



Unregulated legal service providers: Understanding supply-side characteristics

A report for the Legal Services Board

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CONTENTS

1.	Executive summary	3
2.	Context and approach	7
3.	Unregulated wills and estate administration providers	13
4.	Unregulated divorce providers	32
5.	Unregulated IP providers	49
6.	Potential benefits and risks	63
7.	Annexes	73



1. Executive summary

Based on telephone interviews, a review of provider websites, analysis of legal needs surveys and additional desk-based research, this report details our findings with regard to the characteristics of legal services providers that are not regulated through the Legal Services Act 2007.

1.1. Executive summary

The Legal Services Board (LSB) is interested in unregulated providers because they are an important part of the legal services landscape. The LSB needs to take into account both regulated and unregulated providers of legal services effectively to pursue its regulatory objectives under the Legal Services Act, including those around ***access to justice, promotion of competition and protecting and promoting the interests of consumers***.

This report for the LSB identifies the characteristics of unregulated for-profit providers of legal services within three areas of law:

- wills and estate administration;
- family, in particular divorce; and
- intellectual property.

In addition, we also identify a number of potential benefits and risks to consumers of these unregulated providers.

Our research draws on:

- 45 interviews with unregulated providers;
- a review of over 250 unregulated providers' websites;
- analysis of quantitative survey results, including the two legal needs surveys conducted in 2015;
- discussions with 11 regulatory bodies and organisations representing providers; and
- desk-based research of existing literature, Companies House data and online review websites.

1.1.1. Key findings: supply-side characteristics / types of providers and services offered

Figure 1. Wills and estate administration

- » We estimate that there are over 1,600 unregulated providers of wills and estate administration services, many of which are sole traders.
- » These providers write 65,000 wills per year, which accounts for 9% of purchased wills. This equates to £6.1m in revenue. They serve a very small proportion of clients paying for estate administration services.
- » Most providers offer a range of services, with larger providers more likely to offer both wills and estate administration.
- » With the exception of a comparatively small number of DIY / automated providers, firms typically conduct home visits.
- » The use of software to draft wills is commonplace.
- » In relation to voluntary regulation bodies and voluntary protections, about half of providers are members of either the Institute of Professional Willwriters or the Society of Will Writers, which offer training and access to alternative dispute resolution schemes.
- » There is a high prevalence of formal complaints procedures and indemnity insurance.

Figure 2. Divorce

- » Unregulated divorce services are predominantly supplied by online providers, which advertise, communicate with clients and deliver their services online.
- » We understand that there are currently five active providers. There has been a degree of market entry and exit recently. The active providers collectively serve an estimated 23,000 to 30,000 clients on an annual basis – this is 10-13% of individuals getting divorced in a year, and equates to about £4.0 and £5.1m in revenue, based on the average price for a managed divorce.
- » Client acquisition is heavily dependent on internet searches, and providers reportedly depend on paid-for advertisements (Google AdWords).
- » Services range from DIY packages, which cost on average £36, to managed services, which cost on average £173.
- » There is no consistent voluntary regulation body or external quality control. One firm's staff are members of the Institute of Paralegals. Another is a member of Trading Standards' Buy With Confidence scheme.

Figure 3. Intellectual property

- » Unregulated intellectual property providers consist of trademark and patent providers, and invention promotion companies. Trademark and patent providers specialise in providing trademark and/or patent advice. In contrast, invention promotion companies provide legal services as one element of their broader offerings.
- » We have identified 26 trademark and patent providers and 8 invention promotion companies. These firms file 7-8% of patents and trademarks in the UK.
- » Clients of unregulated intellectual property providers tend to be small and medium-sized enterprises, with limited experience of IP legal services.
- » There are a variety of voluntary protections, such as membership of International Trademark Association and compliance with British Standards.

1.1.2. Key findings: potential benefits and risks

Our research suggests that consumers may benefit from the following features of the legal services offered by unregulated providers:

- » **Lower prices, on average, than regulated providers for wills and divorce.** Evidence sources differ, but the order of magnitude could be £50 for a simple will, and hundreds of pounds for an uncontested divorce. There is limited evidence in relation to intellectual property.
- » **Greater price transparency and certainty than regulated providers for wills and divorce.** Unregulated wills and divorce providers often display prices on their websites. Furthermore, they tend to charge flat, fixed fees.
- » **Service differentiation from regulated providers.** Unregulated providers offer services which utilise technological developments, particularly within divorce and intellectual property. For example, services can be obtained entirely through online channels. Wills and estate administration providers focus on in-home delivery.

- » **Competitive effects.** Unregulated providers may also contribute to price and service developments in the regulated market through competitive effects.

For consumers to realise these benefits they must be able to make informed choices between regulated and unregulated providers. Without such an awareness, consumers may be exposed to risks. We have identified the following features of the services that could create risks:

- » **Lack of awareness of regulatory status and its implications.** In general, a significant proportion of clients are unaware of the regulatory status of their provider, even though it affects the level of consumer protection they receive (see below). Many clients assume that their provider is regulated, and do not check.
- » **Differences in consumer protections.** Beyond general law provisions, consumers may not get access to consumer protections that regulated providers offer, such as alternative dispute resolution schemes, indemnity insurance, compensation funds and mechanisms to deal with firm closure. Levels of membership of voluntary regulation bodies, which mirror the protections offered in the regulated sector to varying degrees, are mixed across the different areas of law.
- » **Lack of transparency about services.** We have seen evidence that suggests providers are not always transparent enough for clients to fully understand the services they are buying, particularly within divorce and intellectual property. We have also seen examples of potentially misleading claims on provider websites.

Whilst we have not sought to assess the technical quality of the legal advice offered by providers, we have gathered mixed evidence as to the quality of client service provided.

- » The evidence suggests that on the whole consumers are receiving good levels of client service. Online review websites show high levels of satisfaction and providers reported low levels of complaints.
- » We did, however, also observe evidence of poor quality client service. This included loss of confidential information and poor communication with the client.

We note that this study is not a comprehensive analysis of consumer detriment and further work would need to be undertaken for a complete analysis of benefits and risks.

1.2. Structure of this report

This report contains the following remaining sections.

- » Context and approach.
- » Unregulated wills and estate administration providers.
- » Unregulated divorce providers.
- » Unregulated intellectual property providers.
- » Potential benefits and risks.
- » Annexes.



2. Context and approach

This section of the report details the research objectives and our approach.

2.1. Research objectives

The LSB has commissioned us to undertake a study of the characteristics of unregulated providers of legal services. In particular, we were asked to focus on unregulated¹, for-profit² providers within three areas of law:

- » **Will writing and estate administration.** This area includes specialist will writers, those offering 'DIY' will kits and providers of estate administration.
- » **Family, in particular divorce.** We were asked to focus on providers of divorce services, as previous work has investigated fee-charging McKenzie friends.
- » **Intellectual property.** This area includes providers of services in relation to trademarks and patents, along with invention promotion companies.

We were asked to look at a range of supply-side characteristics of unregulated providers, in addition to the benefits and risks that such providers may pose to consumers. Specifically, we were asked to look at the following:

- unregulated services offered;
- main provider types and business models used;
- the range of qualifications and experience of those providing the relevant legal services;
- client bases;
- client acquisition and marketing strategies;
- fees and charging structures used;
- benefits to consumers;
- risks to consumers;
- existing (voluntary) protections and quality control;
- existence and nature of any interest groups or trade bodies; and
- levels of interest amongst providers in voluntary regulation.

The purpose of this research is to update and improve the LSB's understanding of how unregulated services are provided in areas of law where both regulated and unregulated services feature predominantly. It will inform a decision on whether to pursue consideration of extending consumer protection to consumers of unregulated providers. It comes at a time when reform of the legal services market is being widely considered, and the Competition and Markets Authority (CMA) is undertaking a market study.

2.2. Our approach

To meet the research objectives we have collected and analysed evidence from five types of sources:

- interviews with unregulated providers;
- a review of unregulated provider websites;
- analysis of survey data;
- discussions with organisations; and
- desk-based research.

¹ Not regulated through the Legal Services Act 2007 or other statutory legal sector specific regulation

² Providers that seek to make a profit, as opposed to, for example, charities or public sector bodies

We used two existing frameworks to analyse particular characteristics, specifically: the Legal Services Consumer Panel (LSCP) Consumer Principles framework³ to analyse benefits and risks, and Oxera's market segmentation⁴ to analyse client bases.

2.2.1. Interviews with unregulated providers

We conducted interviews with 45 unregulated legal service providers. The interviews allowed us to explore in detail how the firms operated, along with their views on the market and regulation. The interviews were designed to gather information that was not available through other sources.

The sample of providers that we contacted was based on those identified through our website review (discussed below). For wills and estate administration we contacted a sample of firms, ensuring variation across characteristics such as type of provider, services offered, delivery channel and voluntary regulation status. For divorce and intellectual property we contacted all providers that we could identify. The following figure summarises the sample and response statistics.

Figure 4. Summary of provider interviews

	Population	Target	Contacted	Interviewed
Wills and estate administration	1,600 +	20	171	30
Divorce	5*	6	8	4
Intellectual property	32 +	12	32	11
Total		38	214	45

* We understand that there are currently five active providers. We contacted eight providers including those that we now understand have ceased trading

Initial contact was made via email, with a letter from the LSB attached to it. If providers did not respond, we followed up with a progression of emails and phone calls. Not all providers that we contacted wished to participate in the research.

Interviews were semi-structured. They were based on a discussion guide, but allowed for us to explore interesting topics as and when they arose. The main topics we discussed were:

- business model and marketing;
- client base;
- staff;
- competitive environment; and

³ 'The consumer interest, Using consumer principles', LSCP, 2014 <http://www.legalservicesconsumerpanel.org.uk/ourwork/ConsumerEngagement/documents/UsingConsumerPrinciples2014.pdf>

⁴ 'A framework to monitor the legal services sector', Oxera, 2011 <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>. This allows the market to be broken down by type of consumer, type of consumer problem and type of legal activity to enable consistent analysis

- voluntary regulation and complaints procedures.

Interviews lasted approximately 20-30 minutes.

Statistics based on the interviews are given in the main body of the report. The base sizes achieved, which are detailed in each figure, should be kept in mind.

2.2.2. Review of unregulated provider websites

Figure 5 summarises the number of unregulated provider websites we reviewed.

Figure 5. Summary of website review

Area of law	Number of websites reviewed	Review coverage
Will writing and estate administration	265	Sample of population
Divorce	11*	Whole population
Intellectual property	34	All identifiable providers ⁵

* Note, some providers operate multiple websites

For each of the areas of law we constructed a list of provider characteristics against which we evaluated each provider. High level categories of characteristics captured in the review include:

- services offered;
- business models;
- qualifications of staff;
- client acquisition and marketing; and
- fees and charging structures.

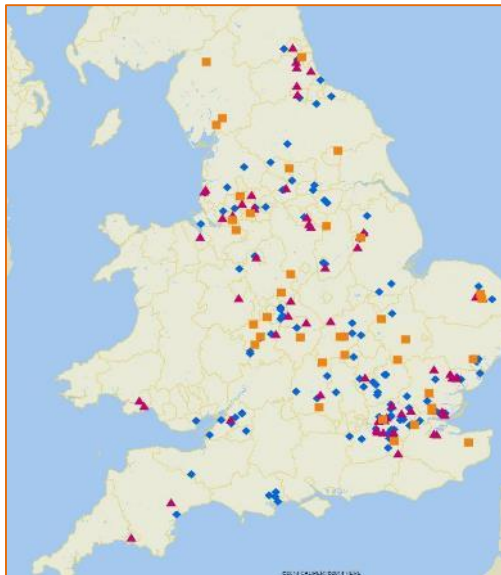
For online divorce and intellectual property, we reviewed all of the providers that we were able to identify. Due to the absolute number of wills and estate administration providers (estimated to be in excess of 1,600), we reviewed a sample of providers.

We conducted internet searches for wills and estate administration providers by locality. Locations were drawn from the 'NUTS' classification produced by the ONS to ensure a spread across England and Wales.⁶ We conducted searches based on a range of region sizes i.e. NUTS1 regions, such as the West Midlands, and NUTS3 regions such as Durham. The figure below shows the geographic distribution of providers included in the sample.

⁵ There may be additional providers regulated by the EPO but not at the UK level, see section 5.2.1

⁶ NUTS stands for Nomenclature of Territorial Units for Statistics

Figure 6. Geographic spread of will writers and estate administration sample



Source: *EI website review*

2.2.3. Analysis of survey data

Existing survey datasets provided evidence about the consumer ‘journey’ and their characteristics. We have included in our research the analysis of:

- Individual Consumer Legal Needs 2015 – Ipsos Mori (2016);
- Small Business Legal Needs Survey 2015;⁷
- Price Index survey 2016 – OMB Research (2016); and
- LSCP tracker (2015).⁸

Ipsos Mori (2016) consisted of a sample size of 8,912 individual consumers, who collectively faced 16,694 legal issues over the previous three years. This provided evidence in relation to: how consumers identify and select providers; awareness of regulatory status; satisfaction with services received; and client demographics.

Small Business Legal Needs Survey 2015 consists of 10,528 firms. This survey provided high level statistics about intellectual property (IP) providers in general, but doesn’t allow for a detailed analysis of unregulated providers.

Detailed analysis of the two Legal Needs surveys is presented in Annex A.

