully assess solicitors' offering will-writing and probate services and the aggregate value of those services. However, SRA turnover data suggests that smaller to medium size firms derive a higher portion of their income from wills and probate services than larger firms. The below table summarises the headline data:<sup>64</sup>

	Largest category of turnover					Firms where 50% or more turnover				
	Sole	2 to 4	5 to 10	11 to 25	More than 25	Sole	2 to 4	5 to 10	11 to 25	More than 25
Conveyancing	26%	28%	26%	26%	15%	14%	13%	6%	7%	3%
Will writing & Probate	9%	10%	10%	9%	6%	5%	3%	2%	1%	1%
Family	12%	13%	12%	8%	6%	8%	7%	4%	3%	1%
Accident or Injury	7%	10%	15%	18%	17%	5%	8%	11%	12%	11%
Housing/Landlord/Tenant	2%	1%	0%	0%	0%	1%	1%	0%	0%	0%
Employment	5%	2%	2%	1%	1%	4%	2%	1%	1%	0%
Criminal	12%	15%	16%	7%	4%	10%	12%	11%	5%	3%
Immigration	9%	5%	1%	2%	0%	7%	4%	1%	1%	0%
Welfare Benefit issues	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Debt problems	1%	1%	1%	2%	1%	1%	1%	0%	1%	0%
Finance & Business	8%	6%	7%	14%	32%	6%	4%	5%	6%	21%
Other	11%	10%	11%	14%	21%	8%	5%	6%	8%	9%
Intellectual Property	1%	1%	1%	0%	1%	1%	1%	1%	0%	1%

46. SRA breakdown of legal services by turnover for law firms shows that out of a total annual turnover of £17.9bn, around £1.07bn can be attributed to will-writing and probate services.<sup>65</sup> Will-writing and probate and estate administration services therefore accounted for 6 per cent of the legal services market for SRA regulated firms in 2010. The value of services provided by unregulated will-writers as well as other authorised persons

<sup>64</sup> SRA Turnover Data (2011): sample of 88% of solicitor firms.

<sup>65</sup> Analysis of SRA entity Turnover Data 2010.

(barristers, notaries) and providers (banks and financial institutions) is uncertain.

47. The total value of the market for will-writing, probate and estate administration is therefore higher than £1.07bn making it substantial category of law as measured by turnover. STEP estimated in the LSB's *Call for Evidence* that fraud in the UK in 2005 accounted for between £100-150m. If this number is accurate it potentially points to a larger market in terms of turnover when one accounts for services offered by both the regulated *and* unregulated sectors.

### *Services provided*

48. Solicitors offer all services associated with will-writing and estate administration. Because they are authorised to do so, they may also apply for a Grant of Probate on behalf of a client, which means that they are capable of providing a complete service to clients. Anecdotal research suggests that it is rare for firms to offer only the reserved element of probate services, although some firms offer advice to assist people to navigate the estate administration process themselves. However, given that historically solicitors only could apply for a Grant of Probate, solicitors clearly still dominate the market in terms of estate administration service, accounting for 86 per cent of firms that offer this service.<sup>66</sup>

49. It is common for firms (especially solicitor firms) to combine the reserved and unreserved elements and they tend to do this alongside other services such as will-writing, to offer a full estate planning service. Some firms specialise in post-death services of probate and estate administration. Among non-solicitor firms, research suggest that the majority of such firms that offered probate and/or estate administration conducted most of the work themselves, only contracting out specific task such as obtaining a Grant of Probate to solicitors.<sup>67</sup> Only in a minority of cases do non-solicitor firms instruct solicitors to carry out the majority of the probate and estate administration work, these mainly being charities and specialist will-writing firms.<sup>68</sup>

50. It is not possible to quantify the value or output of specific services offered by solicitors such as will-writing. However, it is apparent from the data available that a significant portion of legal firms characterised as small to medium size (consisting of four or less partners)<sup>69</sup> provide writing and estate and administration services.

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<sup>66</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.11.

<sup>67</sup> IFF Research, *Probate and Estate Management Services Survey*, 2012, p.13.

<sup>68</sup> *Ibid.*, p.14.

