



IFF Research

Probate and Estate Management Services Survey

Research Report

Prepared for Legal Services Board
By IFF Research

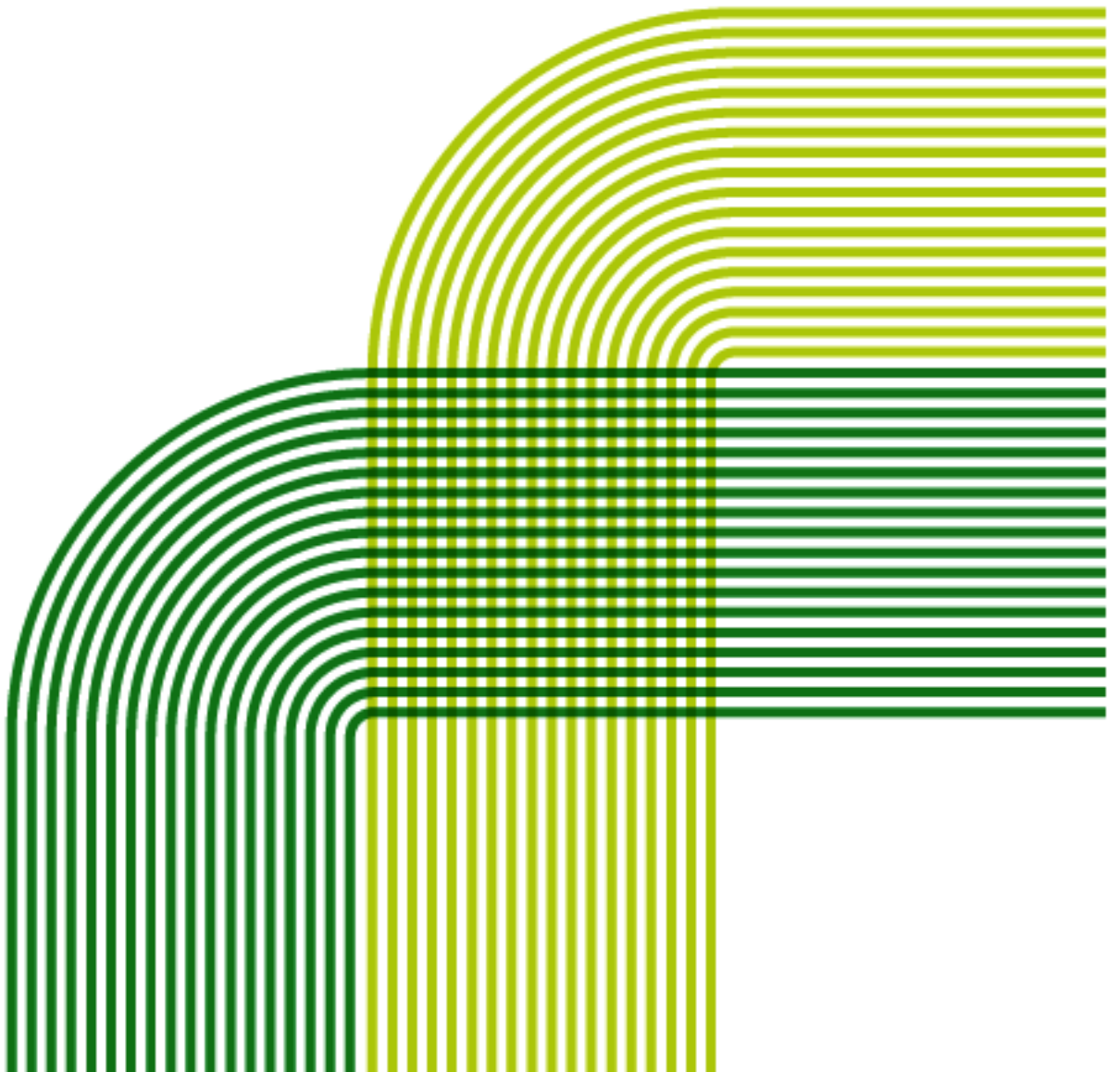




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1 Executive Summary

Background

- 1.1 The Legal Services Board (LSB) is the independent body responsible for overseeing the regulation of lawyers in England and Wales.
- 1.2 Following reports of problems and resulting harms experienced by consumers wishing to write a will, in September 2010 the LSB started a formal investigation into how best to protect consumers of will-writing services and the associated probate and/ or estate administration services. The LSB's investigation did not review estate administration and probate activities. However, it did highlight the association between will-writing, probate and/ or estate administration and consumer detriment.
- 1.3 In November 2011 LSB commissioned IFF Research to conduct a programme of research among businesses providing probate and/ or estate administration services in England and Wales in order to gain a clearer understanding of the state of the market.
- 1.4 IFF conducted 100 telephone depth interviews with a range of business types to gain an understanding of the way in which they conduct probate and/ or estate administration work. These business types were: firms of Solicitors, Specialist Will-Writers, Accountants, Banks/ Building Societies, Charities, Financial Advisers and Trust Corporations.

Market overview

- 1.5 Only a small minority of Solicitors' firms approached for interviewing did not offer probate and/ or estate administration services – those that did not tended to specialise in another area of the law such as immigration or conveyancing. Among all other types of business (i.e. non-Solicitors) approached, offering probate and/ or estate administration was much rarer – those that did offer such services were in the minority.
- 1.6 Solicitors dominate the probate and/ or estate administration market in terms of the number of businesses offering such services and the number of estates administered per year. On average, the Solicitors interviewed administered around 100 estates per year. The number is far lower for non-Solicitors who averaged around 15 per year.
- 1.7 The majority of non-Solicitor organisations that offer probate and/ or estate administration conducted most of the work themselves, outsourcing specific tasks to Solicitors. In a minority (roughly one-fifth) of cases non-Solicitors instructed a firm of solicitors to carry out the majority of the probate and/ or estate administration work.
- 1.8 Solicitors reported – quite consistently – that probate and/ or estate administration work accounts for around one-fifth of their firm's working time whereas among non-Solicitors, the proportion varied a great deal.
- 1.9 For Solicitors, probate and/ or estate administration formed a major part of their business structure and income and was considered an important activity. Among non-Solicitor organisations the importance of probate and/ or estate administration work varied quite considerably, although the majority of these organisations recognised the potential for probate and/ or estate administration work to lead to further (non-probate) work and virtually all saw this as a significant incentive to undertaking probate and/ or estate administration work.



Type and level of the service offered

- 1.10 All Solicitors interviewed offer a full service – administering the estate and preparing the application for probate – but all offered lower level services depending on the client’s requirements. The majority of non-Solicitors also offered a full service but were less likely to offer a lower service level whereby they assist with the preparation of papers for grant of probate for a lay person to administer (around two-fifths offered this level of service).
- 1.11 Among organisations that did not offer customers a full service the most significant service not offered was the application for probate itself. Virtually all non-Solicitor organisations that did not offer a full service stated that they did not offer probate services.
- 1.12 All Solicitors interviewed offered will-writing as well as probate and/ or estate administration services whereas (Specialist Will-Writers aside) only a minority of non-Solicitor organisations offered will-writing services. The majority of non-Solicitor (and non-Specialist Will-Writer) organisations had links to other organisations which offer will-writing services, typically firms of solicitors or specialist will-writers.

How businesses approach probate and/ or estate administration internally

- 1.13 In the majority of Solicitor firms interviewed at least half of all staff involved in probate and/ or estate administration services were qualified solicitors. On average, a quarter of all staff involved in probate and/ or estate administration at Solicitor firms were members of the Society of Trust and Estate Practitioners (STEP). The majority of Trust Corporations and Charities and a handful of Banks/ Building Societies employed qualified solicitors. Other non-Solicitor business types tended not to.
- 1.14 With the exception of Specialist Will-Writers, the majority of non-Solicitors employed members of STEP – and these individuals tended to be the main group working on probate and/ or estate administration in non-Solicitor organisations.
- 1.15 The most common task to be outsourced by non-Solicitors was the application for grants of representation and probate – roughly two-fifths of all non-Solicitor organisations had no involvement in the preparation of grants of representation or grants of probate (and other associated legal documentation that forms part of the probate process). These organisations tended not to employ any trained solicitors and would use a third party firm of Solicitors for delivering this aspect of the service.

Charging customers for probate and/ or estate administration services

- 1.16 Virtually all Solicitors and around three-fifths of non-Solicitors reported that they always provide an indication of likely cost (irrespective of whether or not the client asked for it).
- 1.17 There was little variation between Solicitors and non-Solicitors overall in terms of their fees for probate and/ or estate administration services. The median fee for administering an estate with simple circumstances was around £1,500 among both Solicitors and non-Solicitors; for estates with complex circumstances, the median fee was around £5,000 for both. The Trust Corporations interviewed tended to charge more than other organisations interviewed, averaging around £4,000 for the administration of a will for a client with simple circumstances and £10,000 for a client with complex circumstances.

Risks and challenges to providing probate and/ or estate administration services

- 1.18 The most common type of risk or challenge to all business types except Specialist Will-Writers was poorly written wills. Around half of businesses interviewed raised this issue, which can ultimately lead to a rejection from the Probate Registry. Generally such issues were regarded as a challenge to the



process, in terms of the delays and costs associated with their impacts, rather than a risk to probate and/ or estate administration as a whole.

- 1.19 Other principal risks or challenges to the probate and/ or estate administration process mentioned by businesses interviewed were:
- Complex wills;
 - Technical errors made during the probate and/ or estate administration process;
 - A lack of information provided by the executor or testator; and
 - Overcharging.
- 1.20 In order to address the problems that can occur through poorly written wills, there were three common options that businesses, particularly Solicitors, used, depending on the circumstance in which providers of probate and/ or estate administration found themselves:
- Affidavits to clarify ambiguous areas of the will;
 - Deeds of variation to change inaccurate areas of the will; and
 - Improved communication with the client for reassurance purposes regarding delays and additional costs.

Protecting provider and customer interests

- 1.21 Solicitors tended to have more formalised approaches to quality control, including undertaking regular and relatively frequent peer reviews and the use of case management systems. Many also adhered to external risk management standards, such as having Lexcel accreditation. Non-Solicitors were far less likely to have IT systems and external standards in place to monitor their probate and/ or estate administration services, relying on practice manuals, training, the placement of well-qualified and well-trained employees and a double check of work produced. Banks/ Building Societies and Accountants were likely to conduct regular file reviews and internal audits of work to ensure that work produced was accurate, however.
- 1.22 All Solicitors and nearly all non-Solicitors had a formal complaints escalation procedure in place. Solicitors' complaints procedures tended to be quite consistent, involving internal escalation, client communication and a referral to Legal Ombudsman or the Solicitors Regulation Authority (SRA) if the complaint could not be resolved. There was less clarity regarding internal complaint procedures within non-Solicitor business types and around half of such businesses suggested there was nowhere further than their own company for clients to take a complaint, such as an ombudsman.
- 1.23 Nearly all Solicitors reported that their probate and/ or estate administration activities were authorised, supervised or regulated by the SRA or the Law Society. Only half of non-Solicitors reported that their probate and/ or estate administration activities were regulated by an external body; these were most likely to be Accountants or Banks/ Building Societies. Some Solicitors were concerned that they weren't on a level regulatory playing field as other providers of probate and/ or estate administration services.
- 1.24 All Solicitors and non-Solicitors that carried out some or all of the probate and/ or estate administration work in house had Professional Indemnity Insurance (PII), while organisations that outsourced all probate and/ or estate administration work, taking more supervisory or facilitating roles, generally did not have PII (or at least a PII policy that related to probate and/ or estate administration).