OMB Research (2016) evaluates the prices that are currently paid for key legal services. It included 1,506 providers of divorce, wills, power of attorney, probate and conveyancing. We have used the results of the survey to provide evidence as to the price difference between regulated and unregulated providers.

Lastly, we also analysed the results of the LSCP Tracker, an annual survey on a sample of people who used legal services in the last two years (1,067 adults), which included information on supply-side characteristics:

⁷ <https://research.legalservicesboard.org.uk/reports/consumers-unmet-legal-needs/>

⁸ http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/

- regulatory status of legal services;
- charging structures;
- degree of choice in determining provider to use; and
- importance of factors when choosing providers.

Further details of the survey results are given in Annex A.

2.2.4. Discussions with organisations

We conducted 11 phone interviews with regulatory and representative bodies, in order to fulfil three objectives:

- collect membership data from them;
- discuss their views on benefits and risks; and
- gauge interest in voluntary regulation.

Representative bodies were identified through initial desk research, provided to us by LSB or discovered as part of the website review. Overall, organisations we spoke to were very happy to engage with us and in a number of instances offered their further support if needed. We spoke to the following organisations (listed in alphabetical order)⁹:

- Chartered Institute of Patent Attorneys (CIPA);
- Institute of Trademark Attorneys (ITMA);
- Intellectual Property Office (IPO);
- Intellectual Property Regulation Board (IPReg);
- Legal Services Consumer Panel (LSCP);
- New Leaf Will Writers Federation;
- Resolution;
- Society of Will Writers (SWW);
- Solicitors Regulation Authority (SRA);
- The Institute of Professional Willwriters (IPW);
- The Law Society (TLS); and
- The Society of Trust and Estate Practitioners (STEP).

2.2.5. Desk-based research

Finally, we conducted desk-based research, consisting of:

- a literature review of 18 papers, newspaper articles, consultation outcomes, and websites;
- a further literature review by Dr Andrew Mell from the University of Oxford on the economic theory of voluntary regulation (see Annex B);
- a review of publicly available information on the Companies House website, in relation to online divorce providers;
- analysis of data available through the IPO's website; and
- a review of online review websites.

Desk-based research provided a range of evidence, such as: identification of benefit and risks; provider business models; market shares of IP providers; and consumer experiences.

⁹ One organisation was unable to arrange an appropriate time to speak on the phone and sent through written information



*Last Will
and Testament*

3. Unregulated wills and estate administration providers

3.1. Summary

Our findings in relation to the characteristics of unregulated providers of wills and estate administration services are summarised in the table below.

Figure 7. Summary of findings – wills and estate administration

Provider types
<p>We estimate that there are approximately:</p> <ul style="list-style-type: none"> - 80 DIY / automated providers; - 600 specialist will writers (not offering estate administration); and - 1,000 wills and estate administration providers. <p>These providers account for an estimated 65,000 wills per year – 9% of wills purchased. This equates to £6.1m in revenue, based on an average price of £95 (see below).</p> <p>Unregulated providers account for a very small proportion of paid-for estate administration services.</p> <p>There is a high prevalence of sole traders, and many providing the services have backgrounds in financial services.</p>
Services offered
<p>Most providers offer a range of services. For example, specialist will writers tend to also offer Lasting Powers of Attorney. Larger providers may typically offer wills, estate administration, and Trusts.</p> <p>With the exception of DIY / automated providers, firms usually conduct home visits. This is an aspect of their service which clients value. Having collected information from clients, many providers will use software to draft the actual will.</p>
Fees and charging structures
<p>Wills are charged for on a fixed, flat fee basis, and are lower priced than those available from regulated providers, on average. Our websites review finds an average price for a single will of £95 from unregulated provider. Whereas, OMB Research (2016) finds an average price of £136 for unregulated providers and £176 for regulated providers, based on quotes provided for an identical scenario.</p> <p>Estate administration services are usually charged for either on a fixed, flat fee basis, or as a fixed percentage of the value of the estate. Unregulated providers typically charge between 1% and 1.5%.</p>
Staff qualifications and experience
<p>Staff providing the legal services have mixed qualifications. About a third of providers we spoke to have a law degree, and a fifth had a qualification related to their financial services background. The IPW and SWW provide continuing professional development (CPD) courses for their members.</p>
Marketing and client acquisition
<p>Client acquisition is heavily dependent on word of mouth. Providers also reported the importance of referrals from other professionals.</p>

Client base
Survey data suggests that clients of unregulated providers are more likely to fall into higher age brackets. Providers we spoke to identify two segments: older individuals and married couples with children.
Voluntary protections and quality controls
Membership of voluntary regulation bodies is commonplace – based on our website review we estimate that 42% of providers are SWW members and 15% are IPW members. 20% of the providers that we interviewed also had staff who were members of STEP. All of these organisations offer a complaints process, but not a compensation fund like the SRA. There is also a high prevalence of both formal complaints procedures and indemnity insurance.

3.2. Provider types

We categorise unregulated wills and estate administration providers as follows.

- » **DIY / automated will providers.** Providers that offer a drafting service for wills that consists of either online forms or physical ‘packs’.
- » **Specialist will writers (not offering estate administration).** Providers that offer a face-to-face service for drafting wills, and do not offer estate administration services.
- » **Wills and estate administration providers.** Providers that offer a broader range of face-to-face services, including wills and estate administration.

We note that some firms may not fall ‘neatly’ into one category. For example, we have seen a number of firms offering both automated and face-to-face services.

3.2.1. Number of firms

The table below illustrates the number of providers we estimate are in each of the categories. This is based on the sample of websites that we reviewed, which was then ‘scaled-up’ using the known number of SWW and IPW members.

Figure 8. Number of providers

Provider type	Estimated number of providers
DIY / automated wills	80
Specialist will writers (not offering estate administration)	600
Wills and estate administration	1,000

Source: EI estimates

3.2.2. Market share

Based on Ipsos Mori (2016) and ONS data we have estimated the total size of the unregulated market for paid for will writing advice to be around 65,000 individual consumers per year. This is 9% of the market for paid for wills (based on number of wills).

Figure 9. Estimate of size of unregulated market for paid for will writing advice

	% (from survey analysis above)	Estimate of population
Mid-2014 adult population estimate for England and Wales		43,794,000
People experiencing a legal problem in the last three years	54%	23,648,760
Of which made a will	19.8%	4,686,233
Of which obtained advice	53.8%	2,519,783
Of which paid for the advice	82.1%	2,067,746
Of which obtained advice from an unregulated provider	9.3%	193,099
Estimate of unregulated market on an annual basis (divide by 3)		64,366

Assuming an average price of £95 (as set out in section 3.4.1), implies unregulated providers generate about £6.1m in revenue from wills per year.¹⁰

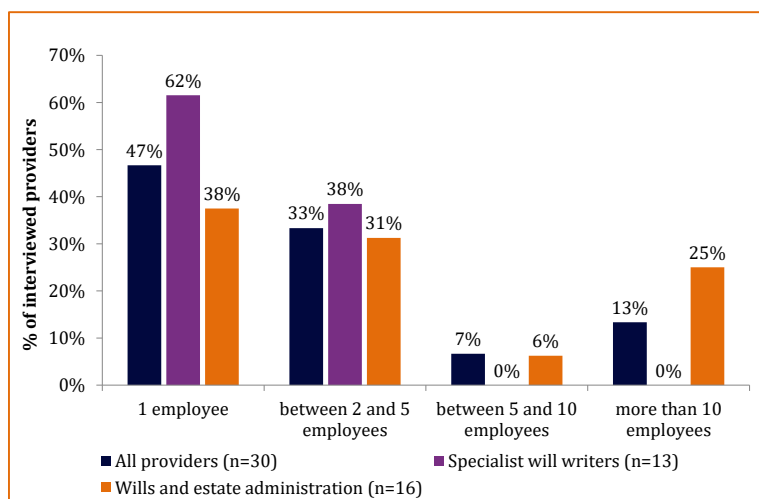
Ipsos Mori (2016) suggests that unregulated providers serve a very small proportion (~1%) of consumers who pay for estate administration services. The sample size is particularly low and therefore we are not able to compute a robust estimate of the number of clients served.

3.2.3. Size of firms

There is a high prevalence of sole traders. Specialist will writers that do not offer estate administration services are more likely to be sole traders, as is shown by the breakdown of interview participants in the figure below.

¹⁰ This could be considered a minimum as the £95 average price is for single wills, and providers may charge higher rates for different types of will

Figure 10. Staff numbers



Source: EI provider interviews

Firms offering both wills and estate administration tend to have higher staff numbers.

Further evidence from our provider interviews suggest there is considerable variation across firms in terms of clients served and revenue. Specifically, providers reported annual:

- client numbers of between 25 and 1,500; and
- revenue of between £3,500 and £5m.

3.2.4. Background to market entry

Many of the owners of the businesses that we spoke to had prior experience of wills and estate administration, and saw the opportunity to set up their own business providing these services. 20% of the individuals that we spoke to had a financial services background, and switched into wills and estate administration. One of the voluntary regulation bodies that we spoke to said that they have seen a number of financial advisers switch to will writing as the demand for such services is more stable.

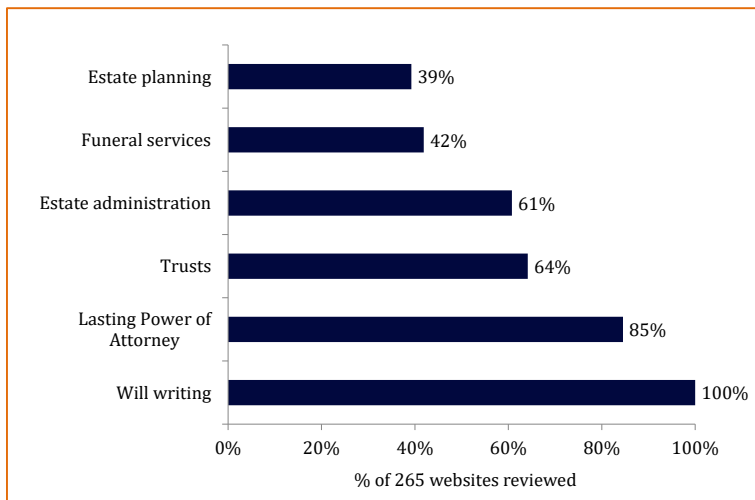
3.3. Services offered

Unregulated providers of wills and estate administration offer a range of services including:

- » **Wills.** The drafting of wills, including single and mirror wills.
- » **Estate administration.** Executor services to administer estates.
- » **Estate planning.** Advice and assistance in planning for how an individual's assets are dealt with, and can include advice relating to wills, trusts, and Lasting Powers of Attorney (LPA).
- » **Lasting Power of Attorney.** Drafting LPAs, often including both Health and Welfare, and Property and Financial Affairs types.
- » **Trusts.** Setting up of trusts to manage assets for beneficiaries.
- » **Funeral services.** Includes pre-payment plans for funerals.

Based on our website review, the figure below illustrates the proportion of providers that offer the different services listed above. As can be seen, the majority of providers offer LPAs, and less than two thirds offer estate administration services.

Figure 11. Services offered

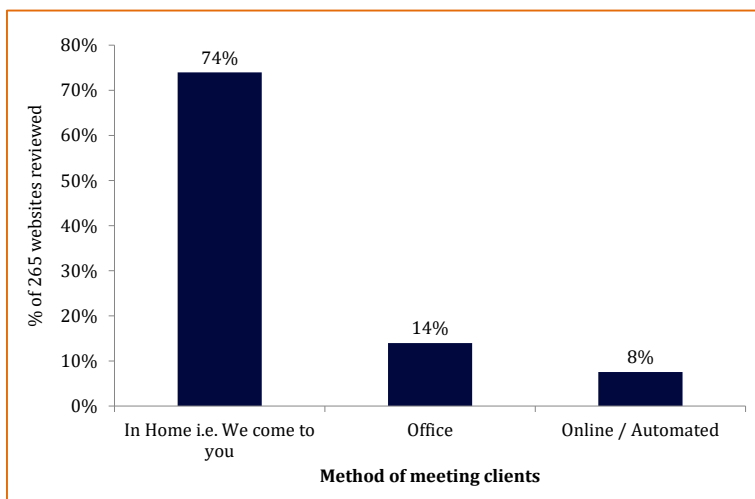


Source: EI website review

3.3.1. Home visits

Home visits are the primary method through which providers meet their clients, with the exception of DIY / automated providers. 74% of the websites we reviewed specified that they undertook home visits. Only 14% stated that they could conduct meetings at their offices, and 8% had the capability to deliver their services online.

Figure 12. Method of meeting clients



Source: EI website review. Note: %s do not sum to 100 because (i) providers can deliver their services through multiple channels, and (ii) it is not clear from all websites how services are delivered

90% of those that we interviewed conduct home visits.

“99% are home visits – clients only come to my place when they want to talk through things that they want to keep confidential from their spouse.”

The smaller providers that we interviewed tended to work from their own home and visit clients at theirs. Larger providers tended to have an office from which staff work and where they also

have meeting facilities. However, these providers reported that home visits were still the norm. One provider noted clients were not as relaxed in an office environment.

Voluntary regulation bodies that we spoke to highlighted that home visits are a key differentiator between solicitors and will writers. We were told that clients value this aspect of the service, and that it allows the provider to deliver a personalised service. We have not verified the extent to which home visits are offered by solicitors.

