



Protecting consumers of will-writing, probate and estate administration services

19 October 2011

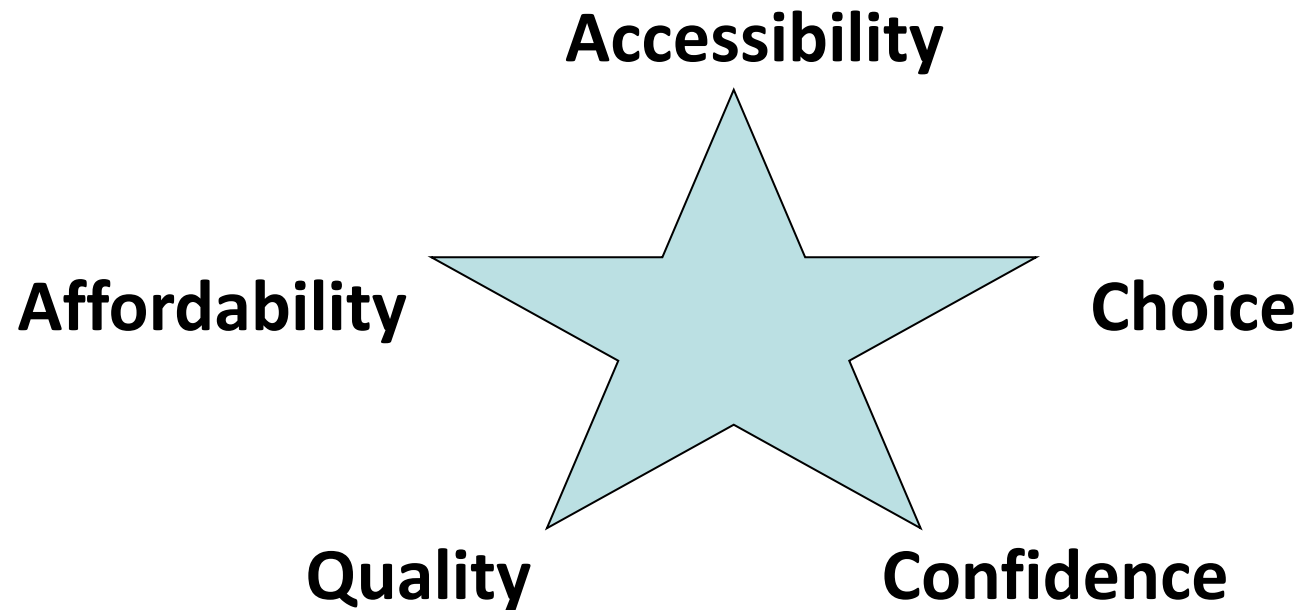
Introduction:

Alex Roy, Research Manager

Chris Handford, Project Manager

What are we trying to achieve?

- Consumer protection



What are we trying to achieve?



-
- **Protection & redress appropriate for risks and detriment for consumers in market**
 - **Wide choice of services and delivery methods**
 - **Transparent and competitive prices for consumers**
 - **Compelling case for final position based on appropriate evidence to put debate to bed**

Background to investigation



-
- **Debate over need for greater regulatory coverage for decades**
 - **LSA 2007 - insufficient evidence to make a reserved legal activity under the Act but left door open**
 - **Continued coverage of case studies showing consumer detriment – undermining consumer confidence**
 - **Legislation in Scotland making will-writing a reserved activity**
 - **Legal Services Consumer Panel review**

Our approach to investigation

What is the problem?

Identification

Evidence



What are the possible solutions?