- 1.25 Around half of non-Solicitors were members of a compensation fund. These tended to be Banks/ Building Societies and Financial Advisers, who belonged to the fund administered by the Financial Services Authority (FSA). In such cases it was unclear that the fund would cover these activities.

Provider views on the wider probate and/ or estate administration market

- 1.26 Non-Solicitors were generally less positive than Solicitors in their assessment of the choice of providers available to clients.
- 1.27 Solicitors felt that the quality of the probate and/ or estate administration services met the needs of clients. Non-Solicitors however were less favourable due to a concern that some businesses employed staff whose limited experience, qualifications and regulation meant their provision of probate and/ or estate administration services lacked quality and security.
- 1.28 A large proportion of businesses thought there was much more room for improvement in the transparency of the service provided by probate and/ or estate administration providers.
- 1.29 There was some concern that clients were not receiving value for money for their probate and/ or estate administration service (generally ascribed to excessive costs), although this was not widespread.
- 1.30 Solicitors and non-Solicitors highlighted the lack of regulation under which certain non-Solicitor providers were able to operate.
- 1.31 The most commonly cited challenge businesses face over the next five years was the entry into the market of new players as a result of the recent introduction of Alternative Business Structures (ABS). Very few businesses had plans in place to address this, although some businesses, particularly Solicitors, felt they could take advantage of the poor service they anticipated ABS organisations providing by picking up their dissatisfied customers.
- 1.32 A majority of businesses, split fairly evenly between Solicitors and non-Solicitors, felt there should be regulation for all providers of probate and/ or estate administration services to create a level playing field for all providers.
- 1.33 Businesses believed that such regulatory change needed to come either from the Government, through bodies such as the LSB, or existing professional bodies such as the Law Society and the SRA, or the FSA (as proposed by financial services businesses).



2 Introduction

Background

- 2.1 The LSB has been set up to reform and modernise the legal services market place in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its own regulatory objectives and providing regulatory oversight for the eight approved frontline regulators¹.
- 2.2 Following reports of problems and resulting harms experienced by consumers wishing to write a will, in September 2010 the LSB started a formal investigation into how best to protect consumers of will-writing services and the associated probate and/ or estate administration services. The LSB's investigation did not review estate administration and probate activities. However, it did highlight the association between will-writing, probate and/ or estate administration and consumer detriment.
- 2.3 The Legal Services Act 2007 reserves 'probate activities', which are defined as 'preparing any papers on which to found or oppose a grant of probate/letters of administration' to authorised persons. In practise, this has meant that the specific submission of the probate application to the registry office is the only reserved element and therefore the only element that is regulated. However, any individual can make a personal application without legal input.
- 2.4 No other aspect of probate or estate administration is subject to statutory regulation.
- 2.5 Solicitors, notaries, barristers and licensed conveyancers can be authorised to undertake probate. Under separate legislation, Trust Corporations can also apply directly for probate, but they are then acting as an individual rather than representing a client.
- 2.6 There are a range of trade associations which provide voluntary self-regulation in parts of the sector. This includes the Society of Will Writers, the Institute of Professional Will-Writers and the Society of Trust and Estate Practitioners.
- 2.7 The Probate Registries can be said to exert a form of regulation or quality control as they will not issue the grant of probate until the paperwork is in order. Her Majesty's Revenue & Customs (HMRC) will play a similar role in relation to inheritance tax and capital gains tax.
- 2.8 Although unregulated firms and non-authorised persons cannot apply for the actual grant of probate on behalf of others, many still offer full estate administration services. It is therefore assumed that one of the following occurs:
 - The probate application is outsourced to an authorised person;
 - The probate application is technically undertaken as a personal application by the client, with assistance from the unregulated business. For example, some firms offer a 'handholding service'; or
 - The client renounces their executor role and appoints an individual from the unregulated firm or a Trust Corporation.

¹ The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Law Costs Draftsmen, Master of the Faculties.



Objectives

- 2.9 In November 2011 LSB commissioned IFF Research to conduct a programme of research among businesses providing probate and/ or estate administration services in England and Wales in order to gain a clearer understanding of the state of the market by answering the following key questions:
- What types of business operate in the probate and/ or estate administration market and what proportions of the market do they account for?
 - What services do these businesses offer and what referral structures are in place?
 - How do businesses charge for probate and/ or estate administration services?
 - What risks and challenges to providing probate and/ or estate administration do businesses perceive?
 - What structures and processes do businesses offering probate have in place to protect their own interests and those of their customers?
 - What are businesses' views on the wider probate and/ or estate administration market?
- 2.10 The report sets out to answer these questions.

Sample and Methodology

- 2.11 As no comprehensive and readily available list of organisations providing probate and/ or estate administration services was available, a number of approaches were taken to source and compile a sample of businesses to contact for interviewing.
- 2.12 Initially, records were purchased from Dun and Bradstreet and Experian's business databases targeting types of organisation believed to provide probate and/ or estate administration services, namely firms of Solicitors, Specialist Will-Writers, Accountants, Banks/ Building Societies, Charities, Financial Advisers and Trust Corporations.
- 2.13 IFF also undertook an additional sample building exercise using a range of publically available sources.
- 2.14 Referrals to other organisations known to provide probate and/ or estate administration were also taken during the interview recruitment process. In a few instances, a business approached for interview referred IFF to another type of business (for example a Charity to a firm of Solicitors) because the latter organisation undertakes the vast majority or all of the probate and/ or estate administration work acquired by the former.
- 2.15 Under these circumstances, IFF approached the business that actually undertakes the probate and/ or estate administration work for an interview. If an interview was secured with this organisation, this was then focused on the probate and/ or estate administration work undertaken on behalf of the business initially contacted – rather than any other probate and/ or estate administration work undertaken.
- 2.16 One hundred telephone depth interviews were conducted between November 2011 and January 2012 spread among the different business types offering probate and/ or estate administration services in England and Wales. Interviews were on average 30 to 45 minutes in length. The types and numbers of business interviewed are shown below in Table 2.1.



Table 2.1 Number of achieved interviewers by business type

Business type	Number of achieved interviews
Firms of Solicitors	46
Specialist Will-Writers	10
Accountants	10
Banks/ Building Societies	10
Charities	7
Financial Advisers	11
Trust Corporations	6
Total	100



3 What is the wider market picture?

3.1 This chapter provides an overview of the probate and/ or estate administration market with specific regard to: the types of businesses offering probate and/ or estate administration services and the incidence with which probate and/ or estate administration services are offered by these business types; the channels of referral that exist among businesses offering probate and/ or estate administration services and how these business relationships work; and the importance of probate and/ or estate administration work to the businesses that provide it in terms of share of sales/ turnover.²

Types of business active in the market and the incidence of activity within each business type

3.2 While all types of business targeted for the study offer probate and/ or estate administration services (either in house or via a process of referral to another organisation which undertakes some or all of the work), there were quite considerable differences in the incidence with which these services are offered by the different types of business covered. Only a small minority of Solicitors' firms approached did not offer probate and/ or estate administration services – those that did not tended to specialise in another area of the law such as immigration or conveyancing. Among all other types of business (i.e. non-Solicitors) approached, offering probate and/ or estate administration was much rarer – those that did offer such services were in the minority.³

3.3 Charities that offered probate and/ or estate administration tended to be the larger organisations in the sector – the smallest interviewed for the research had 170 employees, the majority had over 2,000 and the largest 7,000 employees. Specialist Will-Writers were typically small – from sole practices to a business with six employees – but this is broadly reflective of this type of business in general. Among other business types, size of business did not appear to affect the likelihood of offering probate and/ or estate administration services:

- Solicitors interviewed ranged in size from sole practices to a firm with 1,200 employees;
- Accountancy organisations ranged from sole practices to a business with 1,500 employees;
- Banks/ Building Societies ranged from smaller private banks to the largest high street banks;
- Trusts from 60 to 700 employees; and
- Financial Advisers from sole practices to SME-sized businesses.

3.4 It is clear that Solicitors dominate the probate and/ or estate administration market in terms of the number of businesses offering such services and the number of estates administered per year. As noted above, almost all solicitors approached provided probate and/ or estate administration services and on average, Solicitors administered around a hundred estates per year (although as might be expected, this tends to vary by size of firm – some larger firms administered over 500 estates per year).

² Findings in this chapter are based on results and feedback collated during the process of recruiting respondents as well as participants' responses to the survey topic guide.

³ In terms of Specialist Will-Writers, this reinforces the findings of the study into the will-writing market conducted by IFF in 2010/11 which found that only a minority of Specialist Will-Writers offer to act as the executor for their will-writing clients (one in five Specialist Will-Writers stated that they will offer to be the executor under special circumstances, mainly where the client does not have anyone they trust to act as an executor). The remainder (roughly four-fifths of Specialist Will-Writers) stated that they never offer to act as executor. The Will-Writing study showed that Specialist Will-Writers who offer executor services generally do so with the future provision of probate in mind as this is seen as a lucrative source of income.



- 3.5 The number of estates administered per year was far lower for non-solicitors who averaged around 15 per year with the exception of (a) a minority of Trust Corporations and (b) the probate arms of Banks/ Building Societies: both these types of businesses dealt with around a thousand estates each year and probate and/ or estate administration was a core business activity. Indeed in the case of the probate arms of Banks/ Building Societies, it was the sole activity for that department/ division.

Acquiring probate and/ or estate administration work and channels of referral

- 3.6 Among non-Solicitors, probate and/ or estate administration work was acquired through different routes. For certain business types, typically Trust Corporations, Financial Advisers, Accountants and Banks/ Building Societies, which tended to have ongoing, often long-term, relationships with their clients, offering probate and/ or estate administration services was an extension of their general client offer.

"I feel it's more of an add-on - we've known the client through their lifetime and we're assisting them further."

Accountant, Fewer than 10 estates per year

"I think it fits in to the overall package of services that we offer to our clients. So it's situated within the private banking part of the bank, where we offer investment management services and other subsidiary services such as will-writing and tax management. It's part of an overall wealth management package that we offer to our clients."

Bank/Building Society, 250+ estates per year

- 3.7 For Specialist Will-Writers – and some Trust Corporations – probate and/ or estate administration services tended to be sold with executor services during the will-writing process, so the relationship tended to be transactional rather than ongoing.

- 3.8 Charities tended to be 'reactive rather than proactive', only dealing with estate administration if they were a beneficiary and there was nobody else to administer the will.

"We will offer the service when there is no one else to administer the estate or we are getting a very large legacy or it is split between several charities and we are the lead charity. It very much relates to protecting our charity's interests - if we are not named as a beneficiary under the will, we will not take out the probate."

Charity, 100-249 estates per year

- 3.9 Charities have also undertaken probate and/ or estate administration work when a Bank/Building Society or Trust Corporation has approached them with an estate (in which the charity was a beneficiary) where there was little financial incentive for the Bank/ Trust Corporation to undertake the work, typically low value estates. However, charities have been known also to assess whether there is a financial benefit to administering a given estate and decline to do so where there is not.

"If somebody doesn't have a large estate but they want to leave 100% to us and want us to act as executor we would say fine. If people with an estate of many hundreds of thousands of pounds want to leave us £100 then we would say no because it wouldn't be worth our time and effort ... we would be going against our charitable objectives if we spent time and money on an estate where there was little payback."

Charity, 10-49 estates per year

- 3.10 The majority of non-Solicitor organisations (of all business types) that offered probate and/ or estate administration conducted most of the work themselves, outsourcing specific tasks to Solicitors. The



types of organisations that carried out the individual tasks in the probate and/ or estate administration process are covered in further detail in Chapters 4 and 5 of this report.