3.3.2. Use of software

The use of software is commonplace to draft the actual wills. Providers who meet clients face-to-face, for example, may collect the relevant information from the client from an in-home meeting, and then draft the will using software from their own premises.

An example of such software is provided by the SWW to its members, for a monthly fee.¹¹

We have also heard of ‘instruction takers’ visiting clients in their home and then a separate person being responsible for drafting the will. Although, we understand this approach is not common practice.

3.3.3. Outsourcing / ‘outward’ referrals

Providers often either outsource services or make referrals to other professionals. Larger organisations are more likely to outsource certain services, whereas small providers will simply refer the client to a specialist provider.

The main services that are outsourced are:

- reserved activities of probate;
- trusts work;
- funeral plans;
- inheritance tax planning; and
- other financial services.

Referrals are commonly made to financial advisers, and sometimes an ‘introducer’s fee’ is paid. We were also told by voluntary regulation bodies that will writers tend to be good at assessing a client’s whole situation, and making referrals to other specialist providers, such as financial advisers. Referrals to will writers are discussed in section 3.6.2.

When providers are asked by clients to recommend an executor to write into the will, providers and voluntary regulation bodies have told us that an external organisation is recommended. None of the providers that we spoke to said that they write themselves into the will as executors.

Two organisations were often recommended by providers that we spoke to – one is an estate administration specialist that is regulated by the Council for Licensed Conveyancers, and the other is an affiliate of one of the voluntary regulation bodies.

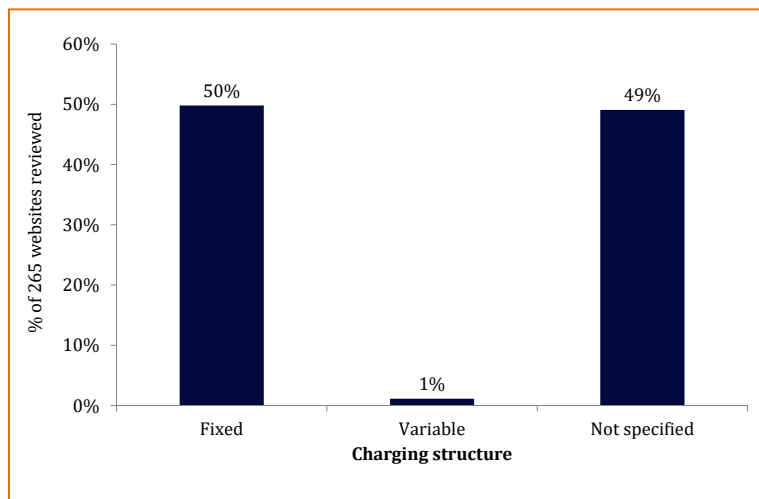
¹¹ See <http://www.willwriters.com/my-account/sure-will-writer/>

3.4. Fees and charging structures

3.4.1. Wills

The figure below demonstrates that of websites that disclose a price, a fixed, flat fee is the most popular.¹² Only three (1%) charge a variable fee (dependent on the circumstances of the individual). However, about half of the websites we reviewed did not give a price for drafting a single will.

Figure 13. Charging structure for a single will



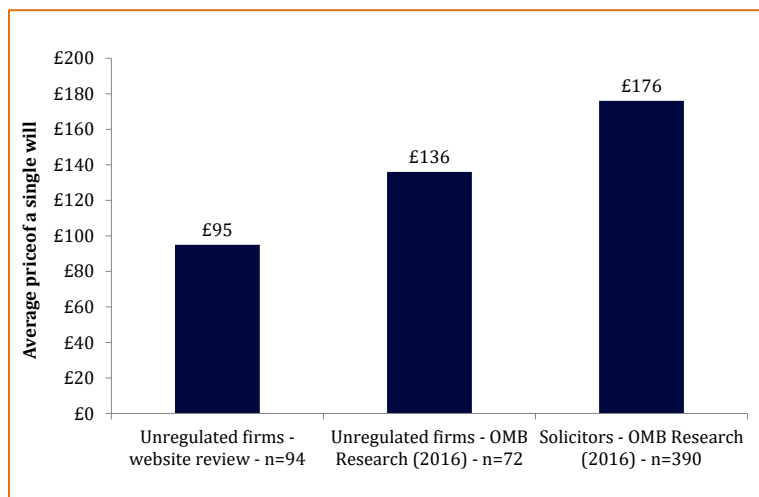
Source: *EI website review*

This is broadly consistent with OMB Research (2016), which found that 31% of unregulated will writers displayed their prices on their website, whereas 60% did not (and 9% did not have a website). The research also found that 16% of solicitors displayed their prices on their website – this result is in relation to the solicitors’ prices in general, not specifically for wills.

The figure below shows the average price of a single will from: (i) unregulated firms in our website review¹³; (ii) unregulated firms in OMB Research (2016); and solicitors in OMB Research (2016).

¹² A large provider that serves clients across the country told us that they vary their prices depending on where clients are based, due to travel costs

¹³ This average excludes three occurrences of zero prices, discussed further in section 3.4.3

Figure 14. Average price of a single will

Source: EI website review and OMB Research (2016)

As can be seen, the evidence suggests that the average price of a will from an unregulated provider is lower than that charged by a solicitor. The difference between the average from our website review and OMB Research (2016) could be due to: (i) differences in sampling approaches (internet searches versus Experian's database); and/or (ii) lower prices being more likely to be advertised (note, half of providers in our website review did not give a price on their website).

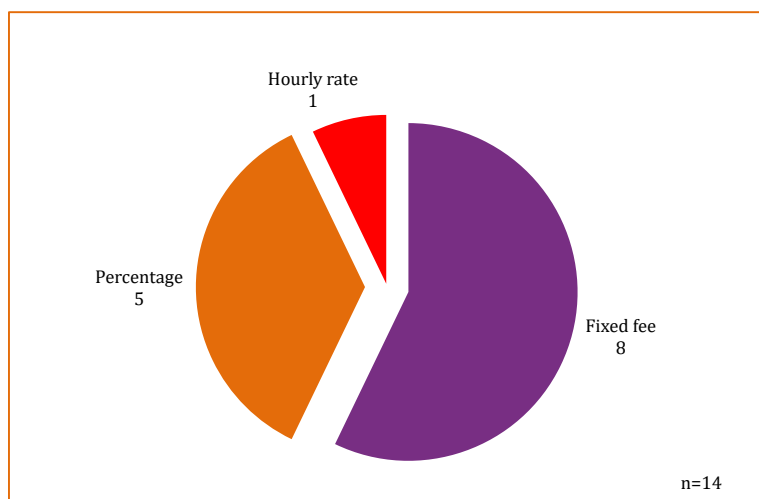
Similar price differences have also been found in other research. IFF Research (2011)¹⁴, for example, found that quotes from will writers centred around £100, whilst prices from solicitors varied from £100 to £300 and online self-completion providers generally charged from £10 to £50. IRN (2015)¹⁵ found that the average price for a fixed price 'simple' will was £118 from solicitors, £86 from will writers and £45 for online companies.

3.4.2. Estate administration

The charging structure for estate administration services is more varied. Limited pricing information is available on websites. The figure below shows how participants from our provider interviews charge for estate administration.

¹⁴ <http://www.sra.org.uk/documents/consumer-reports/lsb-will-writing-reports.pdf>

¹⁵ <http://www.irn-research.com/wp-content/uploads/2015/12/IRN-Wills-ProbateReportRelease-24th-Nov-2015.pdf>

Figure 15. Charging structure for estate administration

Source: EI provider interviews

OMB Research (2016) also found a variety of charging structures for estate administration, although the proportions vary from the ones we found.

Where providers charge on a percentage basis, the percentage is agreed in advance and is payable on the total estate value after it has been administered. Providers we spoke to generally charged between 1% and 1.5%. Similarly, OMB Research (2016) found an average percentage of 1.4%.

3.4.3. Other charging structures

Based on the website review and interviews with providers we identified the following 'alternative' charging structures.

- » One provider does not charge a specific fee for writing the will, but charges an annual cost for storage and updates. However, if the client successfully recommends three friends, storage and updates are also free.
- » Two providers offer free wills if the client leaves a gift in their will for a charity. These providers offer other related services, for fees.
- » One provider we spoke to offers a 'will care scheme' whereby clients pay a monthly fee which gives them access to discounts of additional services, free updates on their will, and storage.

3.5. Staff qualifications and experience

Based on the interviews with providers, the qualifications and experience of those providing the legal services are summarised in the table below.

Figure 16. Qualifications and experience of staff

Wills and estate administration providers	
Legal training	Limited law degrees
Work experience	Experience with financial services common
Ensuring ongoing competence	IPW and SWW members are provided CPD

27% of interviewed providers (8 out of 30) have employees who have a law degree or a legal qualification.¹⁶ All the providers who are members of voluntary regulation organisations such as the IPW or the SWW have completed their training courses. Training received through membership of voluntary regulation bodies is discussed in section 3.8.

20% of interviewed providers come from a financial services background and have related qualifications. 10% of interviewed providers have an employee who is a student member of CILEx or is completing some training to become a member.

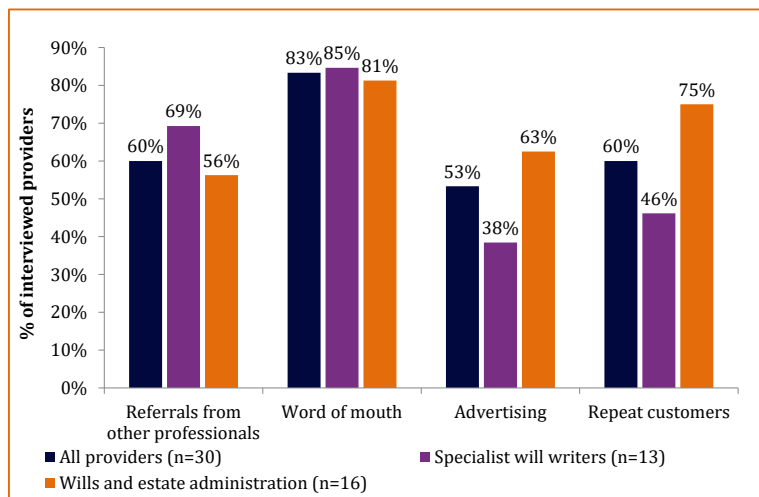
Providers without legal qualifications often stated their many years of experience in the sector as a very important factor and around 7% of providers mentioned that they have developed some in-house training and self-train their employees.

3.6. Marketing and client acquisition

Providers rely heavily on word of mouth.

The figure below shows the proportion of interview respondents that said different methods of client acquisition were important for them. As can be seen, word of mouth is reported most frequently as an important acquisition channel. Providers also frequently reported that they relied heavily on referrals from other professionals.

Figure 17. Acquisition channels



Source: EI provider interviews

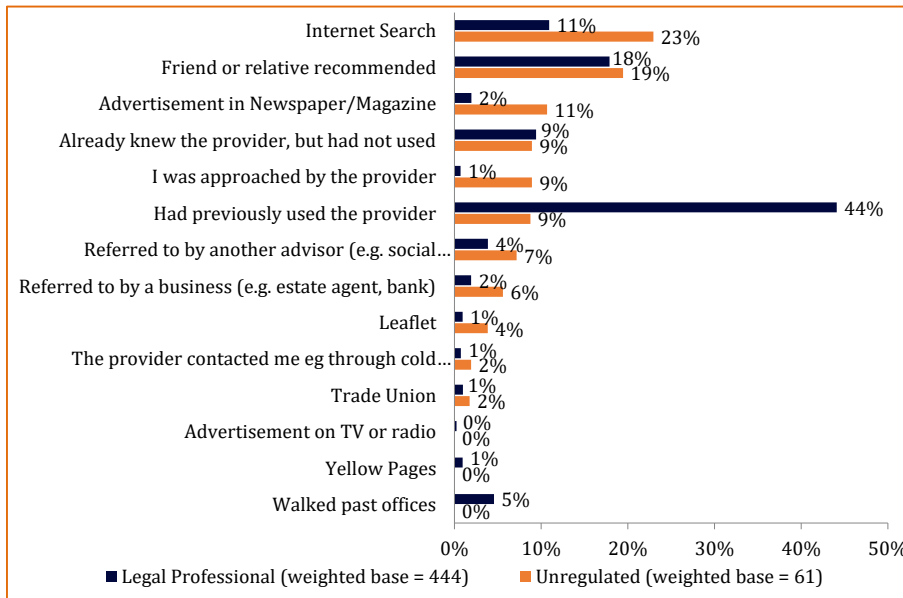
Ipsos Mori (2016) supports the finding that recommendations are important for unregulated providers. Notably, it also suggests:

- » Internet searches and media advertisements are important acquisition channels for unregulated providers, more so than for regulated providers.
- » Some unregulated providers approach clients directly, whereas this rarely takes place with regulated providers.

¹⁶ Respondents were not explicit about what the other legal qualifications were

» A significant proportion of regulated providers’ clients are repeat clients. This is much less common for unregulated providers. This could be due to, for example, the fact that specialist will writers have a relatively narrow service offering, whereas solicitors offer a range of legal services.

Figure 18. How did you find the main, paid for provider you used? By legal professionals and unregulated providers



Source: EI analysis of Ipsos Mori (2016)

Further evidence from the provider interviews on the different market channels is set out below.

3.6.1. Word of mouth

Providers see word of mouth as the most important acquisition method.