<sup>69</sup> Information supplied to the LSB by the SRA on 22 July 2011.

51. Notwithstanding the numerical superiority of small to medium size firms in the market, those larger firms with 81+ partners and which can be characterised as corporate legal firms, provide services on a large scale. Employing on-line technologies, large legal firms such as Irwin Mitchell control around 27 per cent of the will-writing market as measured by annual total wills written.<sup>70</sup> The production of wills by large corporate law firms for their corporate partners such as banks and other financial institutions means that solicitors prepare more wills than the market share figures indicate and a small number of large corporate firms account for a large proportion of this market share.
52. The commoditisation of wills through either DIY on-line wills or electronic templates has greatly reduced the cost for consumers with some wills priced for as little as £9.99. A similar trend can be observed for probate and estate administration services, though these appear often linked to a customer's purchases of auxiliary services or existing loyalty.
53. The mean cost of wills identified in the LSB's shadow shopping exercise point to a significant cost difference between solicitor prepared wills and on-line self-completion will.<sup>71</sup> The use of technology and access to internet has played their part in significantly reducing the unit-cost of wills. Changing consumer preferences for self-completion will services has also facilitated this trend and is likely to continue into the future as the provision of legal services becomes more innovative and consumer focused.
54. Costs for estate administration, however, differed between fixed fees and hourly rates. Hourly rates were by far much higher, and these high costs were reflected, surprisingly, in the combination of fixed cost and hourly and percentage of estate costs. The mean cost of wills is shown in the below table:

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<sup>70</sup> Irwin Mitchell produce 500,000 wills annually and the total annual production of wills across all providers (regulated and unregulated) is 1,851,476. See *Consumer Panel Report*, pp.15, 18.

<sup>71</sup> IFF Research, *Research Report: Understanding the consumer experience of will-writing services*, prepared for the LSB, 2012. p.45

### Complexity of personal circumstances & cost of wills

	<b>Complex</b>	<b>Simple</b>	<b>Total</b>
<b>Mode of will-writing</b>	Mean cost	Mean cost	Mean cost
<i>Solicitor</i>	£147	£142	£145
<i>Specialist will-writer</i>	£140	£126	£135
<i>Paper self-completion</i>	£9	£8	£8
<i>Online self-completion</i>	£18	£35	£29
<i>Other</i>	£80	-	£80
<i>Total</i>	£116	£96	£106

### Average costs for estate administration – fixed versus hourly rates<sup>72</sup>

	<b>Average cost (£)</b>
<b>Presentation of cost</b>	
<i>Fixed price</i>	£1238.29
<i>Hourly rates</i>	£1862.86
<i>Combination (i.e. fixed, hourly and percentage of estate)</i>	£2531.26

55. In the provision of will-writing and probate and estate administration services in respect to solicitors, several key trends are currently shaping the market. In summary these include:

- Proliferation of on-line services offering various 'levels' of service ranging from full handholding services to advice provided over the phone or internet for DIY clients;
- Entry of ABS in the market which is expected to increase competition and facilitate greater commoditisation and innovation in legal service products

<sup>72</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.42.

more generally.<sup>73</sup> For example, will-writing services may become more attractive to providers if they can also offer in-house probate services;<sup>74</sup>

- Growing shift in consumer preferences toward DIY and low-cost on-line wills;
- Increased efficiency in computer generated will templates to reduce human error and improve quality of wills;

56. Emergence of 'non legal' providers such as retailers who can offer low cost standard services usually through delivery platforms such as on-line will templates, which are seen as being in direct competition to solicitors. Solicitors and specialist will-writers have voiced concerns that non-bespoke wills are lower quality and will increase the risk of detriments to consumers.

57. Emergence of DIY and hand-holding services by on-line providers to assist individuals in handling personal applications for probate (e.g. Law Wizard, etc).

58. Operation in the market of large corporate solicitor firms who mass produce wills, and also offer probate and estate administration services. Firms such as Irwin Mitchell draft around 25,000 wills per annum, while Thomsons draft 12,000. Will drafting services are also offered by trust corporations such as Inheritance Trust who draft 20,000 wills per annum and administer a high volume of estates.<sup>75</sup>

## Will-writers

59. After solicitors, will-writers constitute the next important category of providers of will-writing services. A small proportion of will-writers also provide estate administration and limited probate services, though the latter are usually done under the auspicious of a contracted solicitor, ensuring compliance with the requirements of obtaining a Grant of Probate (specifically the preparation of papers and taking of oaths).