- 3.11 In a minority (roughly one-fifth) of cases, non-Solicitors instructed a firm of Solicitors to carry out the majority of the probate and/ or estate administration work – typically Charities and Specialist Will-Writers and a minority of Trust Corporations and Banks/ Building Societies. Some of these organisations reported that they remain involved throughout the process; a number of charities maintain a supervisory role.

“The whole administration is outsourced. It’s better for us to instruct external solicitors.”

Charity, Fewer than 10 estates per year

- 3.12 Solicitors therefore acquired probate and/ or estate administration work through their existing (individual) client base, or through referrals from other business types whereby the Solicitors would conduct some or all of the estate administration. These referrals tended to be part of established relationships or working partnerships which were often specific to local areas in England and Wales.
- 3.13 Charities across England and Wales tended to use a select handful of solicitors experienced in administering estates for charities. Commonly, charities received assistance with the estate administration process from a single third party organisation, a consultancy that primarily offers its services to charities. Consultants were typically qualified solicitors and had worked as legacy officers in a charitable organisation.

Strategic importance of probate and/ or estate administration work to providers

- 3.14 Solicitors reported – quite consistently – that probate and/ or estate administration work accounts for around one-fifth of their firm’s working time.
- 3.15 Among non-Solicitors, the proportion varied a great deal. Financial Advisers and Accountants tended to spend the lowest proportion of their working time on probate and/ or estate administration – less than 10% on average. Two Accountants were notable exceptions to this rule, spending spend roughly half their time on probate and/ or estate administration – both were sole practitioners dealing with fewer than ten estates per year suggesting that such businesses represent an extremely small proportion of the probate and/ or estate management market. Trust Corporations and the majority of Specialist Will-Writers tended to spend more time on probate and/ or estate administration – generally no less than 10% and in some cases 50% to 75% (up to 100% in the case of one Trust Corporation).
- 3.16 For Solicitors, probate and/ or estate administration formed a major part of their business structure and income and was considered an important activity.

“We’d like more of it as it’s quite an important part of our business plan. We are seeking to increase the amount we do as much as we can because it’s the only really profitable work that we do.”

Solicitors, Fewer than 10 estates per year

“[Probate is] very important, particularly over the last couple of years, because other areas have taken a hit with the recession.”

Solicitors, 50-99 estates per year

- 3.17 Among non-Solicitor organisations the importance of probate and/ or estate administration work varied quite considerably, although the majority of these organisations recognised the potential for probate and/ or estate administration work to lead to further (non-probate) work and virtually all saw this as a significant incentive to undertaking probate and/ or estate administration work.



“It gives us the opportunity to meet the heirs or the trustees who might then also become clients in their own right.”

Financial Adviser, 10-49 estates per year

- 3.18 Charities reported that being involved in the estate administration process enables them to control costs and increase the size of the legacy the charity receives. Several Charities reported that testators are aware that using a charity to administer their estate will help to ensure that the legacy the charity receives is not subject to reduction via the estate administration fee – a significant pull factor.

“I think our supporters take comfort in knowing that the administration is going to be seen right through from beginning to end by the charity that they're obviously supporters of. I suppose they put trust in the charity and I think a bonus for them is that we do not charge the estate for the administration. We don't charge a fee which means the estate isn't going to be depleted through administration costs.”

Charity, Fewer than 10 estates per year

- 3.19 For Banks/ Building Societies, probate and/ or estate administration was not seen as a major source of income (although it can help to ensure that the testator's investments remain with the Bank/ Building Society), rather a service that enhances their customer service offer – particularly for high net worth accounts.

“We're looking at providing a holistic service to our customers which includes assisting them where we can with matters upon their death.”

Bank/Building Society, 250+ estates per year

“We see it as a service we can provide to customers at an extremely valuable time in their lives. It also gives us a small opportunity to retain funds within the group.”

Bank/Building Society, 250+ estates per year



4 Type and level of the service offered

4.1 This chapter examines the services a customer might expect to receive from different organisations providing probate and/ or estate administration services in the current marketplace.

Overall service level

4.2 The discussion guide used in the interviews detailed three levels of probate and/ or estate administration service that businesses might offer their clients:

- 1) A full service – administering the estate and preparing the application for probate;
- 2) An intermediate level service – where the executor or administrator remains fully responsible for administering the estate but has access to professional help from the business as and when needed; and
- 3) A lower level service – where the business assists with the preparation of probate for a lay executor/ administrator but once probate is granted, the lay person administers the estate themselves.

4.3 All Solicitors interviewed offer a full service - administering the estate and preparing the application for probate. In addition to this full service, the vast majority of Solicitors (four-fifths in each case) also offered intermediate and lower level services.

4.4 The majority of non-Solicitors offered the full and intermediate level services detailed above. Non-Solicitors were less likely to offer the lower service level whereby they assist with the preparation of papers for grant of probate for a lay person to administer (around two-fifths offer this level of service).

4.5 According to businesses providing probate and/ or estate administration services, factors that determine (or at least contribute to) decisions about which level of service is taken up included:

- The executor's time and inclination to administer the estate
- The amount the executor wishes to spend on the estate administration process
- The complexity of the will/ estate
- The size/ value of the estate
- Whether the will has any specifications regarding estate administration
- The organisation offering probate and/ or estate administration's standard or preferred service level

4.6 Solicitors reported that the level of service offered is determined primarily by the executor. Solicitors generally didn't appear to lead clients towards taking up a particular level of service, rather they allow the client to make a choice based on their own situation and intentions.

"We will explain the difference to the clients - most people want us to do everything for them but some are happy to save some money and happy to do some of the work themselves."

Solicitors, 10-49 estates per year



"It's based on whatever the client's requirements are because they'll make the choice based firstly on what they consider they can do themselves. Quite often they will provide the information so that we can prepare the probate papers for them which they will then take away to deal with. Also on the fees involved. Sometimes they will want us to do a grant only with requisite advice because they want to oversee the full administration. So it's really up to the client."

Solicitors, 250+ estates per year

4.7 A minority of Solicitors stated that they will only make the application for probate (and not administer the estate) if the estate has a very low net worth (i.e. a few thousand pounds at the most). The lay executor would then be left to administer the estate.

4.8 Non-Solicitors' approaches tended to vary although Specialist Will-Writers and Trust Corporations were very similar to Solicitors in their approach. Virtually all Specialist Will-Writers and Trust Corporations stated that the choice lies with the executor.

"I suppose it's just the client's wishes. Whatever they feel they want. They get offered all three alternatives and they'll pick what suits them."

Specialist Will-Writer, 10-49 estates per year

"We're very keen on [testators] appointing family members as executors so that they can make the choices at the time. For most people they're quite happy to do it with our help and support."

Trust Corporation, 10-49 estates per year

4.9 Charities tended to take the same approach to estate administration each time – this is primarily because, as discussed in Chapter 3, Charities tended to get involved with administering a will when they were named as the executor or were the main beneficiary of an estate which had nobody else available to administer it – making it a different process to that which takes place at other types of organisation covered in the research.

4.10 Accountants took varying approaches to establishing which level of service is provided, some stated that the choice lies with the executor, others offered a full service as standard.

"I do all the paperwork, all the probate, go to the probate office, swear it in and take it from there. I know exactly what's going on, have a good relationship with my local probate office."

Accountant, Fewer than 10 estates per year

4.11 Banks/ Building Societies were more likely than other business types to have a standard service level. This is because Bank/Building Societies reported that their probate and/ or estate administration services are often part of a holistic service arrangement the details of which are established at the will-writing stage. This type of service commonly features the Bank/Building Society being named as executor in the will.

"Because we are the named executor, it is a full administration service from point of death to distribution of the estate and it's the same service for every client."

Bank/Building Society, 250+ estates per year

"It's usually from existing clients in the sense that if we've been looking after their investments during their lifetime then we continue to do it."

Bank/Building Society, Fewer than 10 estates per year

4.12 Financial Advisers were more likely to mention the size of an estate as a factor which can determine the service level they offer.



“The size of the estate does play a part. It's much easier when it's small and not complicated so the executors do it themselves to keep costs down and call on our expertise and input when needed.”

Financial Adviser, Fewer than 10 estates per year

Services not offered

- 4.13 Among organisations that did not offer customers a full service (i.e. administering the estate and preparing the application for probate) the most significant service not offered was the application for probate itself. Virtually all non-Solicitor organisations that did not offer a full service stated that they did not offer probate services.

“We don't offer a probate service. We offer advice on where to go for probate services.”

Specialist Will-Writer, 100-249 estates per year

- 4.14 Non-Solicitors had differing views on the fact that only a Solicitor can apply for a grant of representation and how that affects the service they offer customers.
- 4.15 The majority of Trust Corporations and a handful of Banks/ Building Societies felt that this fact does not impinge upon their service as they have solicitors in house equipped to apply for the grant of representation. Charities' services too stated they were unaffected by this fact – either because they have in-house solicitors or because their probate and/ or estate administration service is entirely reliant on solicitors (as discussed in Chapter 3, many charities refer the entire process to firms of solicitors and take a supervisory role).
- 4.16 Other non-Solicitor organisations were split between those who felt that the fact that only solicitors can apply for grants of representation doesn't impact on their services and those for whom this was a major bone of contention.
- 4.17 The former (typically Financial Advisers and Accountants) tended to perceive a fairly seamless process whereby a non-solicitor organisation or a lay executor can approach and instruct a solicitor.

“It doesn't affect the kind of service we offer. We give the client names of two or three solicitors or they already have one. Usually we work in conjunction with them. Especially with modern technology it doesn't affect the service we provide.”

Accountant, 10-49 estates per year

- 4.18 Specialist Will-Writers were far less positive about the fact that the application is a reserved activity (as are a minority of Banks/ Building Societies, Accountants and Financial Advisers). Will-Writers believed that this is a needless additional step in the probate and/ or estate administration process and would strongly prefer it if they were able to apply for probate themselves.

“I think it adds unnecessary stress to the whole process for members of the public. I think as long as someone can prove they're competent and have insurance and part of a regulatory scheme, then they should be able to do it themselves.”

Specialist Will-Writer, 10-49 estates per year

“It's a damned nuisance that you've got to employ a solicitor to make the application to the court. Having done it for 50 years and worked at a firm of solicitors, I'm fully aware of what's required. It's just another step which is not really necessary. I'm fully qualified to apply for the grant but can't because of the legal restriction.”

Specialist Will-Writer, 10-49 estates per year



Executor services and instruction

- 4.19 All but a very small minority of Solicitors and the majority (around seven in ten) of non-Solicitors have had representatives of their organisation act as executor in the past (slightly fewer Financial Advisers and Trust Corporations have).
- 4.20 Generally, the organisations interviewed reported that the executor is as stipulated in the will but most will offer to act as the executor if a named executor cannot or does not wish to perform the task. Charities reported that they will often act as executor when they are the main beneficiary.
- 4.21 Organisations that might have long-term relationships with clients have commonly acted as executor for these clients – typically Accountants, Financial Advisers and Solicitors. Will-writing is also a key means of becoming the executor; Solicitors tended to offer executor services at the point of writing the will as did the minority of Specialist Will-Writers engaged in executor services.

“It can happen with clients many years standing who want us to be executor. It comes up in conversation. They often say, ‘I’ve known you for 20 years, will you be the executor?’”