Variety of interventions

Option appraisal

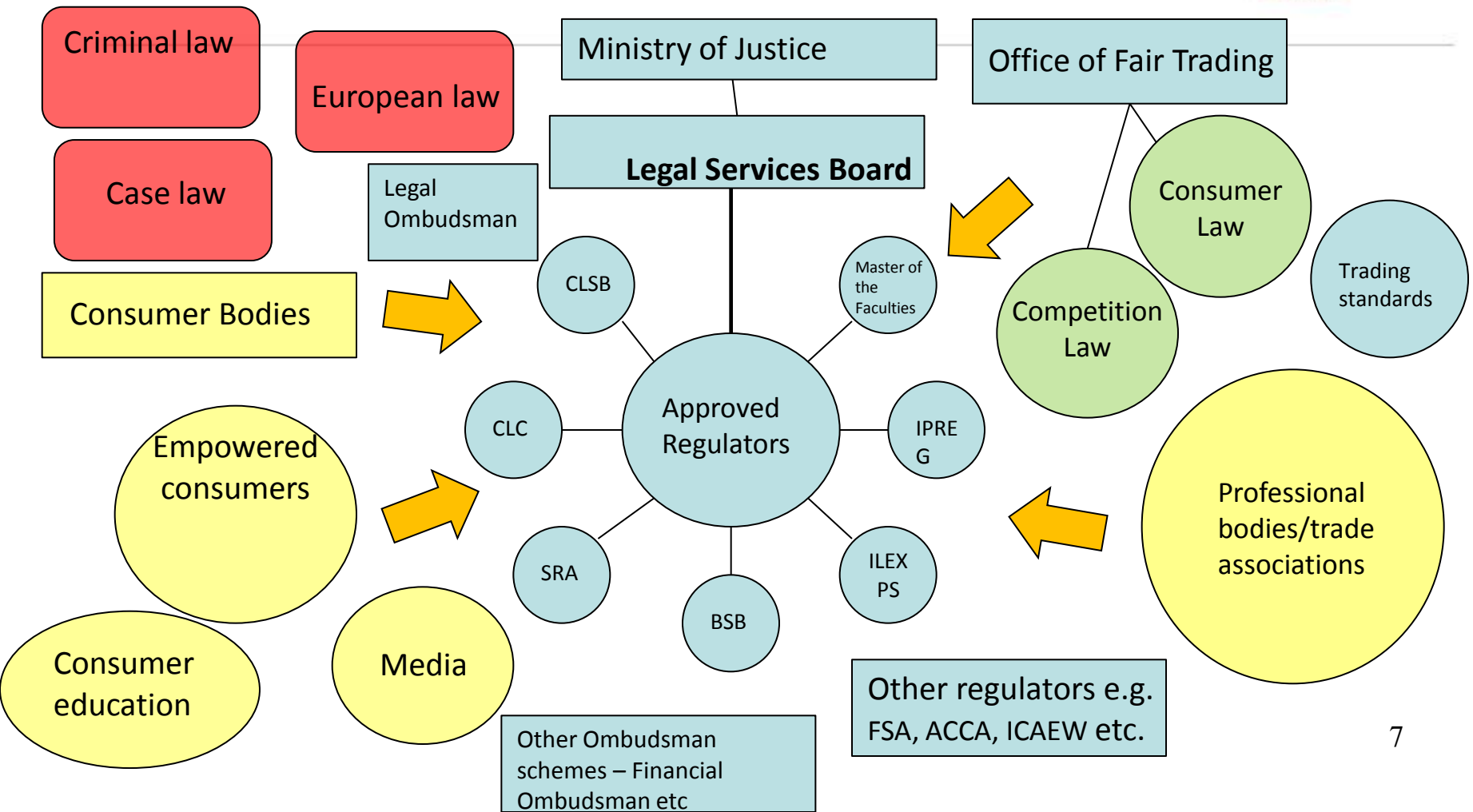


Reservation

Applications from regulators

Regulatory arrangements

Regulation of legal services



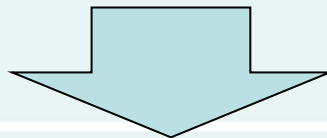
Understanding the actions and incentives of suppliers, consumers and regulators to understand the impact of reservation

Supply

- What drives providers to enter / exit the market
- What are the key financial issues that drive business incentives?
- How do providers compete?
- What service do they offer (price, quality, innovation etc)?
- What problems occur?
- What effect does demand and regulation have on supply?