60. There is no precise information available on the number of will-writing firms in the market. However, we estimate from information provided to the LSB by the two main professional trade bodies IPW and SWW, that there are approximately 2,000 individual will-writers currently in the market. IPW is aware of 850 firms of which most are sole practitioners (250 of these are IPW

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<sup>73</sup> On the possible impact of ABS see 'Research Note: Legal Services Market', published 12 August 2011: [http://www.legalservicesboard.org.uk/news\\_publications/latest\\_news/pdf/research\\_note\\_on\\_the\\_legal\\_services\\_market.pdf](http://www.legalservicesboard.org.uk/news_publications/latest_news/pdf/research_note_on_the_legal_services_market.pdf)

<sup>74</sup> More than half of the businesses interviewed for the Consumer Panel's report into will-writing believed that ABS is the biggest challenge the industry faces. Consumer Panel, *Regulating Will-writing*, July 2011, p.14.

<sup>75</sup> Inheritance Trust submission to the LSB's Call for Evidence on Will-writing, 2011.



members, 600 are SWW members). Possibly another 10 per cent of will-writing (i.e. 85 firms) firms are neither IPW or SWW members.<sup>76</sup> Many providers work part-time either in addition to another business activity or as a sole source of business. Most companies have been operating for 5-20 years, but far more will-writing companies than solicitors have been operating under 5 years (16 out of 47, compared to 3 out of 50), confirm the relatively recent entry and growth of will-writing firms.<sup>77</sup>

61. Consumer preferences in terms of the type of services demanded and how they are purchased are shifting in relation to will-writing. For example, a Consumer Panel survey suggests that 35 per cent of people shop around before selecting a provider. Of these, 51 per cent do an online search and 17% use a price comparison website. Part of this can be explained by more consumers using the internet to find and compare services provided by will-writing firms.

62. These figures are higher than for other legal needs where the shop-around rate is about 20 per cent. However, preferences are determined on the basis of need and the Consumer Panel's qualitative research on quality in legal services indicates that consumers felt that unregulated providers were acceptable in simple circumstances. Consumers tended to prefer solicitors for more complex wills, as they believed that it gave them the reassurance that the advice was watertight.

### *Market share*

63. In terms of market share, will-writing firms that are self-regulated by one of the main professional trade bodies account for around 13 per cent of the market.<sup>78</sup> These 'self-regulated' firms whose membership of a professional trade body such as IPW or SWW ensures minimal standards, write around 183,000 will per annum.<sup>79</sup>

64. Also included among the unregulated sector are those will-writing firms known as self-completion will providers whose market share stands at around 1.5 per cent of firms and account for some 238,000 wills per annum.<sup>80</sup> These firms are often not members of a professional trade body and hence consumers do *not* have the same level of quality guarantee or redress mechanisms as they have with IPW or SWW voluntary regulation.

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<sup>76</sup> Information supplied by IPW to LSB, 17 January 2012

<sup>77</sup> *Consumer Panel Report*, p.14.

<sup>78</sup> *Ibid.*, p.18.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

65. These firms operate a business model which is highly devolved, with their will-writing services almost exclusively procured on-line. They also offer a range of advice services for customers buying DIY wills.
66. Taken together, the self-regulated and self-completion will-writing firms account for 19.8 per cent of the market (i.e. 18.3 per cent of firms members of professional trade body plus 1.5 per cent of self-completion firms outside any regulatory arrangements), making them an important alternative provider of wills for consumers in the legal services sector.