Accountant, Fewer than 10 estates per year

“Most of the time it has been because they are estates and families that we have dealt with as a firm for generations, whereby we have produced wills, power of attorney and court protection matters for generations of a family, so the wills name us along with accountants that we’ve worked with for many years.”

Solicitors, 100-249 estates per year

- 4.22 Both Solicitors and non-Solicitors tended to be instructed by the executor. Charities reported that they are sometimes instructed by a solicitor acting as executor (at the behest of the testator) when administering an estate.

Will-writing services

- 4.23 All Solicitors interviewed offered will-writing as well as probate and/ or estate administration services whereas (Specialist Will-Writers aside) only a minority of non-Solicitor organisations offered will-writing services. The majority of non-Solicitor (and non-Specialist Will-Writer) organisations had links to other organisations which offer will-writing services, typically firms of Solicitors.
- 4.24 There is evidence that certain Trust Corporations had business agreements with specialist will-writers, whereby the Trust Corporation will refer customers to the specialist will-writer for will-writing services and the Specialist Will-Writer will refer clients to the Trust Corporation for probate and/ or estate administration services.

“If we have a client who wishes to write or update a will, then we’d refer them to a third party - we work with will-writers who effectively promote our estate administration services.”

Trust Corporation, 50-99 estates per year



5 How businesses approach probate and/ or estate administration internally

Internal resources and qualifications/accreditation

- 5.1 In the majority of Solicitor firms interviewed at least half of all staff involved in probate and/ or estate administration services were qualified solicitors. On average, a quarter of all staff involved in probate and/ or estate administration at Solicitor firms were members of STEP.
- 5.2 Roughly two-fifths of firms of Solicitors interviewed used paralegals or trainee solicitors in their probate and/ or estate administration work. Roughly one in five firms used non-legally trained admin or support staff – although it is clear that these unqualified employees did not take part in any of the legal work or the preparation of any legal documents.
- 5.3 The majority of Trust Corporations and Charities and a handful of Banks/ Building Societies employed qualified solicitors. Other non-Solicitor business types tended not to.
- 5.4 Except for Specialist Will-Writers, the majority of non-Solicitors employ members of STEP – and these individuals tended to be the main group working on probate and/ or estate administration in non-Solicitor organisations.
- 5.5 Only a minority of Specialist Will-Writers employ STEP members, instead they were more likely to employ members of the Society of Will Writers and Estate Planning Practitioners or members of the Institute of Professional Will-Writers (although only half of the Specialist Will-Writers interviewed had members of the latter).

Outsourcing tasks within the probate and/ or estate administration process

- 5.6 As discussed in Chapter 4 of this report, all Solicitors offered customers a full probate and/ or estate management service and for the vast majority of estates administered, Solicitors did not outsource any aspects of their 'regular' service to another organisation.
- 5.7 Around two-fifths of Solicitors stated that on occasion they will engage third parties for help with 'trickier' issues relating to the administration of an estate. These issues are typically due to income tax issues or stocks and shares owned by the testator, whereby an accountant or stockbroker will be engaged. A handful of Solicitors also mentioned property valuations (from estate agents) and genealogy reports as items that are outsourced on (rare) occasions.

"Occasionally we might seek expert advice on inheritance tax issues or tax planning if there's some problem which we're not confident we can deal with ourselves, additional expertise we don't have."

Solicitor, 10-49 estates per year

- 5.8 Clearly though, these reasons for seeking third-party assistance in administering an estate were not restricted to Solicitors alone. Indeed many non-Solicitor organisations have also used these third-parties although such situations were less top of mind for non-Solicitors.
- 5.9 Only a minority of non-Solicitor organisations conducted their full probate and/ or estate administration services in house **without** outsourcing any element to a third party.
- 5.10 The most common task to be outsourced by these non-Solicitors was the application for grants of representation and probate – roughly two-fifths of all non-Solicitor organisations had no involvement in the preparation of grants of representation or grants of probate (and other associated legal documentation that forms part of the probate process). These organisations tended not to employ any



trained solicitors and will use the services of a third party firm of Solicitors for delivering this aspect of probate and/ or estate administration.

“We can't apply for the grants of probate and that has to be done by a firm of solicitors.”

Specialist Will-Writer, 10-49 estates per year

- 5.11 A minority of businesses that did employ solicitors still outsource the application. This is mainly due to the resource requirements of making the application for probate. Several businesses that had in-house solicitors felt it saved time and was relatively inexpensive to engage a third-party solicitor firm.

“We'd have to go to the Probate Registry so it's easier to get a solicitor to do it for a relatively small fee.”

Accountant, Fewer than 10-49 estates per year

- 5.12 A minority of non-Solicitors that had in-house solicitors stated that they will outsource to a third-party Solicitors on an ad hoc basis if the probate process is likely to be contentious.

“We outsource contentious cases because we strive to maintain levels of expertise and current knowledge. So we go to recognised experts in the field to make sure the client gets the best experience possible.”

Bank/Building Society, 250+ estates per year

- 5.13 Non-Solicitors stated that they may also use Solicitors to provide assistance on (more general) points of law that they do not understand or are not equipped to deal with.

- 5.14 As discussed in chapter 4, the majority of Trust Corporations and a handful of Banks/ Building Societies had in-house solicitors equipped to apply for the grant of representation.

- 5.15 Financial Advisers and Accountants were less likely to state that they outsource aspects of the probate and/ or estate administration process to a third party – however these organisations tended not to employ a solicitor, so clearly the application for probate cannot be carried out by one of their employees. This discrepancy stems from the fact that what these organisations perceived to be a ‘full service’ could still involve the executor approaching a Solicitor separately regarding the application for probate.

- 5.16 Charities that did not employ solicitors (which are the majority of charities), small Trust Corporations and a minority of small Specialist Will-Writers tended to outsource all of their probate and/ or estate administration work, although they remained involved in a supervisory capacity.

“All of it is outsourced. I don't do any of it. I oversee the entire process because basically we don't have the resource. When we receive the papers for a deceased administration, we have a panel of three law firms that we give all our estate administration to.”

Charity, 100-249 estates per year



6 Charging customers for probate and/ or estate administration services

6.1 Virtually all Solicitors and around three-fifths of non-Solicitors reported that they always provide an indication of likely cost (irrespective of whether or not the client asked for it). Only one business interviewed, an Accountant, never provides an indication of likely cost.

6.2 There was found to be very little consistency in the way Solicitors charge for probate and/ or estate administration services: fees were based on an hourly rate, a percentage of the estate and/ or a flat fee. Often fees were based on a combination of two or more of these charging structures.

“It’s an hourly rate for a solicitor and there would be a value element depending on the complexity of the estate and the nature of the assets.”

Solicitors, 100-249 estates per year

“We try to estimate the fee. It’s a bit difficult at the outset to say how costs are structured. We’re often in a position of not being able give a realistic estimate. We might use hourly rates; some percentage of assets; we may agree a flat fee.”

Solicitors, 50-99 estates per year

6.3 Non-Solicitors’ approaches varied – Accountants reported almost exclusively charging an hourly rate while Specialist Will-Writers and Financial Advisers tended to take a percentage of the estate’s value or charge a flat fee. Trust Corporations and Banks/ Building Societies employed a range of charging structures (although Banks/ Building Societies were most likely to charge a percentage of the estate’s value).

6.4 Along with a very small minority of Solicitors, Banks/ Building Societies and Trust Corporations were the only business types whose clients (i.e. the then-living testator) pay an annual subscription fee for probate and/ or estate administration services. Charities tended not to charge because the estate administered is a legacy gift to the charity itself.

6.5 There was little variation between Solicitors and non-Solicitors overall in terms of their fees for probate and/ or estate administration services. The median fee for administering an estate with simple circumstances was around £1,500 among both Solicitors and non-Solicitors, for estates with complex circumstances, the median fee was around £5,000 for both.

6.6 Trust Corporations interviewed in this study however, tended to charge more than other organisations, averaging around £4,000 for the administration of a will for a client with simple circumstances and £10,000 for a client with complex circumstances.

6.7 A handful of Solicitors, Accountants and Trust Corporations typically charged in excess of £20,000 for administering estates with complex circumstances. One Accountant even cited a fee of £45,000 as typical for administering a complex estate.



7 Risks and challenges to providing probate and/ or estate administration services

- 7.1 There is some concern about the level of risk involved in providing probate and/ or estate administration services to clients, particularly given the number of different types of businesses (and differently regulated bodies) that are now involved in the will-writing market. All businesses were asked to reflect on the principal risks and challenges to providing probate and/ or estate administration services, before considering the frequency and impact of these problems.
- 7.2 The most common type of risk or challenge to all business types except Specialist Will-Writers is **poorly written wills**. Around half of businesses cited this area as introducing an element of risk to their services due to difficulties involved with interpreting the will. The following list outlines further risks or challenges that businesses felt caused problems to their provision of probate and/ or estate administration services, in order of commonality:
- Complex wills
 - Technical errors made during the probate and/ or estate administration process
 - A lack of information provided by the executor or testator
 - Overcharging
 - Feuding executors
 - Fraudulent activity linked to administering the estate
 - Service issues such as keeping beneficiaries involved
 - Locating beneficiaries
 - The mental capacity of the client
- 7.3 This chapter will initially examine the backgrounds to poorly written or complex wills, technical errors and a lack of information provided by the executor or testator, and assess the frequency and impact of the problems they lead to, before concentrating on the steps taken by businesses to address these impacts. Subsequently it will turn to the frequency and impact of problems due to overcharging and fraud and examine how businesses react to these scenarios.

Poor quality wills

- 7.4 Wills must be legally valid and of a high quality in order to achieve the grant of representation from the Probate Registry. Businesses noted the following areas of a will that could lead to a rejection from the Probate Registry:
- Improper execution of the will
 - An out-of-date version of the will
 - Insolvent estate
 - Unidentified beneficiaries
 - Ambiguities within the will
 - Tenancy issues (e.g. joint tenancy of the house)
 - Incorrect use of legal terminologies
 - Issues with the signatures on the will



- Unclear or inaccurate spellings (e.g. of the executor or beneficiaries)
- Improper witnesses (e.g. beneficiaries of the will)

7.5 Bank/ Building Societies and Solicitors were the most likely types of businesses to identify poorly written wills as the principal risk or challenge in their provision of probate and/ or estate administration services to clients.

7.6 The majority of Solicitors suggested that the principal causes of such problems were specialist will-writers that were not subject to the same regulations as solicitors, and testators who performed home-made wills. While some Bank/ Building Societies highlighted the involvement of non-solicitors in creating these problems, others admitted that they could stem from staff in other branches within the business whose work they could not control.

“Home-made wills are an issue because professionally written wills tend to leave an audit trail.”

Solicitor, 250+ estates per year

“Badly written wills tend to cause problems. Will-writers are appalling. We've had some intractable problems with those - they're not even insured. They get a template that is totally inappropriate and the wills are virtually incomprehensible.”

Solicitor, 10-49 estates per year

7.7 Conversely non-Solicitors tended to identify poor quality wills as common to all will providers, not merely reserved to non-solicitors, and that these caused problems when applying for the grant of representation.

“Poor quality wills is one problem that crops up time and time again and I don't think any professional body is exempt from that. There's as much criticism to be made of poorly drafted wills made by solicitors as will-writers.”

Accountant, Fewer than 10 estates per year

“We get poor wills from specialist will-writers or from small high street lawyers who have not set one up properly, or have set up a trust but without enough assets or where a beneficiary has witnessed a will.”

Charity, 100-249 estates per year

Complex wills and technical errors

7.8 Complex wills tended to increase the likelihood of technical errors being made by the provider of probate and/ or estate administration services. Such problems usually stemmed from intricate tax calculations or complicated financial situations, especially relating to larger estates.