“When I visit customers in their homes, often they get their neighbour to witness the will, so then the neighbour will also want a will”

3.6.2. ‘Inward’ referrals

Providers noted the importance of inward referrals.

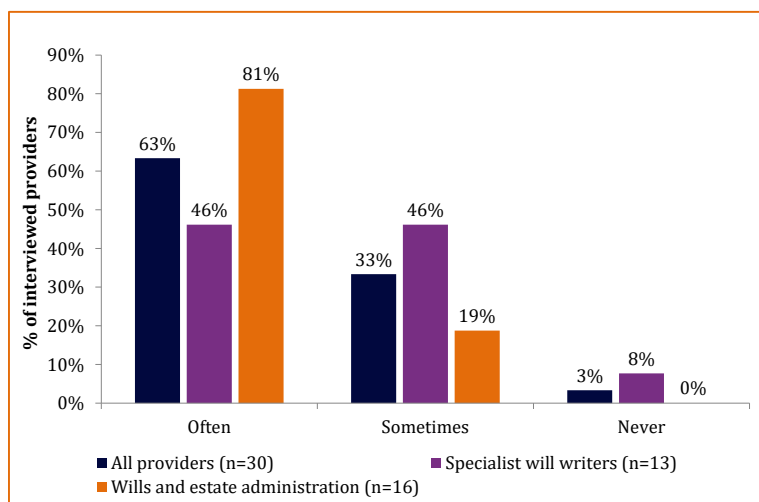
“Advertising is a waste of energy. I work on the basis of referrals from accountants, financial advisers and mortgage brokers.”

“I only work on referral basis from financial advisors and referrals from other clients. I also exhibit at investment shows and speak at events.”

3.6.3. Cross-selling

Providers told us that clients often buy more than one product from them. As shown below, 63% of interviewed providers said that clients often buy more than one service from them. We understand that LPAs are most frequently bought with a will. As set out above, unregulated providers do not appear to receive as many repeat clients as regulated providers, which suggests that these additional products will usually be purchased at the same time as a will and will be seen by the consumers as being a part of a single transaction.

Figure 19. Cross-selling



Source: EI provider interviews

One wills and estate administration provider noted that “*the main deterrent in getting more people to get LPAs when they are getting a will are its prohibitive court costs for some (£100).*” This was echoed by another similar provider. The majority of will writers that also provide LPAs said that they would always recommend to their clients to obtain one, but that they would not ‘hard-sell’.

3.7. Client base

3.7.1. Demographics

Ipsos Mori (2016) shows that clients of unregulated wills providers are similar to those of regulated providers in terms of:

- age;
- income; and
- whether the individual has children or not.

Providers we spoke to told us that clients of both wills and estate administration services don’t differ demographically from clients of regulated providers. A number of providers identified two general groups of clients.

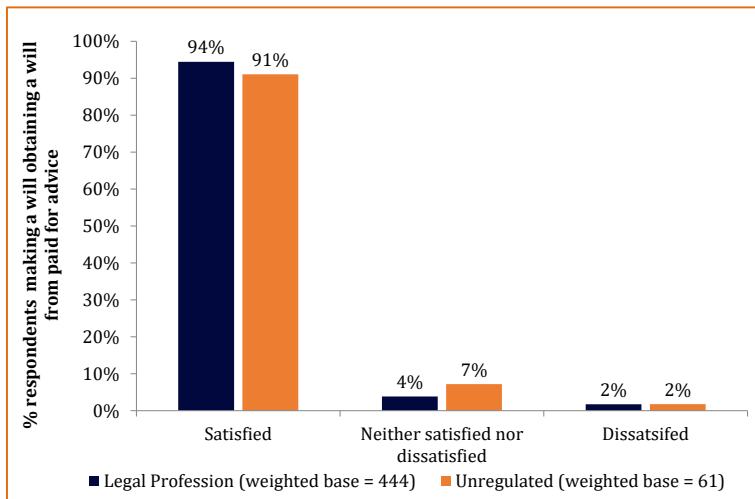
- » **Older individuals.** Retirees who are considering how their affairs will be dealt with. Sometimes purchasing a will is triggered by a spouse’s death. The majority of this group have some experience of purchasing legal services.

» **Married couples with children.** Purchasing a will may have been triggered by the birth of a child or the purchase of a house. These clients tend to be less experienced with legal services.

3.7.2. Satisfaction

Ipsos Mori (2016) shows that clients of unregulated wills providers have similar levels of satisfaction compared to those of regulated wills providers, as is illustrated below.

Figure 20. Satisfaction with main, paid for adviser, by legal professionals and unregulated providers

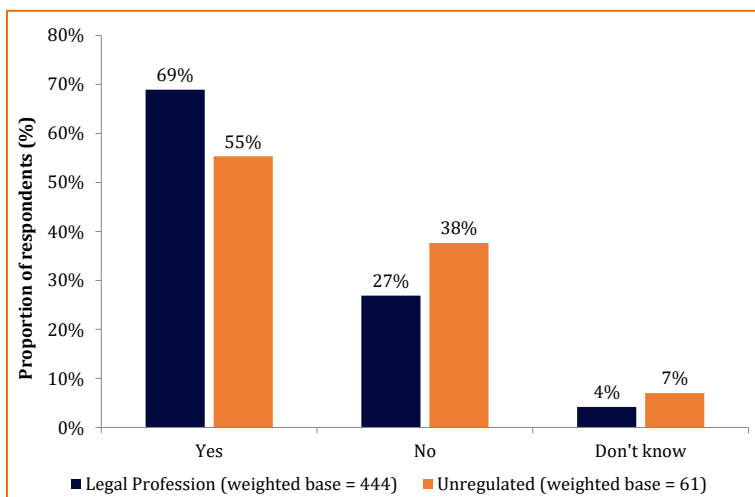


Source: EI analysis of Ipsos Mori (2016)

3.7.3. Awareness of regulatory status

The figure below, also based on Ipsos Mori (2016), shows the proportion of clients of regulated and unregulated firms that checked the regulatory status of their provider. As can be seen, over half of the clients of unregulated providers reported checking. However, compared to clients of regulated providers, a greater proportion of clients of unregulated providers did not check.

Figure 21. Did you check whether your main, paid for provider was regulated? By legal professionals and unregulated providers

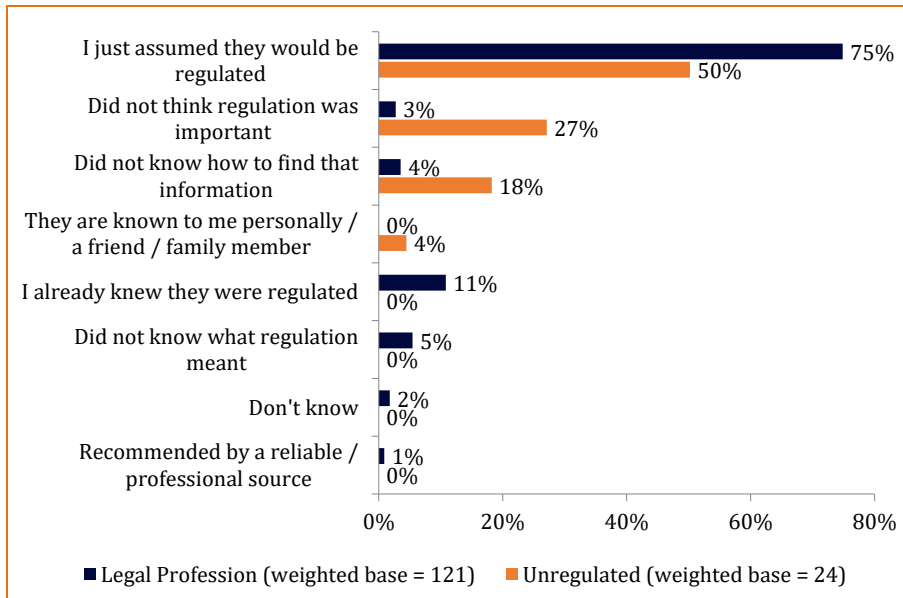


Source: EI analysis of Ipsos Mori (2016)

Although the base sizes are low, the survey results suggest the main reasons those clients of unregulated providers did not check were that the individual:

- assumed the provider was regulated;
- did not think regulation was important; and
- did not know how to find the relevant information.

Figure 22. Why did you not check whether your main, paid for provider was regulated?



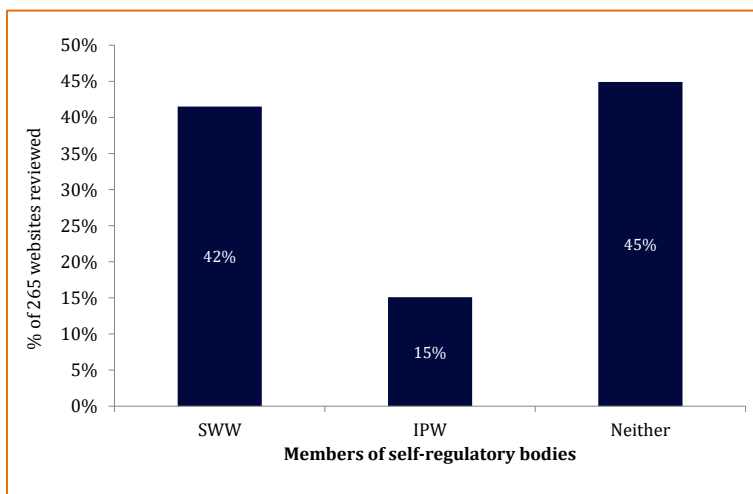
Source: EI analysis of Ipsos Mori (2016)

3.8. Voluntary protections and quality controls

3.8.1. Membership of voluntary regulation bodies

Membership of voluntary regulation bodies is commonplace. Based on our website review, membership of the Society of Will Writers and the Institute of Professional Willwriters is illustrated in the figure below.

Figure 23. SWW and IPW membership



Source: EI website review. Note: %s do not sum to 100 as some firms are members of both bodies

20% of firms that we interviewed (6 of 30) reported having staff that are members of the STEP. This is more common for firms providing estate administration, compared to those just providing wills.

Other organisations that providers reported being members of include:

- Institute of Paralegals;
- Estate Planners Network;
- New Leaf Foundation; and
- Trust and Security (TAS) Network.

A brief description of these organisations is provided in the box at the end of this section.

Providers gave a number of different reasons for being members of the organisations, specifically:

- marketing and credibility;
- giving confidence to the provider in their ability to deliver services;
- training; and
- insurance.

Members of such bodies were supportive of their value, whilst some non-members were sceptical.

"I like the [voluntary regulation body] because they are very specific in what they do and their training is very good, especially covering all the practical aspects and not only the necessary legal knowledge."

"I am sceptical of the value of [one voluntary regulation body] and [another voluntary regulation body] as all they require is a short test, whereas [another voluntary regulation body] gives a proper qualification."

"Essentially, membership allows people to see that we are qualified and gives them confidence that there is a redress mechanism available if needed. It is also important for us as companies to have a certain structure, for example, to have someone remind you that you should do at least 12h CPD per year or get indemnity insurance."

Figure 24. Voluntary regulation bodies and schemes for wills and estate administration***Institute of Professional Willwriters***

The Institute of Professional Willwriters (IPW) was founded in 1991 and is a voluntary regulation body which aims to safeguard the public from unqualified practitioners and unethical business practices. To become a member, members must either pass the IPW entrance examination, or possess a relevant qualification. All IPW members have professional indemnity insurance cover of a minimum of £2 million. Additionally, it is mandatory to comply with the IPW Code of Practice.

Society of Will Writers

The Society of Will Writers (SWW) is a non-profit making voluntary regulation organisation which seeks to protect the public and serve the interests of those who are active professionals in the will writing area. Members are required to pay an annual subscription fee and adhere to the Society's Code of Practice. Additionally, all members are required to carry professional indemnity insurance.

STEP

The Society of Trust and Estate Practitioners (STEP) founded in 1991, is a worldwide association for those advising families (will writing, advising family businesses or protecting vulnerable family members). They promote best practice, professional integrity and education to its members, through training and development, and the use of a code of professional conduct, which all members must adhere to. Members must pay an annual subscription fee as well as obtain a diploma in order to become a full member.

Institute of Paralegals

The Institute of Paralegals is a not-for-profit professional institute for paralegals in the UK. They set professional standards and provide recognition for those working in the paralegal sector. Any practising paralegal can become a member, and membership only requires an annual membership fee.

Estate Planners Network

The Estate Planners Network (EPN) is a support and development network for Estate Planners and Will Writers and offers a voluntary regulation regime and training for its members. It is currently closing down.

New Leaf Will Writers Federation

The New Leaf Will Writers Federation operates an umbrella organisation for a network of will writers. Members are sole traders and must undertake 35 hours of professional career development per year, and also have every will written checked twice by a trained professional. They have a relatively strict membership criteria. They have to sit various exams and it is relatively expensive compared to other similar bodies.