Demand

- What drives consumer choice (price, service or quality)?
- How well informed are they?
- Who are buying services and why?
- Who isn't and why?
- What effect does supply and regulation have on demand?



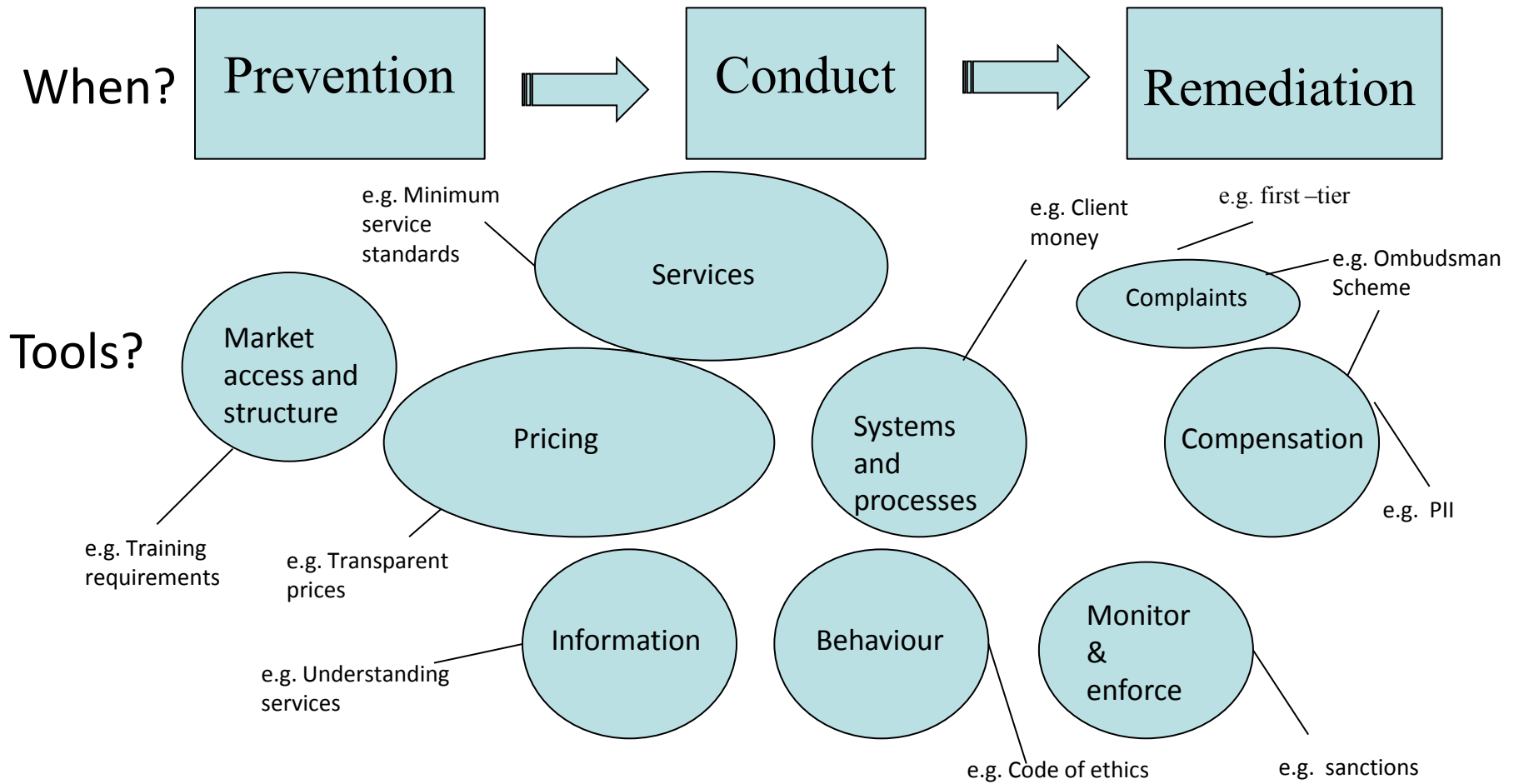
Regulation

- What drives regulation?
- What regulation exists outside of legal market specific regulation?
- What interventions are already occurring?
- Against what problems?
- How successful?
- Can they be improved?
- Are there any protection gaps?