“The risks would be incorrectly completing IHT accounts, finalising the income tax affairs to date of death.”

Accountant, Fewer than 10 estates per year

7.9 There was also notable concern among non-Solicitors about changes to the laws which they were not aware of and which could lead to administering an estate incorrectly. Certainly it appeared that solicitors have the resources and structures in place to keep abreast of changes to the law more easily than some non-solicitors. The maladministration of the estate, such as incorrect distributions, was also deemed a risk, if not one that was widespread.

“One problem is giving the wrong advice. The law changes and cases come about and not picking up a change in the law sometimes can cause issues.”

Accountant, Fewer than 10 estates per year



"I think our biggest risk is one of making an incorrect distribution, not understanding the terms of the will and making distributions to people that are not entitled."

Trust Corporation, 50-99 estates per year

A lack of information during the probate and/ or estate administration process

7.10 A lack of information either in the will or regarding the situation of the estate to be administered can present challenges to providers of probate and/ or estate administration services.

7.11 Businesses reported that in order to administer the estate properly, they required sufficient information about the assets and liabilities to be distributed. Without this information, whether deliberately withheld or not, the provision of these services could become much more challenging.

"The principal risks are making sure that the administration or the executors disclose all the assets and liabilities, and that's probably the biggest challenge for us. Not because they deliberately want to forget something, but because human nature and grief has that effect on people."

Specialist Will-Writer, Fewer than 10 estates per year

"The main risk is making sure the client informs you of the whole situation. Often, where we're dealing with a spouse, they might not be aware. You have to make sure all the papers that you need are brought in."

Accountant, Fewer than 10 estates per year

The impacts of poorly written and complex wills, and a lack of information available to the probate and/ or estate administration provider

7.12 Most businesses were able to identify the potential impacts of poorly written or complex wills when they initially received and reviewed the will, i.e. in the early stages of the probate and/ or estate administration process.

"Usually problems arise at the outset when the family bring in the will and you read it and it's unclear or they haven't included all the issues that they should have done."

Solicitor, 10-49 estates per year

"We identify problems right at the outset otherwise we wouldn't be doing our job. When someone comes in to us for a probate, the first thing we're going to be looking at is the effectiveness of the will. Sometimes they're technical things where wills are effective but are capable of being challenged. It's possible we may flag up with the client if there's not an interpreter clause – why is it not there?"

Solicitor, 10-49 estates per year

"Problems should arise when it's first read. I think experienced practitioners in interpreting wills can identify problems. But where you've not got experienced probate practitioners I'm sure many wills are administered and those complications don't come out, because the family interpret them."

Bank/ Building Society, 250+ estates per year

7.13 Businesses noted only a few occasions where problems due to complicated wills were found by the Probate Office during the application for grants of representation.

"I've seen other people in the past get to the point of applying for a grant, put the application in and then the probate registry sends it back and says this will isn't valid. The client is going to have something to say about that, the fact that you didn't advise them about it."

Solicitor, Fewer than 10 estates per year



- 7.14 Although these problems were common, the frequency with which they occurred tended not to be so high. Most businesses stated that they encountered problems caused by poor quality wills on an infrequent basis.

"If you get a specialist will-writers' will you will find things that are wrong with it. I think they justify the fee by length, so you get some huge irrelevant clauses and buried somewhere in the midst of that is what really should happen, whereas a professionally drawn up will might go on for two pages and you know where you are. We get two or three a year."

Solicitor, 10-49 estates per year

- 7.15 Technical mistakes made by the provider, often due to complicated tax calculations, could affect the process at any time. Problems that result from these occurred relatively infrequently, however.

"Problems can arise if assets that are later discovered that you didn't know of once the application has been made and corrective accounts need to be submitted to the revenue."

Solicitor, 100-249 estates per year

"Where a solicitor has been managing an estate over a period of time and they have to finalise all the tax and prepare estate accounts, they give it to me. That's when I have to tie up the loose ends and find the things that have been overlooked."

Accountant, Fewer than 10 estates per year

- 7.16 On the whole it seemed that all business types and most businesses were acutely aware that poorly written or complex wills could affect their probate application or estate administration. The primary impacts of these issues were delays to the probate and/ or estate administration process and the additional costs to the business or client as a result.

"Any problem with a will is likely to delay probate for weeks or months. It impacts on our business costings, trying to rectify the problem and could impact on our profits."

Bank/ Building Society, 250+ estates per year

"It makes the job longer and therefore more expensive. We charge purely on a time-spent basis. We try to give a quotation on the basis that everything will run smoothly. The skill is persuading the client the bills are a bit bigger because of somebody else's input."

Trust Corporation, 10-49 estates per year

"The two main impacts would be it slows the process down, and the main one is cost. Invariably it always increases the cost and usually quite significantly."

Solicitor, 10-49 estates per year

- 7.17 Delays and costs to the process certainly impact on client satisfaction levels. Businesses reported that clients were often unaware of the timescales involved when delays due to complications with wills ensued and this could lead to higher levels of dissatisfaction. It was also commonly stated that additional time and resources spent on rectifying such problems impacted on cost, which would often be passed onto the client.

"If things take too long, you have the client complaining and if you don't keep on top of the file, things could come to a halt."

Solicitor, 10-49 estates per year

- 7.18 Delays could also lead to a reduction in asset value due to fluctuating markets, which tended to increase dissatisfaction among clients. In addition to this, businesses reported instances of beneficiaries passing away during periods of delay and clients losing important information, which complicated the administration process.



“An estate which takes longer than it should to administer has a whole raft of risks, such as assets losing value, client satisfaction and interest rates, which don't exist if it's properly administered within the proper timeframe.”

Bank/ Building Society, 100-249 estates per year

“Definitely poorly drafted wills have an effect. Delays in terms of dealing with the administration can have affects if beneficiaries have passed away, or information is lost.”

Solicitor, 100-249 estates per year

7.19 Further impacts of delays included penalties prescribed by HMRC if the probate and/ or estate administration service was too slow.

7.20 If technical mistakes are made, for example due to incorrect tax calculations, then businesses are prone to receiving penalties from HMRC. Alternatively, maladministration of the estate or other technical errors could lead to clients referring the business to the appropriate regulator such as the Legal Ombudsman or the Financial Services Authority.

“Delays are a real issue because the process is quite lengthy anyway, particularly now with the HMRC accounts and the detail needed for every estate before you can get the probate - the length of time is extended because of the penalties HMRC charge if they don't feel you've made full and reasonable enquiries.”

Solicitor, 10-49 estates per year

7.21 In order to address the problems that can occur through poorly written wills, there were three common options that businesses, particularly Solicitors, reported using, depending on the circumstance in which providers of probate and/ or estate administration found themselves:

- Affidavits to clarify ambiguous areas of the will;
- Deeds of variation to change inaccurate areas of the will; and
- Improved communication with the client for reassurance purposes regarding delays and additional costs.

7.22 Communication with the client was considered to be vital in maintaining an appropriate level of satisfaction. Businesses stated that managing client expectation was key to avoiding client dissatisfaction. This often meant ensuring that clients were familiar with how much longer certain processes could take, perhaps as a result of complications to the will but also due to standard statutory processes. One Solicitor advocated educating clients to improve their comprehension of these probate and/ or estate administration processes.

“I think just making sure that the executors, because they're your clients, are fully aware that if a problem does arise they know early on that there is a problem, and you've given them appropriate advice and you've told them what steps you're taking to remedying it. I think that's the number one complaint against solicitors, that their clients don't know what's going on.”

Solicitor, Fewer than 10 estates per year

“We give the client a very detailed letter setting out statutory periods and likely timescales. I would allow a year from the date of death [to allow for the estate to be administered]. They often don't like that. They have to be told that they have no right to request their legacy until a year after the death.”

Solicitor, 50-99 estates per year



“There is a perception of delay. The client says it takes far too long. They need to be educated in the procedures involved and the statutory time lapses.”

Solicitor, 50-99 estates per year

- 7.23 Some businesses said however that they had become used to factoring in the time required to handle those estates that need more work. These issues therefore did not normally have an overbearing impact on the quality of the services businesses provided or the final outcome of their services.

“They are not rare but they're not infrequent. They are part of our bread and butter in that we have to work through them.”

Bank/ Building Society, 250+ estates per year

“They're expensive and very time consuming for the firm as to what we're going to do and how we're going to resolve it, but that doesn't really affect the probate service.”

Solicitor, 250+ estates per year

- 7.24 On the whole, appropriate management of the issues caused by poorly written and complex wills limited the impact these had on probate and/ or estate administration services. Generally these issues created time and cost challenges rather than risks to the success of the probate and/ or estate administration services and therefore the impact on such services was not severe, apart from in a few cases.

“It depends how easy it is to rectify the problem. If the problem can't be rectified and the will is invalid obviously it has, or could potentially have, massive implications.”

Solicitor, 10-49 estates per year

“It doesn't really impact on the process. It impacts perhaps the relationships with the client. It makes it slightly more difficult to deal with the person involved but the process doesn't really get altered.”

Solicitor, 10-49 estates per year

- 7.25 Some businesses noted occasions where an issue with the drafting of the will resulted in legal proceedings, usually where a beneficiary or third party contests the will, adding potentially long delays to the process. This appeared to have the greatest impact to the provision of probate and/ or estate administration services: there were few other risks or challenges where the potential impact was so severe.

“With bad drafting - you get challenged and it's all slowed down because it's challenged in Court.”

Bank/ Building Society, Fewer than 10 estates per year

“Claims against estates stop the administration, which can take months or years to sort out.”

Solicitor, 10-49 estates per year

- 7.26 In order to avoid potential complaints due to any mishandling of the probate and/ or estate administration process, one Charity had elected to outsource its work to Solicitors as they were not prepared to take on personal liability. Consequently the only steps they took to reduce the impact of issues occurring was to ensure that any third parties involved with the process were responsible and insured.



"We have outsourced our work because we are not taking on personal liability; it is through three large law firms. We ensure third parties are responsible and insured."

Charity, 100-249 estates per year

Overcharging and Fraud

7.27 Neither overcharging nor fraud were regarded as common causes of risks in the provision of probate and/ or estate administration services, although some businesses had heard of this happening occasionally.

7.28 Non-Solicitors were much more likely to note areas where overcharging had occurred, though each thought other groups were responsible for the overcharging they perceived in the market. Specialist will-writers were reported to sometimes charge a minimal amount for the initial will as well as an annual fee for the administration of the estate, for which they also charged after the death of the testator.

"Probate is an area of work people don't know about, so they don't know what to expect, so they don't know what the cost is. They might begrudge the costs but might not know they're wrong."

Specialist Will-Writer, 20-49 estates per year

"The banks overcharge. I would never ever give probate to a bank or make them an executor - the costs are frightening."

Accountant, Fewer than 10 estates per year

"The chief culprits [of overcharging] are the actual will-writing agencies that have been set up where they get the wills done, appoint themselves as executors and take an up-front charge and also charge after death."

Bank/ Building Society, Fewer than 10 estates per year

7.29 The threat of fraud was identified as being a potential challenge to the provision of probate and/ or estate administration services but there were very few businesses which had experienced this.

"The potential for fraud is always a challenge but one which we control well. We have very strong operational controls."

Bank/ Building Society, 250+ estates per year

"We did have one here where there was a fraud on a will. It moved on to a London firm where it was dealt with through the courts."