### *Services provided*

67. A wide range of services are offered by will-writing companies and on-line will providers. Anecdotal evidence points to a significant expansion in choice and delivery for their services, aided by greater access to the internet and, as highlighted in a number of submissions to the LSB's Call for Evidence, aided through active marketing strategies (door knocking, cold calling, leaflet drops etc).
68. On-line internet provision means that access issues are surmounted for clients with an internet connection, while some firms also take advice over the phone for clients (often elderly) who do not use internet. Some of the larger companies screen clients via an interactive on-line questionnaire. Other provides such as Wills.org.uk and Tenminutewill.co.uk offer fast service while Glosslegal.co.uk uses a mix of solicitors, will-writers and internet professionals to quality check wills.
69. In terms of probate and estate administration work, some of these on-line will-writing companies enter referral arrangements with solicitor firms to prepare papers for a Grant of Probate. The number of will-writing firms who act for clients for the probate and estate administration process is not known. The Probate Service only records the number of Grants to authorised persons and individual applications, and does not specify if those Grants to authorised persons were on behalf of a will-writing company. However, it is thought that numbers are very small and evidence from IPW suggests that all Grants being made to solicitors, notaries or barristers (64 per cent) or personal applications (36 per cent).<sup>81</sup> Will-writing firms, therefore, tend to specialise in the preparation of wills and aspects of estate management.
70. On-line delivery of wills is an important and rapidly growing method of providing services cheaply and allowing individuals to personally tailor the service to their needs. According to IPW many will-writers use software, some as a means to mitigate the need for training.<sup>82</sup> The most popular packages

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<sup>81</sup> Probate Service 2010 data – <http://www.justice.gov.uk>

<sup>82</sup> Information supplied by IPW to LSB, 17 January 2012

used being DLP (£30 per month) and *Sure Willwriter* offered by SWW. Other major software packages used include a will-writing package offered by Legacy (£100 one off fee) and a package offered by *Lawsuite* which costs £60 per month. *Lexis Nexis* offers a package which works on 'lives' – each document uses one or more 'lives', depending on complexity. For example, one life costs £10 and a simple will uses one life, whilst a complex will uses three lives. IPW report only a small proportion of the 250 firms that are members of IPW use will-writing software. The majority of IPW members write wills without needing to rely exclusively on software.

71. Those firms that provide on-line self completion will tends not to be members of professional will writing organisations or signatories to any voluntary arrangements or codes.

### **Independent Trust Corporations**

72. Independent trust corporations are subject to the *Trustee Act 1925* but are not regulated by a body in the same manner that some will-writing firms are members of professional bodies, or accountants are regulated under ACCA and ICAEW rules.

73. It is thought that a handful of large trust corporations operate in the market and their main focus of business is in estate administration. The market share of these providers is not known, however they constitute the 7 per cent of unregulated providers who provide estate and administration and are responsible for a high volume of estates being administrated.<sup>83</sup> They also are active in drafting wills. For example, Trust Inheritance draft around 20,000 per annum and they estimate this to be about 12 per cent of the independent will writing market in England and Wales and that the independent sector provides perhaps 150,000 wills per annum, two-thirds of which are written by the dozen or so largest Will-writing companies - most of whom are in the Professional Association of Legal Services (PALS) trade association.<sup>84</sup>

### **Other providers: banks/financial institutions & charities**

74. A further type of providers on the supply side includes banks/financial institutions and charities operating in the third sector. The market share of these providers is difficult to ascertain precisely, not least because legal services are often provided as an auxiliary service to their membership.

75. Taken together, the market share of these providers calculated on the basis of output of wills is around 11 per cent of the market (7 per cent for banks and 4

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<sup>83</sup> *Ibid.*

<sup>84</sup> See Trust Inheritance's submission to the LSB's Call for Evidence for Will-writing, 2011.

per cent for charities).<sup>85</sup> In practice, many of the wills supplied by charities and trade unions to members are contracted via solicitor firms, making quantification of market share actually undertaken by the sector themselves independently of regulated individuals difficult to determine. For example, Thompsons prepares 13,000 wills a year for a trades union client. This number accounts for roughly 0.7 per cent of the total market for will-writing.<sup>86</sup>