Analyse costs and benefits?

- Reserving
- More effective usage of current tools
- Increased consumer education.

Regulatory menu?



Consumer Panel Advice

- **Broad evidence base of problems including:**
 - **Evidence of poor quality wills across the market**
 - **Some poor sales practice**
 - **Disappearing firms and finding wills**
 - **Life time fraud**
 - **Capacity**
- **Case to be answered – statutory investigation**

Problems (wills and estate planning)

Quality	Causes?
<p>Inadequacy –does not account for an estate fully, fails to make adequate provision or neglects to take certain outcomes into consideration</p>	<p>Sloppiness / lack of checks</p>
<p>Requirements –client’s requests have not been met through omission or conflicting specification</p>	<p>Insufficient skill or knowledge / provider acts beyond competence areas</p>
<p>Legality –actions specified in the will are potentially illegal</p>	
<p>Inconsistency – language, logic and/or content of the will is contradictory</p>	<p>Skills and knowledge not kept up to date</p>
<p>Detail – where items, people and requests are described in insufficient detail</p>	<p>Inadequate instructions</p>
<p>Presentation –language and format of the document is lacking</p>	<p>Client rejects advice</p>

Problems (wills and estate planning)

Sales / products / services	Causes?
Inappropriate bundling	Unethical behaviour <ul style="list-style-type: none"> •Sales pressure / bait tactics •Misleading advice / untrue claims •Hidden charges
Ineffective or unneeded products / services	
Inflexible or compulsory products / services	Lack of transparency – fees / services
Expensive products / services <ul style="list-style-type: none"> •More than thought / led to believe •Poor value •Much higher than alternatives 	Informational issues / consumer understanding
Escalating costs	Insufficient knowledge of required services
	Knowledge of required services not kept up to date Client rejects advice on required services

Problems (wills and estate planning)

Other	Causes?
Will can't be found – when provider storage service used	High rate of firms closing No succession firm Insufficient succession processes Insecure storage practices
Lifetime fraud – identity related theft, credit card theft, services not delivered, forgery inc. executor, undue influence, disappearing wills	Criminal behaviour
Mental capacity – will made without testamentary capacity, may involve undue influence for personal gain.	Lack of checks/ appropriate precautions

Probate and estate administration

•Initial thoughts?

- **Fraud and protecting client money**
- **Use of attorneys**
- **Service issues – delay, keeping client informed, completing tasks etc**
- **Sales and product issues**
- **Quality – complexity:** interpreting will, calculating tax, valuing assets, clearing debts, missing beneficiaries, foreign properties, transfers of deed, business provision, challenges, intestacy , children

Problems (probate and estate administration)

Fraud & protecting client money	Causes?
Fraud <ul style="list-style-type: none">• Forging or suppressing wills• Omitting relatives in intestacy• Theft before registration of death• Theft from estate during administration	<ul style="list-style-type: none">• Criminal behaviour• Absence of background checks• Beneficiaries unsighted• Limited client account protections
Other financial dangers <ul style="list-style-type: none">• Poor accounting practices• Protection from business liabilities	<ul style="list-style-type: none">• Inadequate financial control systems• Limited client account protections• Insufficient skill or knowledge
Providers as attorneys?	<ul style="list-style-type: none">• No robust checking by Probate Service• Within rules?