Solicitor, 10-49 estates per year



8 Protecting provider and customer interests

- 8.1 There is some concern that the probate and/ or estate administration market does not have sufficient controls and regulations in place to allow for suitable protection of customers. There are no standard probate and/ or estate administration procedures to which providers of these services must adhere.
- 8.2 Certain business types, such as solicitors, are regulated by an external body, the SRA, but there is no one regulatory body which authorises and supervises all providers of probate and/ or estate administration services.
- 8.3 Businesses were therefore asked to outline their quality control procedures, the regulatory bodies to which they belonged, their level of insurance and whether they participated in a compensation fund to gauge the extent of customer protection in the market.

Quality control

- 8.4 Roughly two-thirds of Solicitors reported conducting regular, and relatively frequent, file reviews. This tended to involve one solicitor checking the work of another to ensure accuracy was maintained. These reviews were likely to occur every four to six weeks and were normally performed on a random basis. A few smaller firms preferred to rely on their practitioners' experience and knowledge alone for quality control.

"All of the files are supervised by a partner. There are checks in place to review files every so often and update clients."

Solicitor, 50-99 estates per year

"We have file checks for quality purposes. In my case there's myself and my assistant solicitor who deals with it. Everything she does is checked by me and she checks some of the work that I do."

Solicitor, 10-49 estates per year

- 8.5 Case management systems were also reported to be fairly common among Solicitors. These assisted Solicitors to keep track of how far each element of the probate and/ or estate administration service had progressed, although a notable proportion of Solicitors found it simpler to audit these processes in a more manual way. These tended to be smaller businesses that had been in operation for a relatively short period of time.

"We use case management systems for everything – we have controls where accounts and all the major, key points are signed off by a partner and we try and ensure we are communicating with the client."

Solicitor, 50-99 estates per year

"We're all qualified solicitors and we're responsible for our own caseload. We're a small firm - we keep an eye on each other. No software is used."

Solicitor, 10-49 estates per year

- 8.6 A sizeable proportion of Solicitors said they were either Lexcel accredited or in the process of becoming so. Lexcel is the Law Society's practice management standard, covering all the main causes of claims against solicitors and covers specific procedures for assessing and managing risk within practices. It effectively commits solicitors to perform reviews of their work and ensure that the probate and/ or estate administration is undertaken properly.



"We've got the Lexcel mark, so I have to do monthly file reviews and my files are reviewed, as are other department members."

Solicitor, 250+ estates per year

8.7 Non-Solicitors reported that they were far less likely to have IT systems, such as case management systems, and external standards, such as the Lexcel accreditation, in place to monitor their probate and/ or estate administration services. The majority employed the same checking procedures that they used as standard across all areas of their work.

8.8 Non-Solicitors, especially non-financial businesses explained that these procedures sometimes took the form of practice manuals whereby the correct procedure was outlined to all staff performing probate and/ or estate administration services. Often they took the form of more precise training relating to the tasks required, while for others the placement of well-qualified and well-trained employees, along with a double check of work produced, was considered sufficient to ensure high standards. Such non-formal procedures were more likely to be found among Specialist Will-Writers but were also evident in other business types.

"We have our own practice manual. We employ mainly internal controls - hopefully the appropriate management is in place. We're less driven by IT systems than making sure the staff are competent. We don't have enough work to merit a bespoke system."

Trust Corporation, 10-49 estates per year

"Internal controls have been developed over the years. We have three different systems to monitor money from accountancy packages. We have manual checks as well. We've just learnt to check and double check."

Specialist Will-Writer, 100-249 estates per year

8.9 Banks/ Building Societies and Accountants were far more likely to conduct regular file reviews and internal audits of work to ensure that work produced was accurate.

"We conduct regular peer reviews from different teams on an annual basis. There are internal audits and a regular training programme to ensure people are technically up to date."

Accountant, Fewer than 10 estates per year

"We have internal audits. We have regular reviews of files and a four eyes policy as well. Two people will be dealing with the administration at least."

Bank/ Building Society, Fewer than 10 estates per year

8.10 The small proportion of non-Solicitor businesses that did not report having any formal processes in place (either manual or computerised) were more likely to only perform a few probate services every year.

"I suppose the term that comes to mind is due diligence, in as much that I'm working with people who I have confidence in."

Specialist Will-Writer, 10-49 estates per year

"If there was something I was doubtful about, I would consult a solicitor. I might consult colleagues within STEP. Generally you know if something is not right."

Accountant, Fewer than 10 estates per year

Complaints

8.11 All Solicitors and nearly all non-Solicitors interviewed had a formal complaints escalation procedure in place. The businesses that did not have this in place ranged in size and number of estates



administered, but none had been involved in probate and/ or estate administration services for more than ten years.

- 8.12 The SRA requires all Solicitors to have a formal complaints escalation procedure. The process generally involves the complaint being examined either by the solicitor in question or the partner with responsibility for the department. In a handful of cases it would be directed straight to the partner with overall responsibility for complaints in the business.
- 8.13 If, after the initial review, the complaint is deemed potentially valid, a complaints procedure letter is sent to the complainant. This letter outlines the various processes by which the business handles complaints. In many cases this letter is sent as soon as the client opens an account with the solicitor, as part of the introductory package.
- 8.14 If the solicitor or Head of Department is unable to resolve the complaint, the matter would be passed on to the complaints partner, and if an agreement could still not be reached, clients would be referred either to the Legal Ombudsman or the SRA.

“Any complaint goes to the complaints partner. If I’m dealing with something, I can refer it to the complaints partner separately. It’s up to the complaints partner to attempt to resolve it with the client or if not, telling them what the options are if they’re not happy. When we open a matter - a Lexcel requirement - every client has to have an initial letter and the complaints procedure is set out.”

Solicitor, 250+ estates per year

“We ask people to take the matter up with the person dealing with the file in the first place. If that’s not successful they have to contact me as the overall person in charge of the business. If that’s of no satisfaction to them, they have to go to the Legal Ombudsman.”

Solicitor, 10-49 estates per year

- 8.15 There was less consistency regarding complaint procedures within non-Solicitor business types. Around half of such businesses suggested there was nowhere further than their own company for clients to take a complaint, such as an ombudsman.
- 8.16 Accountants reported that a complaint would normally be made to the person who was handling the affairs of the estate, or alternatively the client relations director. If they failed to resolve the matter then a handful of Accountants would direct the complainant to the Institute of Chartered Accountants in England & Wales (ICAEW), while the remaining few were either not sure what happened or thought the complaint could not go beyond the business.

“Initially complaints can be made to the engagement partner. If unsatisfied, they can write to the CEO of the firm. I would guess it would go to the ICAEW if there was any problem.”

Accountant, Fewer than 10 estates per year

- 8.17 Banks/ Building Societies generally stated that they followed a more consistent procedure and fit in with the approach suggested by the FSA. Similar to Solicitors, a complaint would either be directed to the employee managing the estate or to the compliance department. If the complaint was not resolved it would in most cases be referred to the Financial Ombudsman Service.

“Most complaints are dealt with within a week to ten days. Finally if the customer was still unhappy they do have recourse to the Financial Ombudsman Service.”

Bank/ Building Society, 250+ estates per year

- 8.18 Financial Advisers also reported that they tended to follow the route as designated by the FSA for dealing with complaints. That is, the complaint would be dealt with at the initial point of contact, and, if the matter was not resolved, the complaint would then be referred to a senior staff member. Should



the client want to take it further they could take it to the ombudsman: most Financial Advisers would refer their client to the Financial Ombudsman Service, although one did suggest sending them to the Legal Ombudsman.

- 8.19 Far less clear was the complaints procedure employed by Charities. A couple of Charities had none in place (neither had been providing probate and/ or estate administration services for more than five years) while another did not know their procedure. Of the remaining Charities, one followed internal procedures followed by a referral to the SRA if necessary (as much of their work was outsourced to external lawyers) while others dealt with complaints in house, as a last resort referring the matter to trustees of the Charity.

"We have our own internal procedures. Initially all complaints are addressed to me. At [CHARITY] if most complaints can be dealt with by the department where the complaints are being lodged then that's how it works. My assumption is that if something had to go before trustees it would but that has not happened to my knowledge."

Charity, 100-249 estates per year

- 8.20 Trust Corporations were far more likely to report keeping the complaints procedure in house, with the final stage of the complaint being referred to board members if necessary, although some believed it would not even reach this stage. In all cases however, there was no external agency to whom clients could take their complaint.

"As we are not a law firm or regulated by the FSA, the client doesn't have access to them or the Ombudsman or the Law Society. If the client is still unhappy, the matter could be referred to the MD or the Compliance Officer who deals with complaints in all areas of our business independently. If the matter cannot be upheld, the client has nowhere else to go really."

Trust Corporation, 50-99 estates per year

- 8.21 Specialist Will-Writers broadly fell into two camps, between those who would eventually refer their client to the Society of Will Writers and those who would refer them to the Institute of Professional Willwriters. They had various ways of dealing with complaints up to that point. The matter could be handled by various staff such as the complaints manager, office manager, general manager or Chief Executive.

Regulation and other external protections

- 8.22 Nearly all Solicitors reported that their probate and/ or estate administration activities were authorised, supervised or regulated by the SRA or the Law Society. A small proportion said they were also regulated by the FSA while a further handful said they were not regulated at all.
- 8.23 By comparison only half of non-Solicitors reported that their probate and/ or estate administration activities were regulated by an external body. These were most likely to be Accountants or Banks/ Building Societies. Table 8.1 below highlights the bodies regulating businesses' probate and/ or estate administration services.



Table 8.1 External bodies providing regulation

Business Type	External body providing regulation
Solicitor	Solicitors Regulation Authority Financial Services Authority
Accountant	Institute of Chartered Accountants in England and Wales
Bank/ Building Society	Financial Services Authority
Charity	Solicitors Regulation Authority The Charity Commission
Financial Adviser	Financial Services Authority
Trust Corporation	Trustee Act 1925 (The Court)
Specialist Will-Writer	Institute of Professional Willwriters Society of Will Writers

8.24 In addition to being asked which bodies were responsible for regulating their probate and/ or estate administration activities, businesses were asked to consider what other external protections there were in place for customers seeking redress on probate and/ or estate administration issues.

8.25 Over a third of Solicitors believed there were no further protections for customers, mainly because they believed that the regulation conducted by the SRA was enough for themselves and their customers. Indeed some Solicitors were wary that they weren't on the same regulatory playing field as other providers of probate and/ or estate administration services.

"There are no further protections that I know of. We have the indemnity insurance and we're regulated by our body. As far as protection goes that's pretty well covered."

Solicitor, 10-49 estates per year

"There are none [external protections]. The legal profession should be highly regulated because we're not operating on an even playing field. We're paying in terms of insurance premiums and everything else. Others can do whatever they like, they can even prepare a grant of probate."

Solicitor, 50-99 estates per year

8.26 The Legal Services Ombudsman was regarded by some Solicitors as a facility for customers to resolve their complaints. The Law Society was also suggested by a handful of Solicitors as a place for customers to seek protection.

"Consumer law is always in the background, but the main recourse is through the SRA or Legal Ombudsman."

Solicitor, 250+ estates per year

8.27 The Probate Office was not widely identified as providing protection for customers. They could however assist in settling grants if these were slightly wrong and could also help identify if a will was ambiguous or invalid. A handful of Solicitors noted that customers could take their complaint to Probate Court, but very few actually viewed this as a realistic or common option for customers to take.

"The Probate Court is sometimes the ultimate arbiter but I do do some contentious probate work; some of it will go to the Court."