76. All of the major banks routinely offer will-writing services and most also offer additional probate and estate administration services. The legal services offered by banks are often cross-sold with packages of financial services products. Many of the banks use firms of solicitors for their will services with HSBC and Barclays using Irwin Mitchell, while RBS uses Hugh James. Equally, banks use solicitor firms to complete the estate administration and application for Grant of Probate process for clients. Some banks use software themselves (such as Epoc Tech) for drafting wills and provide an option to consumers to have their drafted will tested by a solicitor.
77. In terms of regulatory arrangements, all of the banks fall within the scope of FSMA regulation and their appointment of outside solicitor firms are regulated through the SRA.
78. Many of the will-writing services of banks are offered on-line and different levels of service are accorded depending on consumer need and relationship with the banks. Halifax offers on-line legal advice while some banks offer a 'try before you buy facility'. In submissions to the LSB's Call for Evidence, it was reported that some banks sell on former customer details to will-writing firms in exchange for a referral fee. Relatives of the deceased are then contacted by the will-writing firm in the hope to be appointed executors of the estate.
79. Anecdotal evidence suggests that few independent financial institutions and advisors offer will-writing services. Some may, of course, have referral arrangements in place for the benefit of their clients, though this is also thought few. However, this conceivably may change with the advent of ABS and the possibility of multi-disciplinary practices with more solicitor working alongside financial advisers. Financial advisers tend to offer estate administration services, though their overall number is unknown.
80. Charities tend not to be large scale providers of will-writing services or for that matter probate and estate administration services. Some charities do offer limited forms of legal advice to recipients. In the main, charities rely on bequests (legacies) which come in the form of: pecuniary legacies (fixed sum of money) and residual legacy (part or whole of the estate after beneficiaries are provided for).

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<sup>85</sup> Consumer Panel Report, p.18.

<sup>86</sup> *Ibid.*, pp.15, 18

81. Individual charities are more reliant on legacies than others. The People's Dispensary for Sick Animals, in their submission to the LSB, noted that they receive 70 per cent of the revenue from bequeaths. It is estimated that around 12 per cent, or £1.9bn of total revenue for charities, is left as legacy gifts every year.

82. The other important providers of will-writing services are Trades Unions. In general Unions offer free or discounted will services to members, often as part of a package of legal services. Instead, Unions offer legal advice services or deliver their will services through solicitors for reduced rates for members. Unions have arrangements with solicitor firms such as Thompsons and operate referral arrangements with these firms. These arrangements usually cater for solicitors who are willing to provide free or discounted wills in return for referrals of personal injury claims by Union members.

83. In terms of probate and estate administration services, other providers include the recently authorised (since 2008/09) non-legal regulatory bodies. At the time of these bodies' application under section 55 of the *Courts and Legal Services Act 1990* to provide probate services, it was estimated that up to 2,000 members were expected to provide probate services, half of which would be from ACCA.<sup>87</sup> As of November 2011, 61 members of CLC are classified as probate practitioners, up from 28 in 2010.<sup>88</sup>

84. Other non-legal regulatory bodies include:

- The Council for Licensed Conveyancers (CLC);
- The Institute of Chartered Accountants of Scotland (not yet authorising members for probate activities);
- The Association of Chartered Certified Accountants (ACCA) (not yet authorising members for probate activities);
- Institute of Chartered Accountants in England and Wales (pending).

85. According to a survey conducted by ICAEW in 2011 there was limited member interest in probate and related areas of will-writing and estate administration.<sup>89</sup> Of the respondents to the survey, around two thirds of the sole practitioners and one third of the larger firms were not currently engaged in any probate-related activity (i.e. will-writing / advice on IHT or trust planning / estate administration). For those that were engaged in some probate-related

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<sup>87</sup> MoJ, *Review of Regulatory Impact Assessment Carried out in 2004 for Implementing Sections 54 and 55 of the Courts and Legal Services Act 1990*, p.5.

<sup>88</sup> Figure from CLC Council Papers (2012) – Confidential but soon to be published in Business Report.

<sup>89</sup> Information supplied by ICAEW to LSB, 8 February, 2012. ICAEW survey undertaken in late 2011.

activity, the level of activity was low. Approximately half of the firms were unable or unwilling to separately identify the income received from these services, but for those that did, fees for probate-related services generally comprised 1 per cent of their total fee income. Only 1 per cent of sole practitioners and 4 per cent of 2+ principal firms had drafted wills for clients, while 11 per cent of sole practitioners and 23 per cent of 2+ principal firms had acted as executors in administering estates. ICAEW reported that of those firms engaged in estate administration the majority were only dealing with only one or two estates. The vast majority of these firms also not hold estate assets or monies (89 per cent).