Problems (probate and estate administration)

Service & Quality	Causes?
<p>Service issues:</p> <ul style="list-style-type: none">• Delay• Keeping client informed• Completing tasks• Unexpected costs	<p>Inadequate systems</p> <p>Unethical behaviour</p> <p>Lack of transparency – fees / services</p> <p>Informational issues / consumer understanding</p>
<p>Quality issues:</p> <ul style="list-style-type: none">• Poorly drafted wills• Probate applications “stopped”• Simple process errors• Other?	<p>Sloppiness / lack of checks</p> <p>Insufficient skill or knowledge / provider acts beyond competence areas</p>
<p>Problem areas? Interpreting will, calculating tax, valuing assets, clearing debts, missing beneficiaries, foreign properties, transfers of deed, business provision, challenges, intestacy , children</p>	<p>Skills and knowledge not kept up to date</p>

Problems (probate & estate administration)



Sales / products / services	Causes?
Inappropriate bundling	Unethical behaviour <ul style="list-style-type: none"> •Sales pressure / bait tactics •Misleading advice / untrue claims •Hidden charges
Ineffective or unneeded products / services	
Inflexible or compulsory products / services	
Expensive products / services <ul style="list-style-type: none"> •More than thought / led to believe •Poor value •Much higher than alternatives 	Lack of transparency – fees / services / referrals
Escalating costs	
Informational issues / consumer understanding	Insufficient knowledge of services needed
	Knowledge not kept up to date
Client rejects advice about required products	

Problems (probate and estate administration)



- **Impact of existing reservation of preparing probate papers** - Important consumer protection or reduced competitive pressure and higher costs?

Consumer Panel Advice: will-writing



- **Education** – given the evidence of poor quality wills, providers should have to pass formal exams or equivalent qualifications
- **Office holders** – given the risk of fraud, providers should be required to appoint a Head of Legal Practice and Head of Finance and Administration (defined roles under the alternative business structures regime)
- **Conduct rules** – given the evidence of poor sales practices and the incentives for providers to withhold information from consumers, providers should be required to follow a set of rules

Consumer Panel Advice : will-writing



-
- **Ensuring ongoing competence** – given concerns about quality and regular changes to laws and taxation, there should be annual CPD requirements and periodic reaccreditation
 - **Monitoring compliance** – given consumers lack of expertise, a mystery shopping programme should form part of approved regulators’ toolkits. This is an area where existing mechanisms need strengthening
 - **Redress** – providers should be insured, make contributions to a compensation fund (if estate administration falls within scope) and fall within the jurisdiction of the Legal Ombudsman
 - **Discipline** – where providers are guilty of misconduct, they should be subject to a wide range of sanctions including expulsion

Existing obligations / protections?

Information required from e.g. regulators & industry associations

		Entry E&T	Background Checks (advisers / owners)	CPD	Quality indicators	Codes	Client account	Risk profile	Quality checks	System checks	Complaint mechanisms	PII	Compensation	Ombudsman	Sanctions
SRA	Solicitors & entities														
BSB	Barristers														
Faculty Office	Notaries														
CLC	Conveyancers & entities, ABS														
IPS	Legal Executives														
ICAEW	Accountants														
ACCA															
ICAS															
IPW	Will writers, estate planners, trust corporations, executor support, some authorised persons														
SWW															
PALS															
TACT	Corporate trustees														
FSA	Banks & building societies, IFAs, Insurance companies? IFAs?														
Charity commission	Charities														
STEP	All?														

Existing obligations / protections?

Narrative required from e.g. regulators & industry associations

- **Types / groups of provider in the market?**
- **Providing what services?**
- **What obligations / protections already in place?**
- **Compulsory?**
- **Targeted at problems identified in market?**
- **How effective – evidence of actions & outcomes?**
 - Issue resolved for consumer
 - Prevention / raising standards
 - Reduce risk of recurrence
- **What cost?**

What we are looking at today?

- Market
- Problems & difficulties
- Causes & detriment
- What protections may work for each
- What is already there
- What are the costs and benefits of change
- Evidence, evidence, evidence

Questions?

Workshop 1:

- Problems & challenges – is list right or other things too?
- Frequency and causes?
- When and how are problems spotted?
- What are the impacts?
- Finding evidence?
- Can negative impacts be put right?

Workshop 2:

- What are the answers?
- What protections are there already?
- Information on effectiveness, targeted actions and outcomes?
- What else is needed?
- Pros, cons and costs?
- Defining activities

Chris Handford, Project Manager, LSB
chris.handford@legalservicesboard.org.uk
<http://www.legalservicesboard.org.uk>
Tel. 020 7271 0074