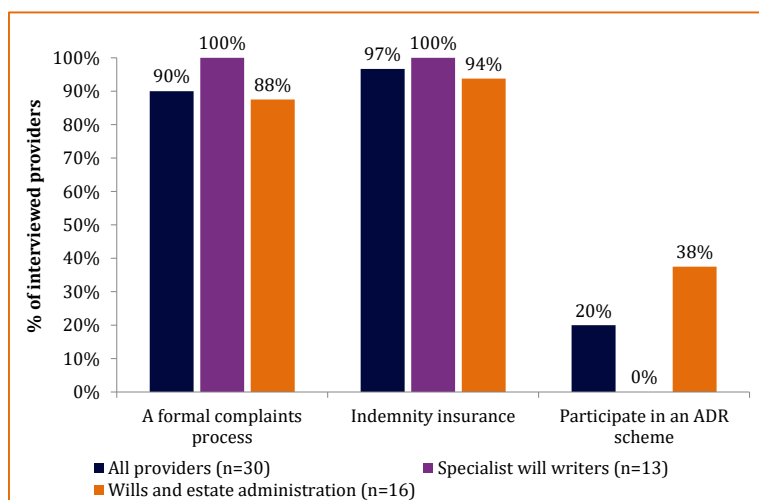
TAS Network

The Trust and Security (TAS) Network is a support network for independent will writers and associated service providers. TAS regularly holds training sessions for members to discuss business matters with others in order to assist members to develop a network of contacts and connections, increasing knowledge and professionalism.

3.8.2. Complaints procedures and indemnity insurance

The figure below shows how many of the providers that we interviewed reported having a formal complaints procedure, indemnity insurance, and participation in an alternative dispute resolution (ADR) scheme.

Figure 25. Formal complaints procedure, indemnity insurance and ADR scheme



Source: *EI provider interviews*

As can be seen, the vast majority of providers have a formal complaints procedure and indemnity insurance. Providers that are members of the voluntary regulation organisations such as the IPW, SWW or STEP noted that a formal complaints procedure and indemnity insurance are requirements for membership.

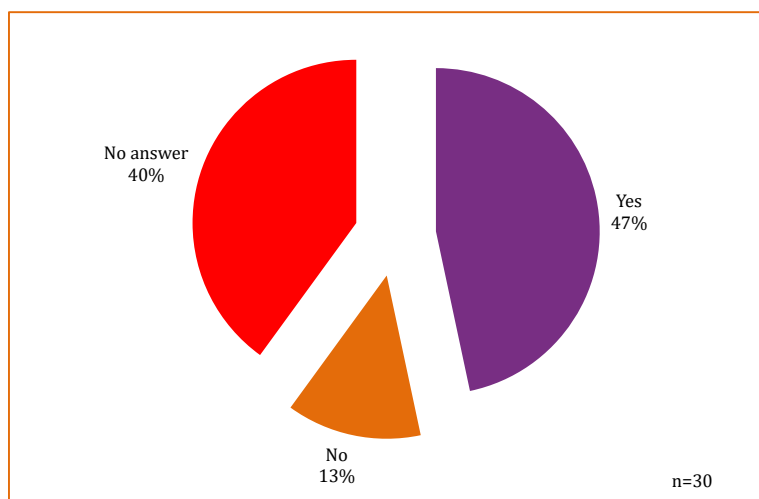
Reported participation in ADR schemes was low. However, the IPW and SWW provide access to ADR schemes to their members. We note that, in general, providers were not aware of what constitutes an ADR scheme.

Most providers reported not receiving any complaints in the last year.

3.8.3. Attitudes to regulation

The providers that we spoke to had mixed views as to whether the sector should be regulated by statute or not. As is shown in the figure below, about half of those we spoke to would support statutory regulation.

Figure 26. 'Do you think the sector should be regulated by statute?'



Source: EI provider interviews

Supporters of statutory regulation had the following views.

- » A number of providers were of the view that statutory regulation would prevent 'cowboys' that do not have indemnity insurance and do not undertake CPD.
- » Some providers recognised that statutory regulation would impose extra costs on them, but that it would be 'right' for the client. One provider thought that it would reduce the number of providers and push up prices.
- » One provider thought statutory regulation could add consumer protection in relation to estate administration services, particularly where unregulated providers are able to hold client money.

Those against statutory regulation, or that didn't have a strong opinion, recognised the potential to increase costs and some questioned the effectiveness of regulation in general.

"If it was statutory [regulation] it would take out of the market the cowboys – those with no insurance or qualifications"

"Often we deal with estates of around £12m and there is nothing stopping us running away with it. Solicitors can misappropriate trust funds, but the Law Society has an indemnity fund that covers the beneficiaries. You don't get this with unregulated providers, and as such there is nothing stopping them from running away with those large sums of money"

"Essentially, regulation is just a veil, and not even the regulator has the appetite or resources to enforce their own rules. You should let the market regulate itself, as no matter how strong the regulator is, things will go their own way."



4. Unregulated divorce providers

4.1. Summary

Our findings in relation to the characteristics of unregulated providers of divorce services are summarised in the table below.

Figure 27. Summary of findings – divorce

<p>Provider types</p> <p>Unregulated divorce services are almost exclusively supplied by online providers, which advertise, communicate with clients, and deliver their services online. We understand that there are currently five active online divorce providers, but some operate more than one brand and website.</p> <p>We estimate that collectively unregulated providers serve between 23,000 and 30,000 clients on an annual basis – 10-13% of individuals getting divorced. This equates to between £4.0m and £5.1 in revenue, based on the average price for a managed divorce.</p>
<p>Services offered</p> <p>Providers offer assistance to individuals petitioning for divorce under amicable terms. Assistance varies between ‘DIY’ packages, where the client is provided with the forms that they are then responsible for completing and filing, to ‘managed’ packages, where the provider is responsible for completing and filing all forms.</p> <p>Providers typically do not provide services in relation to contested divorces or unagreed financial or child matters. Furthermore, they do not provide ‘general advice’ beyond how to complete the necessary forms.</p> <p>Some unregulated providers offer ‘solicitor managed’ packages, where the work is outsourced to a regulated firm, and general advice may also be provided. Additional legal services are also offered by the unregulated divorce providers, such as consent orders and wills.</p>
<p>Fees and charging structures</p> <p>Unregulated online divorce providers charge for their services on a fixed fee basis. The average price, based on the 11 websites that we have reviewed, ranges from £36 for a DIY package to £173 for a managed package. These prices are significantly less than the average of £637 for a solicitor to provide services for an uncontested divorce (including ‘general advice’), based on OMB Research (2016).</p>
<p>Staff qualifications and experience</p> <p>The staff providing the legal services typically have law degrees, or in one provider’s case are members of the Institute of Paralegals. However, there is considerable variation across the small number of providers.</p>
<p>Marketing and client acquisition</p> <p>Client acquisition is heavily dependent on search engine results. Given the nature of the providers, clients use search engines to identify providers. Providers place great value on coming at the top of search results. On their websites, providers focus on the comparatively low price and convenience of their services.</p>

Client base

There is no evidence to suggest that the characteristics of the clients of unregulated online divorce providers differ significantly from individuals seeking a divorce in general.

Voluntary protections and quality controls

Membership of voluntary regulation bodies is low. Various providers are members of schemes such as Trading Standards Trusted Trading Scheme and have obtained quality assurance from the International Organization for Standardization. Providers we spoke to could see the benefits of both self and statutory regulation, but are wary of the costs it would create for their business.

All four of the providers that we spoke to had a formal complaints process, and half had indemnity insurance.

Providers reported low levels of complaints and online reviews are generally positive.

4.2. Provider types

Unregulated providers of divorce services predominantly consist of 'online divorce providers'. These firms advertise, communicate with their clients, and deliver their services primarily through online channels i.e. websites, email and live chat. All online divorce providers offer a similar range of services, and all serve clients going through an amicable and 'less complex' divorce (as is discussed further in section 3.3).

In addition to online divorce providers, physical 'advice packs' can be purchased from book shops and online retailers. We have not found any evidence of 'offline' unregulated divorce providers i.e. providers offering face-to-face advice about divorce.¹⁷ This study focusses on online divorce providers.

4.2.1. Number of firms

We have identified 11 different websites offering online divorce services.

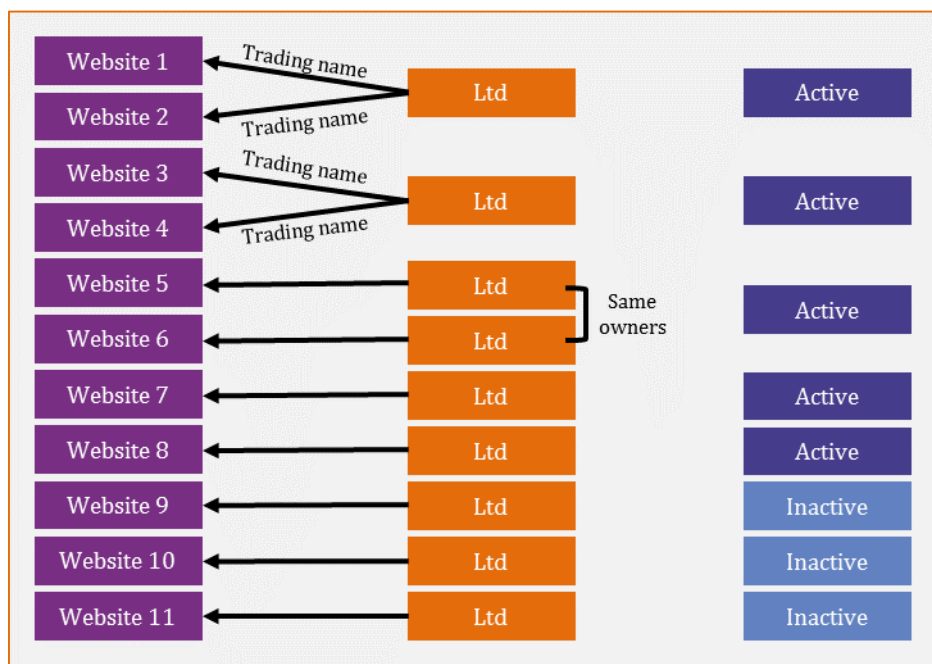
Based on our website review, provider interviews and Companies House data, we understand that, in practice, there are currently only five online divorce providers operating in the market. Notably:

- » Three providers operate multiple websites, each with their own branding. The services being delivered, however, are largely the same (although prices do vary) and are undertaken by the same staff.
- » Two providers appear inactive, although their websites are still 'live'. They have not responded to our emails and there is no answer on their phone number.
- » There has been recent entry and exit into the market. We are aware of one firm that only started serving clients within the last 12 months, and we have spoken to another provider which told us that it is in the final stages of shutting down the business, and thus we consider it also inactive.

¹⁷ This is based on our review of websites

As is illustrated below, due to the ownership structures and active status of providers, we believe there are only five providers currently operating in the market.

Figure 28. Online divorce providers



Source: EI analysis of company accounts, websites and interviews with providers. Note, the order of websites in the diagram is presentational, and does not relate to the list given above

4.2.2. Volume of clients served

We estimate that online divorce companies serve between 23,000 and 30,000 clients per year. These figures are based on annual client numbers given by providers and are calculated as follows:

- » The two active providers that we spoke to gave annual client numbers of 7,500 and 600. Another provider states on their website that “last year, over 15,000 people” used their service to initiate their divorce petition. The sum of these three figures is 23,100, and forms our low estimate.
- » For our high estimate we make assumptions about the other two active providers. One of the providers told us how many staff they have, and this was equal to the provider which serves 600 clients on an annual basis. This suggests four providers serve $(23,100 + 600) = 23,700$ clients, or $(23,700 / 4) = 5,925$ on average. Pro-rating this figure for five providers, suggests unregulated providers in total serve $(5,925 * 5) = 29,625$ clients annually.

The sample size of unregulated divorce provider clients is particularly low in Ipsos Mori (2016), and as such we have not used it to derive an estimate of client numbers.

ONS data suggests 229,440 people get divorced in England and Wales annually.¹⁸ This implies that unregulated providers serve between (23,100/229,440) 10% and (29,625/229,440) 13% of individuals who get divorced annually.

Based on an average price of £173 for a managed divorce (see section 4.4), the above client numbers imply revenue between £4.0m and £5.1m.

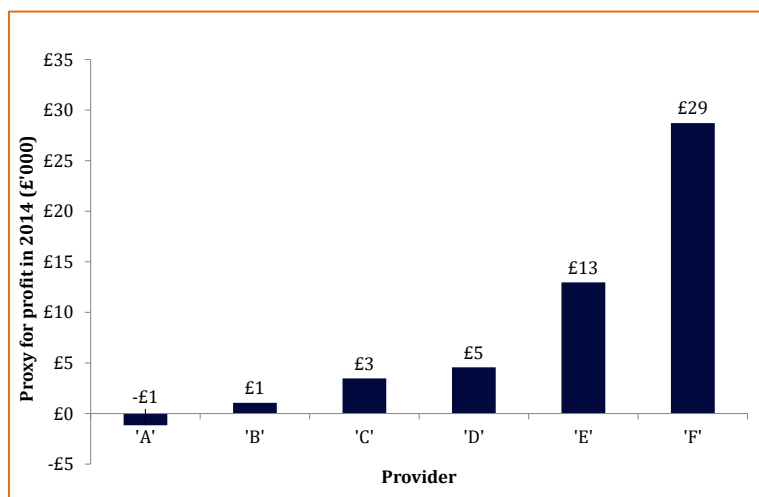
4.2.3. Size of firms

The four providers that we spoke to reported total staff numbers of between 3 and 14.