Solicitor, 50-99 estates per year

8.28 Further suggestions for external protection included the Citizens Advice Bureau, the Legal Services Commission and Trading Standards. None of these options were mentioned by more than one



Solicitor. One Solicitor even suggested the now defunct Legal Services Complaint Board, highlighting the lack of awareness surrounding the issue.

- 8.29 The majority of Solicitors whose clients had made use of external protections thought these generally worked well. Only a couple of Solicitors were negative about them, while a large number could not respond as they had not experienced the impact of customer protection directly.

“They [customers] are very well protected. It’s a very high level of obligation on client service which is imposed on us. You have to be insured and trained as a solicitor and comply with the Code of Conduct.”

Solicitor, 250+ estates per year

- 8.30 A similar proportion of non-Solicitors as Solicitors felt there were no additional sources of external customer protection. Most businesses felt that the regulation and internal checks they already had in place were sufficient protection for their customers.

“I think that they’re mostly underwritten by the fact that we’re a large investment bank that has the resources to make any compensation if they need to.”

Bank/ Building Society, Fewer than 10 estates per year

“I don’t think there is [protection] ... because a lot of people who do probate are not qualified or experienced to do the work. It is very difficult to know whether they have done it properly. We are not regulated at the moment which is a problem because it will help us as a business.”

Specialist Will-Writers, 10-49 estates per year

- 8.31 A sizeable proportion of non-Solicitors – although this did not include Specialist Will-Writers or Accountants – identified the option for customers to take them to Court in order to seek redress. This could either entail a civil or criminal matter.

- 8.32 However, one Bank/ Building Society did highlight the fact that the processes required to seek protection were often deliberately complicated or hidden to discourage customers from taking this route. Another Bank/ Building Society contradicted this, suggesting that there was a clear precedent set for seeking protection and that due to their use of Solicitors in the will-writing process, customers could take their complaints down the more traditional Solicitor-regulation route.

“I think that external protections are fairly invisible so I’m not sure if anyone would know where to go - they might think of going to Court. To the general industry, it’s fairly hidden. I guess some of that is fairly deliberate; historically it has, because it’s allowed for pricing to be hidden, for service standards to be poor. Once that becomes more visible, things have to be tightened up, and dealt with better in a much more customer-centric way, which they’re not at the moment.”

Bank/ Building Society, 50-99 estates per year

“They can go to Court, and the Court will tackle us in terms of maladministration of the estate. There is a clear precedent for them to follow. Around the will-writing aspect, because we use solicitors they are actually able to use the various solicitors’ routes i.e. the Legal Ombudsman.”

Bank/ Building Society, 250+ estates per year

- 8.33 Accountants and Specialist Will-Writers were the least likely businesses to be able to suggest further external protections, and indeed one Specialist Will-Writer opined that their current regulatory body did not go far enough for customers. Another was slightly more positive about their influence but was unsure how much they were able to achieve.

- 8.34 Around half of non-Solicitors were able to comment on their experience of external protections. Of these a small proportion criticized the current protections, suggesting that unregulated businesses



were able to avoid external protections. One Bank/ Building Society was also concerned by the numerous types of businesses able to provide probate and/ or estate administration which were regulated in different ways. The majority, however, were satisfied with the protections in place for customers.

“Internal controls are only as good as the provider. I do think there needs to be a common set of external controls. Minimum qualification, dealing with complaints; it's too diverse at the moment. Will-writing - there needs to be a common body dealing with this specialist area.”

Accountant, 10-49 estates per year

“I think in my dealings with clients, they work well in a very straightforward manner.”

Specialist Will-Writer, 100-249 estates per year

Insurance

- 8.35 All Solicitors and non-Solicitors that carried out some or all of the probate and/ or estate administration work in house had Professional Indemnity Insurance (PII). The level of insurance cover differed significantly from company to company.

“We have professional indemnity cover as required by our regulator, which I think is £2 million for any one claim.”

Solicitor, 10-49 estates per year

- 8.36 The businesses which outsourced all probate and/ or estate administration work, taking more supervisory or facilitating roles, generally did not have PII (or at least a PII policy that related to probate and/ or estate administration).

“I'm trading for another firm so I would have to check with them whether the PII was covered. If I'm giving advice on wills and probate for existing clients, it all comes under the remit of advice but if I was actually administering probate, it would have to be tighter and I would have to make sure I was covered or I would have to pass it on to a Solicitor.”

Financial Adviser, Fewer than 10 estates per year

- 8.37 Non-Solicitors were less likely to report having insurance that was specifically related to their probate and/ or estate administration services.

“We have one policy: professional indemnity insurance. That's extensive bearing in mind we're a private bank. There's one policy covering all our activities.”

Bank/ Building Society, Fewer than 10 estates per year

Compensation funds

- 8.38 Compensation funds exist to allow clients of probate and/ or estate administration services to receive some compensation if they lose out financially while experiencing the estate administration process. This could occur for example if a business were involved in fraudulent activities while administering the estate, perhaps distributing some assets to themselves rather than the intended beneficiaries. Members of the fund contribute money on a regular basis to ensure the amount stays relatively constant.

- 8.39 All practising solicitors are members of the SRA. This membership means compulsory enrolment within the SRA's compensation fund, therefore all solicitors are members of the compensation fund administered by the SRA.

- 8.40 However, only half of Solicitors interviewed were aware that they belonged to this fund. There was certainly some confusion as to whether the fund was run by the SRA or the Law Society.



“The SRA or the Law Society [administer the fund]. I get confused nowadays as to who's controlling it. The regime has changed at least three times in the last three years.”

Solicitor, 100-249 estates per year

“I think it used to be called the Law Society Fund, but there was some reorganisation last year.”

Solicitor, 10-49 estates per year

- 8.41 Around half of non-Solicitors said that they were members of a compensation fund. These tended to be Banks/ Building Societies and Financial Advisers, who belonged to the fund administered by the FSA. Some however were not clear about who exactly administered the fund, while one Financial Adviser believed their compensation fund scheme did not actually cover probate work.



9 Provider views on the wider probate and/ or estate administration market

9.1 Businesses were asked to reflect on the current state of the probate and/ or estate administration market by considering the extent to which it met the needs of clients and then to consider the potential challenges and opportunities faced by market players, as well as their appetite for enhanced consumer protection and regulation.

The current state of the market

9.2 Businesses rated certain aspects of the market (listed below) on a scale of one to five where one represented 'not at all favourable' and five represented 'extremely favourable'.

- The choice of providers available
- The quality of the service available
- The transparency of the service produced
- The value for money of the service provided
- Protection of consumer rights

9.3 Those who rated these aspects unfavourably (a score of one or two out of five) were subsequently asked to explain the reasoning behind their rating.

The choice of providers available

9.4 Non-Solicitors were generally less positive than Solicitors in their assessment of the choice of providers available to clients. The primary reason given for unfavourable scores was not necessarily due to a restriction in choice, but rather a perceived lack of understanding of the level of choice among clients. A large proportion of non-Solicitors who gave an unfavourable rating were concerned about the client perception that only solicitors were able to provide probate and/ or estate administration services. They felt that general ignorance with regard to the market led clients to automatically choose a solicitor without considering other options.

"I think a lot of people think there is only one place to go. Generally [they believe] you have to go to a solicitor. I had a client who went to a solicitor, had a bad experience, and when she found I could have done it, she wished she had come here."

Accountant, Fewer than 10 estates per year

"I think it is lack of knowledge from the general public. It's not knowing what to do. So they would end up going to a local solicitor because that would be their default choice."

Trust Corporation, 10-49 estates per year

9.5 Conversely a handful of businesses corroborated this perceived lack of choice, suggesting that there was not a wide range of options. One Charity believed that new Alternative Business Structures (ABS) would soon afford clients a lot more choice.

"You have not got a huge choice yet until these alternative business structures come on-stream over the next couple of years. At the moment I guess the general public would turn to a solicitor or a few accountants ... anybody welcomes competition if it is good quality work – fair enough, it's good for the public."

Charity, 100-249 estates per year



- 9.6 A few businesses advocated the set-up of specialist probate and/ or estate administration providers to avoid some of the negative impacts, such as overcharging, that occurred due to unregulated bodies' activities in the market.

"I just don't think there are enough choices for clients in the market place. It's either a bank, a solicitor, an accountant, or firms like ours by and large, and I don't think it's enough. I think there should be specialist firms set up to deal with probate and for it to become more competitive in that arena."

Specialist Will-Writer, 10-49 estates per year

The quality of the service available

- 9.7 A majority of Solicitors felt that the quality of the probate and/ or estate administration services met the needs of clients. Non-Solicitors however were less likely to record favourable scores, generally due to a concern that some businesses employed staff whose limited experience, qualifications and regulation meant their provision of probate and/ or estate administration services lacked quality and security.

"There are private firms entering the marketplace that are not regulated and people seem to be inclined to go to these firms as they think they are getting a better deal but don't realise there's no protection if things go wrong."

Solicitor, 10-49 estates per year

"It [the probate and/ or estate administration service] can be very specialised. There's a lack of qualified people available for probate and/ or estate administration work."

Financial Adviser, 10-49 estates per year

- 9.8 A handful of businesses were concerned that various providers took too long conducting their probate and/ or estate administration services and this resulted in client dissatisfaction.

"There are a lot of dissatisfied people complaining about other solicitors - how long it's taking and how solicitors have treated them."

Solicitor, 10-49 estates per year

The transparency of the service provided

- 9.9 A large proportion of businesses thought there was much more room for improvement in the transparency of the service provided by probate and/ or estate administration providers. Over a third of businesses interviewed gave scores of one or two out of five for this aspect of the market.
- 9.10 The cost of the service was reported to be the key driver behind a perceived lack of transparency in the probate and/ or estate administration market and many businesses reported a high level of client dissatisfaction as a result of this. Businesses commonly highlighted their competitors' inability to be upfront about charges and their lack of explanation as to how these were reached as contributing to this lack of transparency. Solicitors were perceived to be most culpable of this lack of transparency.

"There's no transparency: if fees or likely costs are issued, it's all hidden in jargon. It's all waffle and hidden behind disbursements and who knows what else. There's no clarity at all."

Specialist Will-Writer, 10-49 estates per year

"If it's done by a solicitor, most people don't know what the final bill is going to be and are generally unhappy with it."

Specialist Will-Writer, 100-249 estates per year



- 9.11 A slightly lower proportion of businesses thought responsibility fell not only on providers to set out their costs more clearly, but also on clients to understand better the processes behind the calculations of probate and/ or estate administration costs. There was a sense that clients needed to be more educated about the probate process.

"I don't think testators fully appreciate the way fees are charged, particularly on a per capita basis."

Trust Corporation, 10-49 estates per year

"I think it's a combination that the process in itself can be deemed to be complicated by consumers, and not all service providers are as transparent about what is technically involved or what they're actually doing."

Trust Corporation, 250+ estates per year

"People don't understand what goes on. How do you educate the public? It's very difficult, I don't know."

Accountant, Fewer than 10 estates per year

- 9.12 Generally it was deemed that a higher level of communication would assist in improving the transparency of services. However one Solicitor explained that this was simply not possible due to budgetary limits.

"I wouldn't go so far as to say that it's not in the interests of solicitors to make things understandable. But the cost that we're able to charge doesn't allow us to lavish the time and effort on it that clients require in order to fully understand. For example to keep somebody constantly up to date with email updates, reporting on a weekly basis as to what's happened in the administration or what stage you're at would be the best practice, but it's really quite difficult to provide that service on a budget."