86. Probate work undertaken by members of non legal regulatory bodies is usually offered in conjunction with their core business services such as accountancy and conveyancing. This is typically done by providing an integrated service for current clients that includes financial services connected with personal wealth management as well as estate administration services which are pre-paid and full executorship undertaken by the firm.

## Accountants

87. Accountants also are involved in providing will writing and estate administration services (primarily the latter). Financial advisers also offer estate administration services to clients, though there numbers are not known. Accountants who offer estate administration services have compensation and other regulatory arrangements in place through their professional regulator – either ICAEW or ACC.<sup>90</sup> Financial Advisers have regulatory arrangements in place via the FSA.<sup>91</sup>

88. However, the market share of these provides is difficult to ascertain, but it is thought that accountants are not very active in providing these services to a large cliental as of yet. Accountants, along with banks/financial institutions and financial advisers constitute the 7 per cent of non-solicitor firms who offer estate administration but who are subject to some form of regulation (professional bodies, financial services regulation, etc).<sup>92</sup>

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<sup>90</sup> IFF Research, *Probate and Estate Management Services Survey Research Report*, 2012, p.37.

<sup>91</sup> *Ibid.*

<sup>92</sup> You Gov, 2011 survey of 2001 consumers on behalf of LSB and SRA, p.11.

## Demand side

89. This section outlines the key components on the demand side of the market. Demand for wills, probate and estate administration has changed over time as consumers' preferences have changed. This change is in part due to changes in supply e.g. new ways these services are sold using technology, which has increased access to these services and, in some cases, dramatically cut costs.

90. Survey evidence points to consumers having at best a superficial understanding of which legal services are regulated and therefore have in place redress mechanisms. Many consumers do not recognise that unregulated providers are not subject to regulatory protections in respect to quality or complaints handling processes. For example a Law Society survey found that 61 per cent of respondents believed that will-writing was always subject to regulation.<sup>93</sup> Added to this is evidence of quality problems across regulated and unregulated providers of will-writing services. The shadow shopping exercise jointly commissioned by the LSB, Consumer Panel, Solicitors Regulation Authority and Office of Fair Trading showed that one quarter of wills failed the quality test and that around one-third of all assessments had a rating of poor or very poor. The data suggests that regulated solicitors were more likely to be failed on simple wills, and will-writing companies were more likely to be failed on complex wills.<sup>94</sup>

91. The demand for will-writing services can be broken down into several identifiable groups:

- Private consumers who approach a provider to draft a will;
- Consumers who are contacted via marketing and sales practices of firms to purchase a will;
- Consumers who purchase a will either through referral or as a package.

92. In addition to the above demand categories there is further detail around sales practices of wills and the purchasing of executorship services with the same provider.

## Key demand issues

93. In terms of headline figures related to demand, around 560,000 people die per annum. For the probate process HMRC reports that around half of those who

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<sup>93</sup> Consumer Panel, *Regulating Will-Writing*, July 2011, p.16.

<sup>94</sup> *Ibid.*, p.20.

are deceased their estates do not need to make any return to HMRC as their estates fall below the inheritance tax threshold of £325,000. Of the remainder estates, HMRC have advised that only around 3 per cent tax on the beneficiaries' inheritance, of which approximately £1.5bn is collected annually by HMRC.

94. Headline research suggests that the number of people with a will varies between 36 to 48 per cent and that around 1.8 million wills are prepared annually. A survey by Cardiff University indicates that the proportion of people with a will increases with age and that 82 per cent of people over 75 have a will. The research strongly points to financial worth as a key determinant in demand as 80 per cent of people with assets valued above £500,000 have a will, while only 9 per cent of those with assets valued at £100,000 or less have a will.<sup>95</sup>

95. While it is difficult to determine precisely the number of wills that are in place at the time of a death, the Law Commission estimates that in the year November 2007 to October 2008 the Probate Service dealt with 254,370 estates, of which 42,060 were intestate (16.5 per cent).<sup>96</sup> While it cannot be conclusively stated that 83.5 per cent of people therefore have a will at the time of death, it is clear is that demand for wills is high. Predictably, this demand rises in line with individuals' level of assets as well as age profile.