There is limited financial information on the providers available from Companies House due to exemptions for small businesses. However:

- » There is turnover data available for one of the limited companies for the years 2000 to 2005. Turnover increased each year and in 2005 was approximately £262,000. Assuming an average price of £150 would suggest the company served about 1,750 clients in the year.
- » A balance sheet is given for six of the limited companies for 2014 and 2013, and this can be used to calculate a proxy for-profit.¹⁹ The figure below shows this proxy for profit for the six limited companies. It suggests that some firms made a negligible profit (in one case a small loss), and other firms made more substantial profits in the tens of thousands of pounds.

Figure 29. Proxy for providers' profits in 2014



Source: EI analysis of company accounts. Note, one of the providers is no longer active

4.2.4. Background to market entry

A number of providers told us that they entered the online divorce market because of the opportunity of efficiency gains through the use of technology. That is, they could charge lower

¹⁸ The ONS reports 114,720 couples got divorced in 2013 in England and Wales. This implies that (114,720 * 2) 229,440 people get divorced annually
<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/divorce>

¹⁹ The difference between retained profit between the two periods can be used as a proxy for profit. However, this doesn't take account of, for example, dividends paid out

prices through leveraging technology and reducing the case-by-case input of senior staff. Specifically:

- » A director of one of the providers, who is a practising solicitor, told us that they wanted to make divorce as cost-effective for clients and as streamlined as possible. He thought that efficiencies could be made through delegation of tasks to less senior members of staff along with the use of technology. As such, his company developed a case management programme in conjunction with a programmer, which streamlines the divorce process, although human interaction is still integral.
- » Another provider told us that one of his friends, who had been a practising divorce solicitor for over 30 years, had told him that straightforward divorces can be very expensive. As such, they set up the business to provide a less costly alternative to “*simpler*” divorce cases.

The providers that we spoke to felt that it was relatively easy to enter the market. Two providers used the same firm that offers services to start-up companies, including company registrations and virtual offices. The main barrier to (successful) market entry appears to be marketing costs, which is discussed further in section 4.6.

4.3. Services offered

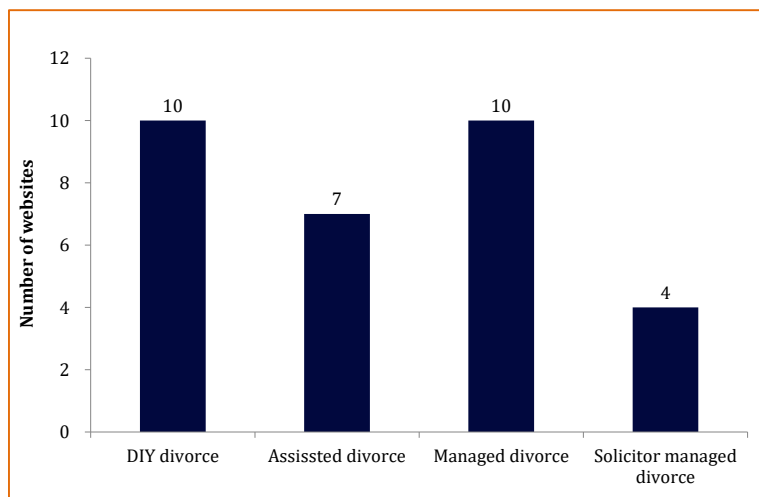
All of the providers offer assistance to petitioners of uncontested divorces through online channels. Providers offer different ‘packages’ at different price points, which vary in the degree of assistance that the provider gives during the process. Packages typically fall into one of three categories:

- » **DIY divorce packages** involve the online provider delivering divorce documents to the client, who then completes the forms and files them with the courts themselves.
- » **Assisted divorce packages** consist of the provider filling in divorce documents on the clients’ behalf, returning to the client upon completion, who then files documents with the court.
- » **Managed divorce packages** consist of the provider completing the entire divorce process on behalf of the client, in particular, completing the divorce forms, and handling all court interactions.

Providers typically do not provide services in relation to contested divorces or unagreed financial or child matters. Rather, services are in relation to the procedural matters of obtaining a divorce. Furthermore, providers do not provide ‘general advice’ beyond how to complete the necessary forms.

Some providers do, however, offer ‘solicitor managed divorce’ packages, which involve the work being outsourced to a qualified solicitor. These packages will provide some level of general advice. This service is discussed in further detail in section 4.3.3.

Based on the 11 websites listed above, the figure below illustrates how many offer the different packages. As can be seen, most providers offer a range. Only four offer a solicitor managed divorce package (two of which are the two brands/websites run by the same company).

Figure 30. Packages offered by websites

Source: EI website review

Two of the providers that we spoke to said their managed divorce package was the most popular. Others did not give a breakdown of their sales.

4.3.1. Type of divorces

Online divorce providers offer services to individuals going through an amicable and uncontested divorce. Providers state on their website that they only deal with uncontested divorces. They seek to establish, before taking on the client, that the divorce is suitable for their services.

- » Providers told us that if a divorce becomes contested during the process they recommend to the client that they upgrade to a solicitor managed package or obtain advice from a solicitor.
- » We were told that clients are refunded if the divorce becomes contested and the provider is not able to assist them further.
- » One provider, that doesn't offer a solicitor managed package, said that they were capable of interacting with solicitors if a case became contested. This had only happened once for the provider.
- » Another provider told us that it is very clear with their users that the divorce dissolves the marriage only, and informs the client of this in writing. If arrangements need to be made in respect of financial matters or childcare arrangements, the provider strongly suggests the client seeks advice from a solicitor or financial adviser.

The observation that online divorce providers focus on amicable divorces was also identified by previous research. BDRC (2015) found that 86% of clients of online divorce providers²⁰ thought their divorce was amicable. Whereas, only 56% of clients who sought face-to-face advice thought their divorce was amicable.

4.3.2. Communication with clients

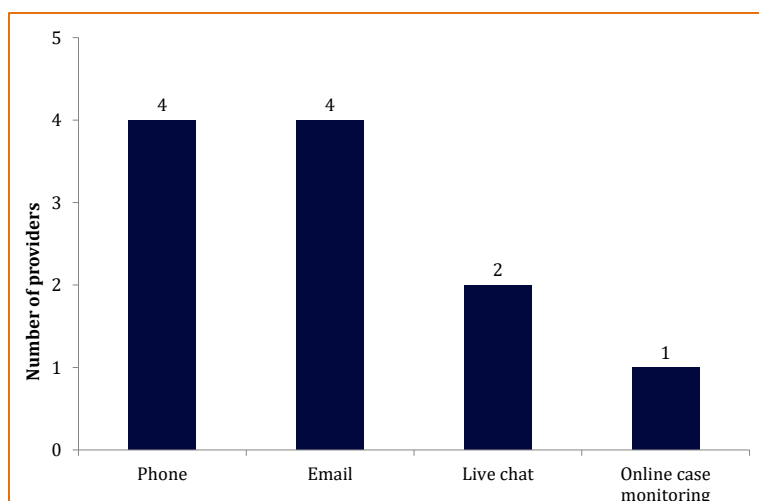
The channels through which online divorce providers communicate with their clients varies depending on the type of service provided. For example, clients that use a DIY package will

²⁰ This included regulated and unregulated providers

typically communicate by email and live chat, whereas those using a managed package will be more likely to communicate with their provider by telephone (in addition to email).

The figure below shows how many of the providers that we spoke to use different channels to communicate with clients. All of the providers use telephone and email, two use live chat and only one has online case monitoring.

Figure 31. Communication channels with clients



Source: EI provider interviews

One provider also told us that if clients were local they were able to come into their office if they wished to do so.

4.3.3. Solicitor managed packages

Four websites offer a solicitor managed divorce package. This consists of a solicitor, engaged by the provider, to handle all legal matters of the divorce i.e. preparing, filing and handling the entire case. We understand that a level of general advice will also be provided. These packages are aimed at uncontested divorces, but have the flexibility to deal with a divorce if it does become contested.

- » One website states that their qualified and experienced family law solicitor will handle the divorce and the making of the financial consent order. The service includes any telephone calls, letters, all correspondence with the court, the spouse or their solicitor and legal advice given by the solicitor. The fee includes a qualified solicitor preparing, filing and handling the entire case including obtaining a consent order.
- » Another website states that their “*team of highly qualified solicitors manage the entire divorce from start to finish*”. This covers the client and their spouse, as well as all the communication with the spouse, the court and the judge throughout the whole divorce process. The solicitor will draft all the forms and documents and provide detailed advice.

In practice, the services will be outsourced to regulated solicitors. One provider told us that the solicitor pays the online divorce provider a marketing fee.

Another provider said that they explain very clearly to the clients that they are not a firm of solicitors and refer clients to other providers if suitable. For example, for financial and child matters they refer clients to specialist solicitors.

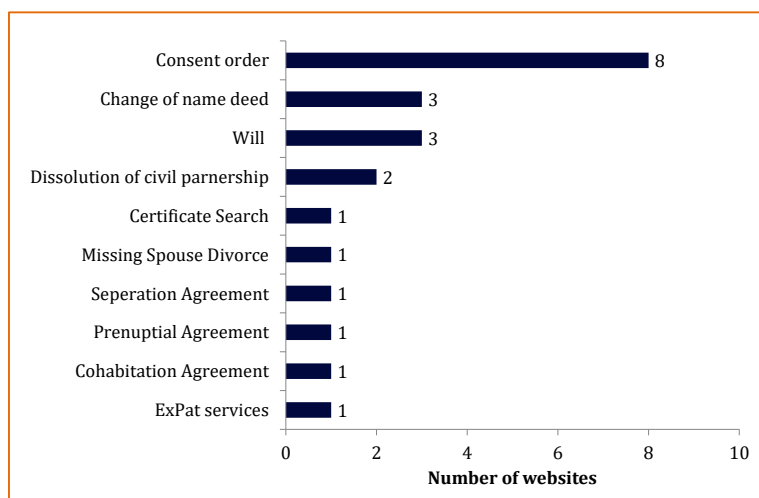
4.3.4. Additional services

Online divorce providers also offer other legal services, including:

- clean break agreements / consent orders;²¹
- change of name deeds;
- wills;
- dissolution of civil partnership;
- missing spouse divorce;
- separation agreement;
- prenuptial agreement;
- cohabitation agreement; and
- expat services.

As can be seen in the figure below, the most popular additional service is a consent order. However, not all of the 11 websites we reviewed offer it.

Figure 32. Number of websites offering additional services



Source: EI website review

As with the divorce itself, consent orders are primarily provided to clients with uncontested circumstances i.e. they have already agreed the division of assets. With the exception of solicitor managed packages, the service provided will focus on processing the order and will not involve advice or checks concerning the proposed division of assets. Some providers also bundle consent orders with their packages e.g. offering a fixed price for a managed divorce and consent order.

We understand that the additional services, when provided on a standalone basis, only represent a small proportion of providers' income.

- » One provider told us that they remind clients throughout the whole process to purchase a consent order and that at the middle and at the end of the process they also remind consumers to purchase a will. This provider told us that very few consumers do buy these additional services.

²¹ A consent order sets out how financial assets are planned to be divided. A clean break agreement dismisses the right for parties to ask for more money from each other in the future

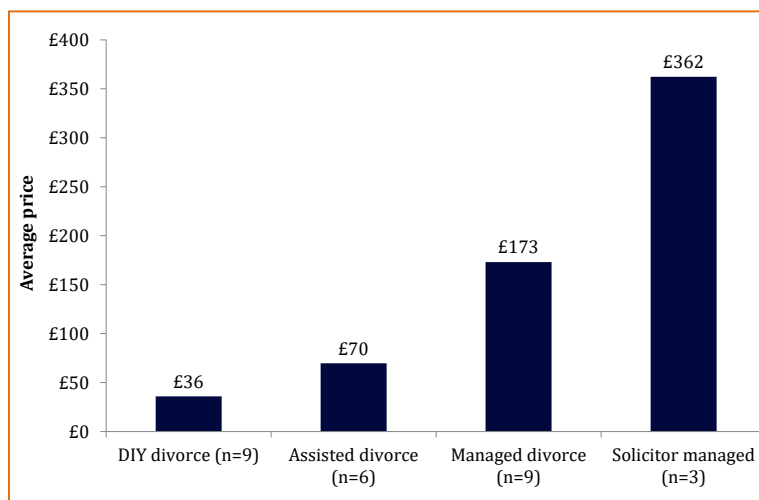
- » Another provider told us that they recommend a clean break order for every divorce application and that around 40-45% of consumers purchase one.

The two providers that we spoke to that offer wills outsource the service to solicitors and will writers.

4.4. Fees and charging structures

Based on our review of the 11 websites, unregulated providers charge on a flat, fixed fee basis. The average price for the divorce packages is illustrated in the figure below.

Figure 33. Average price of divorce packages



Source: EI website review

It should be noted that packages are not entirely consistent between providers, and we have codified offerings as to how they best align with our classifications. Importantly:

- » One website offers a DIY service free of charge.
- » Two providers include a consent order in some of their packages.

OMB Research (2016) found that, for a petitioner of an uncontested divorce, providers charged on average £722 (which included the provision of general advice). The sample for this statistic consists of 499 providers, 98% of which are solicitors. The research also found that 74% of providers charged a fixed fee, 17% an estimate of the total cost and 11% an hourly rate.

4.5. Staff qualifications and experience

Based on the interviews with providers, the qualifications and experience of those providing the legal services are summarised in the table below.