Solicitor, 10-49 estates per year

The value for money of the service provided

- 9.13 There was some concern reported that customers were not receiving value for money for their probate and/ or estate administration service (generally ascribed to excessive costs), although this was not widespread. One Bank/ Building Society defended the fees they charged (for their will-writing process as a whole) suggesting that they were not suitable for customers who required a simple estate administration process, but were indeed appropriate for those in more complex circumstances.

"My experience of solicitors is you don't get value for money. Nearly two hours at £210 an hour and on top of that they'll always find reasons to charge a bit more."

Accountant, Fewer than 10 estates per year

"I'm expensive - if you want a simple will [executed], it's better that I don't do it for you. But if you want anything complex or sophisticated, then you should expect to pay more."

Bank/ Building Society, Fewer than 10 estates per year

- 9.14 Businesses often employed combinations of charging structures, including an hourly rate, a percentage of the estate and/ or a flat fee. This in turn caused confusion among some customers and a perception that it enabled some businesses to charge more than they would be able to if they charged a flat fee only. Some deemed charges based on a percentage of the value of the estate unfair, because the fee bore no relation to the amount of time spent by the provider on the matter.

"I think certain providers can charge disproportionate amounts for relatively straightforward work, using time costs and percentage of estates."

Accountant, 10-49 estates per year



“It takes just as much time filling out the probate paperwork to put a property value of £200,000 down as it does to put a property value of £2 million down. Yet the typical charges nowadays are 3-5% of the asset value and I don't think that is fair.”

Specialist Will-Writer, Fewer than 10 estates per year

Protection of consumer rights

- 9.15 Although a majority of businesses believed that consumer rights on the whole were well protected in the current probate and/ or estate administration market, some businesses, both Solicitors and non-Solicitors, highlighted the lack of regulation under which certain non-Solicitor providers were able to operate. Without the equivalent of an SRA or Legal Ombudsman to protect consumers, businesses that were not regulated to the same degree were not able to offer consumers that same level of protection.

“Solicitors are regulated so much that your rights as a consumer are over-protected, but if you go to an organisation without much regulation, then who knows. I wouldn't even know where to start complaining for some of these professional probate organisations. I'm not even sure if they're insured.”

Solicitor, Fewer than 10 estates per year

“If you are using someone from the Society of Will Writers then I think you are in danger if that person disappears because there is very limited recourse.”

Charity, 100-249 estates per year

- 9.16 A handful of businesses were under the impression that some customers were unaware of their rights and their ability to seek protection from external, regulatory bodies. This tied in with the potential lack of communication with their probate and/ or estate administration provider.

“It's not very visible. I don't think the consumers involved in probate work really know what their rights are.”

Accountant, 10-49 estates per year

“There is protection there but I don't think consumers are aware of it ... a solicitor in private practice is very heavily regulated and has lots of protection for the client so it is there but I don't think they promote that to the client enough.”

Trust Corporation, 100-249 estates per year

Challenges facing the probate and/ or estate administration market over the next five years

- 9.17 The biggest challenge businesses face over the next five years is the opening up of the probate and/ or estate administration market to new – and potentially large – organisations, particularly after the recent introduction of ABS, which allow legal departments within a non-solicitor business to offer their services outside their employer's business. This challenge was recognised across all business types in the research study, with around half of all businesses expecting ABS to present a challenge over the next five years, but was most common among Solicitors.
- 9.18 Businesses reported that they were particularly concerned about the entry into the market of larger organisations with considerable financial resources, geographical reach and the ability to provide a round-the-clock service. There was a fear among businesses that their client base would be depleted with the advent of new market players charging lower fees.



“It will be a challenge because they have much more economic power to advertise and encourage people to go to them, rather than coming to the professions such as solicitors who are already there in the market place.”

Solicitor, 50-99 estates per year

“I think the ABS does pose a threat for us – we could well lose some clients because it would be easier for them to go their local [supermarkets].”

Solicitor, 50-99 estates per year

“On the probate side, we’re starting to see some reasonably aggressive acquisition of volume business by certain players in the market. I just don’t think we’re going to go toe to toe with them on that sort of thing.”

Trust Corporation, 250+estates per year

- 9.19 Very few businesses reported having formal plans in place to address the potential influx of large organisations into the probate and/ or estate administration market, although some felt that their reputation along with improved local marketing techniques, a more personable approach and guarantees of security due to regulation would enable them to maintain a similar number of clients over the next five years. One Solicitor suggested that it would make their service more bespoke and specialised in providing expert services.

“ABS is quite a potential threat. They don’t have a scary image, they’re quite a friendly institution. It’s more a question of, ‘Are they local enough?’ There are times when the client wants to ask you questions.”

Solicitor, 50-99 estates per year

“We’re looking at potentially opening for longer hours to compete with the [ABS firms], so we’re available to clients for longer during the day and into the evening.”

Solicitor, 50-99 estates per year

“We’re promoting it as expertise. It’s part of why solicitors can be a good thing, as well as the protection that comes with that, because solicitors get quite a bashing.”

Solicitor, 10-49 estates per year

- 9.20 Various businesses were concerned that the recession could prove challenging to the probate and/ or estate administration market, as customers would become more price conscious and choose providers offering cheaper services. This could also lead to an increase of poor quality wills, which, as noted in Chapter 7, contributed to issues in the provision of probate and/ or estate administration services.

“As clients are trying to cut down on expenses then possibly they’re not going to get wills professionally drafted which will cause problems. Also if it’s a complicated estate and they’ve not had professional advice it may be that the estate has not been administered correctly.”

Solicitor, 100-249 estates per year

“The recession on the whole is making most people have a go at it themselves.”

Bank/ Building Society, 250+ estates per year

- 9.21 Further challenges identified by businesses were an increase in claims to estates and an increase in the complexity of administering estates.

“There will be increasing numbers of contentious probate issues. The number of claims against estates is rising. The inheritance tax is more than likely to get more complicated which makes it a more challenging environment to work in.”

Bank/ Building Society, 250+ estates per year



Opportunities in the probate and/ or estate administration market over the next five years

- 9.22 The most commonly cited opportunity reported was attracting customers by advertising an expert and quality probate and/ or estate administration service. With the introduction of ABS, some businesses, particularly Solicitors, felt they could take advantage of the poor service they anticipated ABS organisations providing by picking up their dissatisfied customers.

“People want to do it themselves and invariably get things wrong. The opportunities would be that it’s not always straightforward, you should come to a solicitor and we can do it for you efficiently, well and reasonably priced.”

Solicitor, Fewer than 10 estates per year

“ABS might prove to be positive, as customers might not be satisfied and return to us.”

Solicitor, 50-99 estates per year

“The biggest opportunities will be acting for clients to fix the problems of the will-writing services and [ABS firms].”

Solicitor, 100-249 estates per year

- 9.23 One further opportunity which businesses suggested ABS provided was an increased awareness among customers of the probate and/ or estate administration process, due to the reach of the larger organisations entering the market. A better understanding of the process could encourage customers to turn to more qualified businesses, such as solicitors.

“If ABS brings more knowledge into the market place and more awareness of the situation, then other businesses can benefit from it.”

Financial Adviser, 10-49 estates per year

- 9.24 Another quite commonly reported opportunity was the trend towards higher value estates. When charging by a percentage of the value of the estate, higher value estates would result in increased profits on probate and/ or estate administration services.

“People do have more money now than they used to in the past. Most people have a house. When I first started out not everybody had a house, so there’s more money to be dealt with.”

Solicitor, 100-249 estates per year

“There will be more work available with an ageing population dying off and estates are getting bigger.”

Specialist Will-Writer, 10-49 estates per year

- 9.25 Further opportunities highlighted by businesses included the potential for attracting customers through offering more personalised services, tighter regulations and the potential to provide consultancy services for those organisations which had entered the probate and/ or estate administration market since the introduction of ABS.

Necessary actions to protect consumers against problems in the probate and/ or estate administration market

- 9.26 There is no single regulatory body which oversees all providers offering probate and/ or estate administration. Solicitors are regulated by the SRA and accountants by the ICAEW but these are different types of regulation which are not necessarily specific to the processes involved with probate and/ or estate administration. The only reserved aspect of these services is that only solicitors can apply for a grant of representation on behalf of their client. Businesses were therefore asked what actions should be taken to protect customers against problems in the probate and/ or estate administration market.



9.27 A majority of businesses, split fairly evenly between Solicitors and non-Solicitors, advocated that ideally there should be regulation for all providers of probate and/ or estate administration services, so that there was a consistent standard for all and to ensure consumers received the necessary protection. However there was some disagreement as to the level of regulation that was required and which body should drive the change in regulation.

9.28 Regulation across all business types was considered to be important due to the complexities of the issues involved in probate and/ or estate administration.

"I think it should be regulated across the board because it is a specialised area and can have complexities. I have witnessed pretty poor lay executors administering estates: they are just out of their depth."

Charity, 100-249 estates per year

"They should actually regulate the people who provide the service, the training and insurance that comes with that and monitoring of it. It still amazes me how people can offer advice when they're not qualified to give it."

Solicitor, 10-49 estates per year

"They should ensure that all providers are set the same stringent restrictions and conditions as imposed on solicitors, particularly with regard to holding client funds. Such regulations will provide benefits for the public."

Solicitor, 10-49 estates per year

9.29 Businesses believed that such regulatory change needed to come either from the Government, through bodies such as the Legal Services Board, or existing professional bodies such as the Law Society and the SRA, or the FSA (as proposed by financial services businesses). Few businesses felt that self-regulation or consumer-driven regulation would prove effective.

"I think the SRA should regulate anybody offering probate, will or trust - any sort of service like that and there needs to be a level playing field so clients get the same protection that solicitors' clients can."

Solicitor, 10-49 estates per year

"I think the government needs to drive it and make it a regulated activity."

Solicitor, 10-49 estates per year

9.30 Although some businesses were concerned that an increase in regulation would increase costs, on the whole they believed that regulation would have a positive impact on the market. It would increase consumer protection, reduce fraud, ensure quality services were provided across business types and ultimately improve customer satisfaction.

"I think there is an opportunity for regulation to make a difference. It provides comfort for people who know that their estate will be administered efficiently and we know that is really important to people."

Charity, 100-249 estates per year

"Apart from increasing the costs, it might increase the credibility of the company."

Specialist Will-Writer, 10-49 estates per year

"Standards would be raised. There would be a big improvement in service delivery and a more transparent service with complaints."

Trust Corporation, 50-99 estates per year



9.31 Businesses were also asked specifically whether they thought regulation of probate and/ or estate administration was required to give customers greater protection. An even greater proportion of businesses advocated the use of regulation across all providers of the probate and/ or estate administration market when asked this specific question. It is important to note that a number of businesses advocated regulation not only for the probate and/ or estate administration process but also for will-writing.

9.32 This regulation could entail standard cross-provider requirements being enforced on the following areas of probate and/ or estate administration services:

- Training or qualifications
- Financial and administrative processes
- Minimum levels of insurance
- Code of Conduct and anti-fraud measures
- Regulation of fee structures
- Regular audits or tests

9.33 A small proportion of businesses thought that properly qualified practitioners would be a sufficient level of protection for consumers, while others felt a high level of insurance would provide enough assurance.

“I think sufficient professional indemnity insurance, and some quality training [would be needed] because if things go wrong the client wants an assurance that they're not going to be out of pocket.”

Specialist Will-Writer, 10-49 estates per year

9.34 A handful of businesses thought that educating consumers would be the most appropriate method of protecting them, so that they were aware of the processes involved in probate and/ or estate administration services.

“There definitely needs to be a huge PR exercise in relation to educating consumers about it.”

Charity, 100-249 estates per year