96. Some trends in demand can be observed. Firstly, there has been a rising volume of Grants of Probate made with the use of a solicitor since 2004. This has risen from 28 per cent of all Grants made, to 36 per cent of all Grants made.<sup>97</sup> Discussions with the Probate Service indicate that this could be because of the simplified processes now in place in seeking a Grant of Probate and perhaps more accessible information on how to go about it.<sup>98</sup>

97. The increase in personal applications from 2006 may be explained by negative economic conditions and potentially a growing awareness of the support available to an individual carrying out an application. Another trend that can be identified is the increase in consumers buying wills from on-line service providers, other known as self-on-line completion. The trend data shows that on-line wills are increasingly popular with consumers who are attracted to the ease of use and lower prices. The IFF survey indicated that consumer satisfaction with on-line wills was 8.5 out of 10, on par with satisfaction rating of solicitors (8.8) and will-writing companies (8.4).

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<sup>95</sup> Consumer Panel, *Regulating Will-Writing*, July 2011, p.12.

<sup>96</sup> *Ibid.*

<sup>97</sup> YouGov, *The Use of Probate and Estate Administration Services*, January 2012.

<sup>98</sup> YouGov, *The Use of Probate and Estate Administration Services*, January 2012.



98. Surveyed consumers overwhelmingly declared that consideration of price and uncertainty about reliability of services were leading factors in why consumers decided against particular will-writing channels. For example, in a survey carried out by IFF Research in 2011 for the LSB, it was found that 66 per cent of consumers decided against using a particular solicitor because they were deemed as too expensive. This can be contrasted against 17 per cent of respondents who viewed self-on-line completion as too expensive.<sup>99</sup> In terms of reliability, only 19 per cent were unsure of the reliability of a solicitor, while 37 per cent were unsure about the reliability of self on-line completion will services.<sup>100</sup>

99. While a majority of consumers use solicitors to write a will, other trends in the market suggest that some market share is being lost to alternative providers. This may, in part, be driven by growing numbers of people who shop around for wills. The IF survey suggests that 35 per cent of people shop around before purchasing a will and of these, just over half do so via an online search and 17 per cent use a price comparison survey. The table below compares consumer choice of will-writing provider between 2007 and 2011.<sup>101</sup>

Provider Type	NCC data (2007)	Law Society data (2011)
Solicitor	74%	67%
Will-writing company	8%	10%
Will pack or online service	8%	13%
Financial services provider	5%	7%
Other	5%	4%

100. Anecdotally it also seems that those not using a solicitor to write the will tend to be the ones applying for a Grant of Probate personally. This trend has been observed over a short period but there is no reason to believe that this trend will not continue.

101. Consumers appear to choose a firm to do their probate and estate administration on the basis of its location and having a past relationship with the client.<sup>102</sup> Cost does not appear to be a key driver in people's choice of service provider when it comes to probate and estate administration.<sup>103</sup>

102. When it comes to purchase additional services such as appointing an executor to a will, solicitors were far more likely than any other provider to be

<sup>99</sup> IFF Research, *Research Report: Understanding the consumer experience of will-writing services*, prepared for the LSB, 2012. p.22.

<sup>100</sup> *Ibid.*

<sup>101</sup> Consumer Panel, *Regulating Will-Writing*, July 2011, p.13.

<sup>102</sup> YouGov, *The Use of Probate and Estate Administration Services*, Jan. 2012, p.20.

<sup>103</sup> *Ibid.*

appointed as such. Research indicates that around one in eight consumers (12 per cent) appointed their will-writer as the executor of their will, but 19 per cent appointed their solicitor who had already written their will as executor.<sup>104</sup> Research also points to around a third of consumers tend to purchase ancillary services such as will storage solutions and Power of Attorney.<sup>105</sup>

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<sup>104</sup> IFF Research, *Research Report: Understanding the consumer experience of will-writing services*, prepared for the LSB, 2012. p.36

<sup>105</sup> *Ibid.*, p.36.