Figure 34. Qualifications and experience of staff

Online divorce providers	
Legal training	Law degree typical
Work experience	Often experience with customer services
Ensuring ongoing competence	No evidence

Specifically:

- » Two providers stated that the staff providing the legal services typically hold a law degree.
- » Another provider stated that all non-administrative staff have degrees. The director of the company has an LLB and had worked in the legal sector for over 15 years in policy, regulatory and dispute resolution.
- » The other provider informed us that all the staff dealing with legal matters are legal executives. Moreover, all of the employees of this provider are members of the Institute of Paralegals.
- » One provider said that they undertake regular ‘file checks’ and try to ‘self-regulate’ as much as possible.

4.6. Marketing and client acquisition

4.6.1. Importance of search engine results

Providers told us that they rely on organic search results and paid-for placements. We found that the first Google search results for ‘online divorce’ are paid-for advertisements for unregulated online divorce providers. The first organic result is also for an unregulated online divorce provider.

Furthermore:

- » One provider told us that they have an in-house search engine optimisation (SEO) analyst and spend about 5% of their turnover on advertising on top of the analyst’s time. They said that they use both natural search results and Google AdWords.
- » The provider that we spoke to that is exiting the market told us that they were not able to compete effectively due to the cost of Google AdWords. A figure of £2,000 per week was given, and without such investment they could not achieve sufficient client numbers.

“War is won through who has more capital to invest in Google AdWords.”

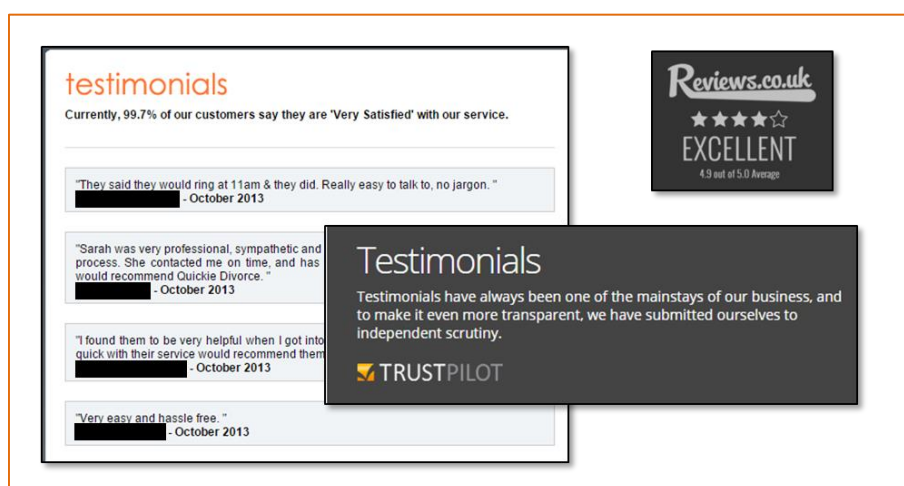
We have also seen apparent examples of one provider using AdWords related to their rivals' names. That is, they appear to have paid to come at the top of the search results when an individual searches Google for particular provider names.

4.6.2. Marketing on providers' website

Marketing on providers' websites focuses on the relatively low price, convenience and speed of the services that they provide. There is heavy use of client testimonials and client reviews from independent review websites. Of the 11 websites reviewed:

- five use client testimonials (i.e. reviews providers have received and presented on their website);
- three have 'feeds' from independent review websites (i.e. reviews posted on independent review websites that are displayed on providers' websites).²²

Figure 35. Use of client testimonials and client satisfaction scores

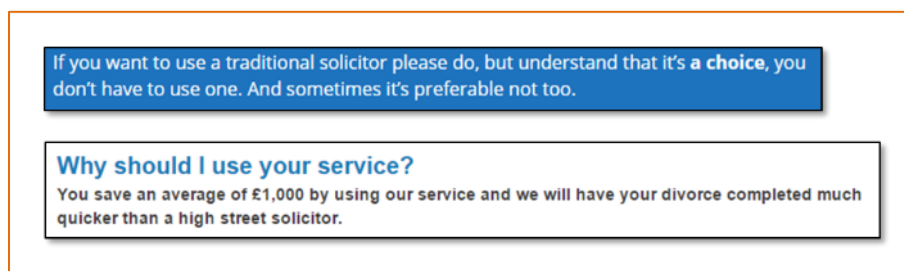


Source: provider websites February 2016

We discuss independent review websites further in section 4.8.4.

Providers are generally transparent about the fact that they are not solicitors.

Figure 36. Transparency about not being solicitors



Source: provider websites February 2016

²² One provider has both client testimonials and a feed from an independent review website

4.7. Client base

Providers told us that clients of online divorce providers do not differ significantly from those of regulated providers, specifically:

- » One provider described their typical clients as being over 40 years old, slightly more women than men and usually not in the lower income bracket. They also said that their clients had little experience of legal services, apart from, for example, those related to a house purchase.
- » Another provider described their typical client to be in their 30s, in skilled employment, with an income of between £20k and £40k and a higher proportion of female users.
- » Another provider described their clients as usually not having children, but otherwise being very varied – *“from people on benefits to high net worth individuals”*.
- » Another provider described their clients as being *“from all walks of life”* and the only difference between their clients and those of regulated providers was that their clients *“had done their research properly”*. This is, that they had established that they could obtain divorce services through unregulated providers for a lower price.

4.8. Voluntary protections and quality controls

4.8.1. Membership of voluntary regulation bodies and quality controls

Based on our review of websites and provider interviews:

- » One provider’s staff are all members of the Institute of Paralegals.
- » One provider is a member of the Trading Standards Trusted Trading Scheme – ‘Buy With Confidence’.
- » One provider’s website states that it is ISO 9001 Quality Assured by the International Organisation for Standardisation.
- » Two websites (run by the same limited company) state that they are members of the National Association of the Providers of Online Divorces (NAPOD). This is an organisation that appears to have been set up by one of the providers and does not appear to have any other members, or be active.
- » Two providers state that they comply with the SRA’s code of conduct. This could be seen as misleading as the providers are not authorised or regulated by the SRA and therefore are not subject to the SRA’s supervision or enforcement activity aimed at ensuring compliance.

In addition, one provider’s website did suggest that that it was a member of Resolution and that it was Law Society Accredited for Family Law.²³ That is, its website included the logos for both, although there was no text specifically saying that they were members / accredited. Since the beginning of this project the website was changed, and the logos no longer appear.

The various voluntary regulation bodies and external quality controls are discussed further in the box below. It should be noted that the level of protection that these different bodies and quality controls offer varies significantly.

²³ It is understood that it would not be possible for an unregulated provider to receive Law Society accreditation

Figure 37. Voluntary regulation bodies and schemes for divorce providers***Institute of Paralegals***

The Institute of Paralegals (IOP) sets professional standards and provides recognition for those working in the paralegal sector. In 2005, it was granted institute status by the Secretary of State for the Department of Trade & Industry. The IOP upholds a code of conduct and offers training.

Buy With Confidence

The Trading Standards' Buy With Confidence scheme provides consumers with a list of local businesses which have given their commitment to trading fairly. To gain membership, firms must pass background checks, including references from previous customers and a visit from trading standards. Firms continue to be monitored thereafter, and must apply with a code of conduct. The scheme is only available to businesses in certain areas of the country.

ISO 9001 Quality Assured by the International Organisation for Standardization

The International Organisation for Standardization (IOS) is an independent, non-governmental international organisation with a membership of 162 national standards bodies. The 9001 standard specifies requirements for a quality management system.

NAPOD

The National Association for the Providers of Online Divorces (NAPOD) members include two trading names of one of the limited companies providing online divorce services, and one wills provider also owned by the same company. In addition, there are a number of other members listed for which further details cannot be found.

The website appears to have been set up around 2007, with no sign of being updated since.

4.8.2. Attitudes to regulation

The providers that we interviewed spoke positively about the benefits of voluntary regulation.

- » One provider said that their motivation for being part of schemes and associations was to “convey trust and reassure consumers that there is redress in case things go wrong”.
- » Another provider said that some bodies put up “stonewalls” for companies that are not solicitors.

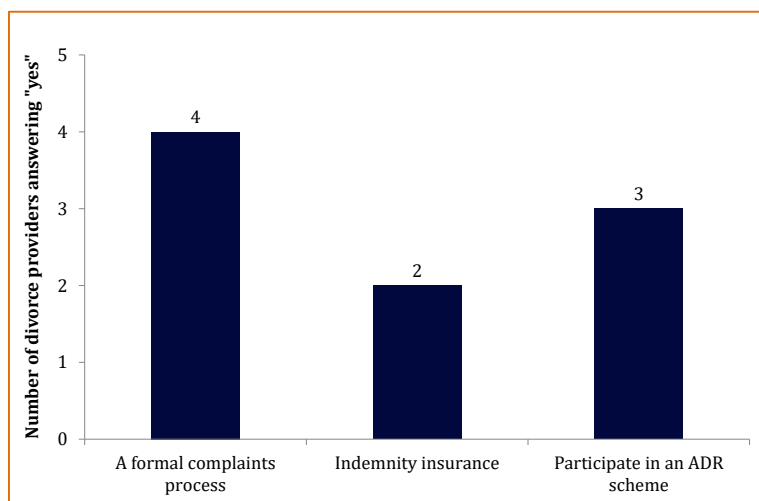
Views on statutory regulation were mixed – providers saw benefits of access to redress mechanisms, but also increased costs of complying with regulation.

- » One provider thought that there should be statutory regulation, but that it would increase costs which would prohibit start-up businesses.
- » One provider stated that the main appeal of being unregulated was that they faced lower costs, which in turn benefits consumers through lower prices.
- » Another provider was against statutory regulation if it were to make its operations more burdensome. Nonetheless, if statutory regulation meant it would come under the Legal Ombudsman’s umbrella for redress, then it would welcome it – “it is all a question of risk and loss for the consumer”.

4.8.3. Complaints procedures and indemnity insurance

All of the providers that we spoke to said they had a formal complaints process, three reported participating in an ADR scheme, but only half had indemnity insurance, as is illustrated below.

Figure 38. Consumer protections



Source: EI provider interviews

From the interviews:

- » One provider participated in an ADR scheme through the Institute of Paralegals.
- » One provider did not have indemnity insurance because it was unable to find suitable cover. If a mistake is made in an application, the provider said they would cover the re-submission costs of £95. This provider was not part of an ADR scheme, but said they would happily refer a matter to ADR if its internal complaints procedure had been exhausted.
- » Providers told us that most of the complaints they received were about court timings, rather than the specifics of the services they offered. Levels of complaints were generally low.

4.8.4. Online review websites

For online divorce providers we have identified three online review websites:

- Trustpilot²⁴;
- Reviews.co.uk²⁵; and
- FreeIndex²⁶.

All of the review websites allow clients to give written reviews of the service that they received, along with a rating. Providers are able to post replies to comments, and in the case of negative reviews providers often offer apologies and / or explanations.

The table below shows the average score for the online divorce websites, where available.

²⁴ <https://uk.trustpilot.com/>

²⁵ <http://www.reviews.co.uk/>

²⁶ <http://www.freeindex.co.uk/>

Figure 39. Online review scores

Online divorce provider	Trustpilot (score out of 10)	Reviews.co.uk (score out of 5)	FreeIndex (score out of 5)
'A'	8.9 (270 reviews)		4.4 (25 reviews)
'B'	9.2 (249 reviews)		
'C'	4.6 (4 reviews)		
'D'			4.8 (69 reviews)
'E'		4.8 (16 reviews)	
'F'			4.7 (1 review)

Source: online review websites February 2016. Note, one of the providers is no longer active

Positive reviews reflect a number of aspects of the service, such as:

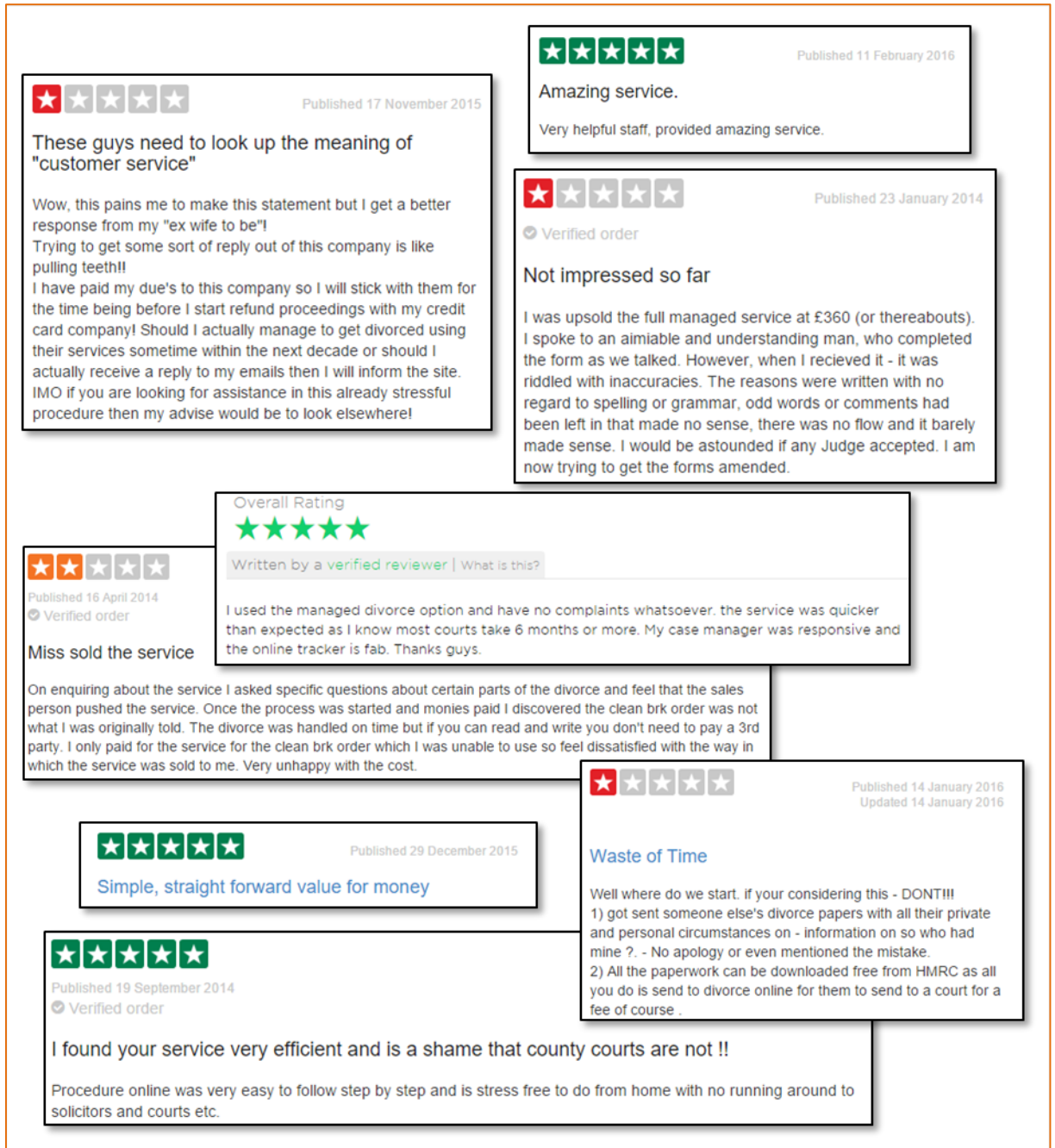
- the ease of process, in particular that it can be completed from home;
- the speed and stress free nature of the service;
- the high calibre and responsiveness of the staff;
- the low price compared to solicitor services; and
- furthermore, some reviewers did not think they could afford a divorce through a solicitor, but could through an online provider.

Negative reviews reflect:

- slow service;
- clients not fully understanding what services they were paying for;
- poor client service / communication, especially over the phone;
- unprofessionalism, such as clients being sent documents that related to other people's cases, receiving documents with errors / spelling mistakes; and
- use of aggressive selling tactics especially throughout the different steps in the process.

These points are illustrated by quotes from the reviews below.

Figure 40. Quotes from online reviews



Source: online review websites February 2016

One provider told us that he was suspicious of a rival provider posting negative reviews about their competitors. Review websites try to deal with such practices by 'verifying' users, flagging potentially false reviews and displaying the number of other reviews a user has posted.



5. Unregulated IP providers

5.1. Summary

Our findings in relation to the characteristics of unregulated providers of IP services are summarised in the table below.

Figure 41. Summary of findings – IP providers

<p>Provider types</p> <p>We categorise unregulated providers of IP services into: trademark and patent firms; and invention promotion companies.</p> <p>Trademark and patent firms typically provide their services through online channels i.e. websites, automated processes, email and live chat. Some firms specialising in patent services rely on face-to-face meetings.</p> <p>Invention promotion companies typically provide a suite of IP services, such as trademarks, patents, designs, advice, commercialisation and administration.</p> <p>Unregulated providers advise on about 7-8% of patent and trademark registrations.</p>
<p>Services offered</p> <p>Unregulated IP providers offer a variety of services, including:</p> <ul style="list-style-type: none"> - trademark registrations, watching and searches; - patent specifications, registrations, searches and renewals; - market research, prototypes, product development, and product promotion/launching; and - other services including design, copyright and IP administration.
<p>Fees and charging structures</p> <p>IP providers mainly charge a fixed fee for services that are conventional and predictable, with variable pricing used where this is not the case. The average price charged for a trademark registration is £384, and patent registration is £450 (although most providers do not advertise fees and the figure for patent registrations is based on 2 providers). There was no publically available information on the price of invention promotion services.</p>
<p>Staff qualifications and experience</p> <p>A large number of providers employ either law degree qualified and / or trained solicitors, European Patent Attorneys or European Trademark Attorneys.</p>
<p>Marketing and client acquisition</p> <p>Unregulated IP providers predominately acquire clients through word of mouth and repeat clients, whilst there is some use of Google AdWords. In addition to this, the cross-selling of services is fundamental to business with 7 of 11 interviewed providers indicating clients often buy more than one service.</p>
<p>Client base</p> <p>Clients of unregulated IP services are typically small and medium-sized enterprises (SME) / start-ups and individual inventors. Knowledge and experience of legal services is varied amongst clients.</p>

Voluntary protections and quality controls

While some providers are members of voluntary regulation bodies, there generally appears to be a low appetite amongst unregulated IP providers towards voluntary regulation. However 'internal' redress mechanisms are not uncommon amongst the providers, with 9 of 11 having indemnity insurance. Only 4 of 11 had a formal complaints process.

Providers overall, reported a low number of complaints, and online reviews are in general, positive.

5.2. Provider types

We categorise unregulated providers of IP services into two groups, based on the type of services that they predominantly offer:

- » **Trademark and patent providers** specialise in offering trademark and/or patent services. Services are often delivered through online channels.
- » **Invention promotion companies** offer clients a range of services in relation to the development of new products and services. One element of their offering is legal advice in relation to intellectual property.²⁷

5.2.1. Number of firms

We have identified 34 different websites offering unregulated IP services, these consist of:

- 26 trademark and patent providers; and
- 8 invention promotion companies.

We believe we have identified the large proportion of unregulated IP providers. However, we acknowledge that there may be more firms, particularly those that employ European attorneys.²⁸

We note the relatively large number of trademark and patent providers compared to online divorce companies. These providers share similarities in their business models and the services that they are delivering. The difference in number of firms could be a result of repeat clients in IP, and a greater degree of service differentiation.

5.2.2. Market share and firm size

ITMA Review (2015)²⁹ gives a list of the top 100 agents filing UK trademarks in 2014, along with the number of trademarks each agent filed. The data shows:

- » A regulated firm filed 570 trademarks, the most of any agent.

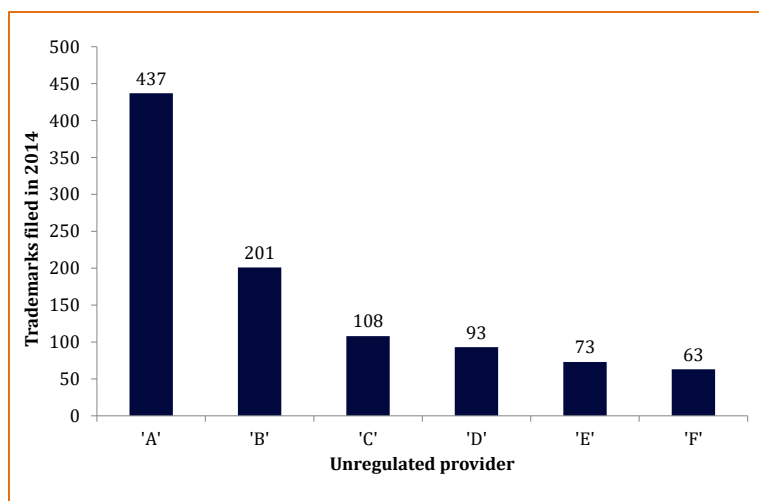
²⁷ Further distinctions could be made in relation to the regulatory status of providers, reflecting the facts that: (i) unregulated firms can employ regulated individuals; and further (ii) unregulated firms can employ patent and trademark attorneys regulated at the European level (that are not regulated through the Legal Services Act)

²⁸ One of the regulatory organisations that we spoke to believed there are over 100 European Patent Attorneys (individuals) that are not regulated at the UK level

²⁹ 'ITMA Review', ITMA, May 2015 edition

- » An unregulated firm filed 437 trademarks, the second most of any agent.
- » Six unregulated firms are in the top 100 list, with trademark numbers illustrated in the figure below.
- » All unregulated firms in the list represent 8% of the given total number of trademarks.

Figure 42. Number of trademarks filed by unregulated providers in 2014



Source: EI analysis of ITMA Review (2015)

We understand, however, that the unregulated provider with the highest number of filings ceased trading in early 2016. We spoke to the provider which told us they were shutting down to pursue other IP services – specifically to act as a “broker” and connect potential clients with other providers.

The IPO has published information on a sample of patents that were filed between 1978 and October 2015.³⁰ We have analysed a sample of 565 that were published³¹ in 2015, of which:

- 60% were filed by regulated firms; and
- 7% were filed by unregulated firms.³²

5.2.3. Background to market entry

Providers that we spoke to generally gave one of two backgrounds to the company setting up.

- » **Prior industry experience.** The founders previously worked as a trademark / patent attorney, or other industry experts who have identified gaps in the market or saw an opportunity to streamline traditionally inefficient (costly or timely) processes. For example one provider we spoke to, with 20 years previous IP industry experience, identified the needs to outsource IP administration services, such as data handling.
- » **User of trademark or patent services.** Founders who experienced difficulties navigating the system, and entered the market by applying their learning in order to assist others with IP services. One inventor we spoke to experienced difficulties when trying to commercialise his

³⁰ <https://www.gov.uk/government/publications/ipo-patent-data>

³¹ There is normally an 18 month delay between filing and publishing

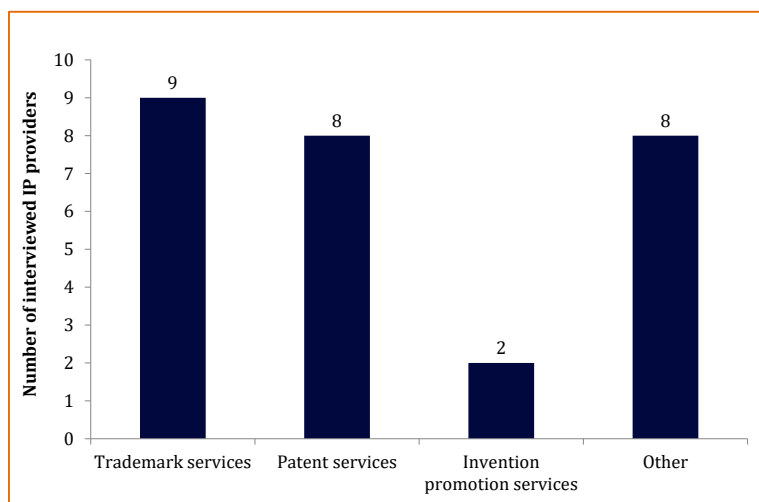
³² 15% were filed by companies (presumably responsible for the invention itself), 7% by natural persons and 11% by others

ideas, and as such, set up an invention promotion company to help others discover whether their ideas have commercial merit or not.

5.3. Services offered

The majority of providers we interviewed offered trademark, patent and other services. Whereas 'other' services provided by IP companies varied considerably from one company to another, but includes services such as design, branding and prototyping.

Figure 43. Services offered by IP providers



Source: EI provider interviews

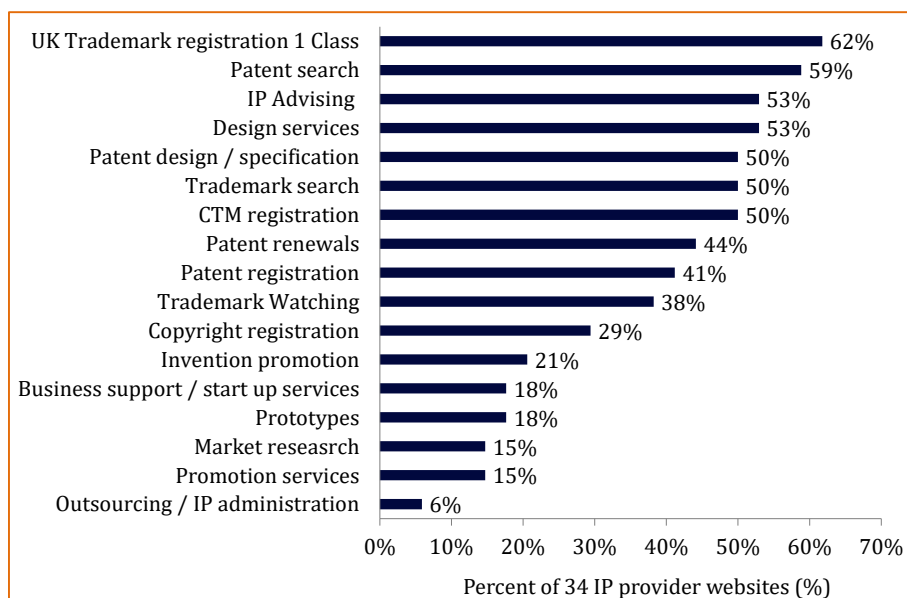
More specifically trademark and patent companies' services include, but are not limited to:

- » **Searching** – conducting research to discover the viability of a client's trademark / patent idea. The client usually receives a report detailing the findings.
- » **Watching** – monitoring the market in order to detect if a similar or the same trademark / patent idea is used elsewhere.
- » **Registration** – can involve the whole process including: (i) specification of trademark / patent; (ii) design; (iii) completing application forms; and (iv) managing the application process or alternatively, it may involve only certain elements of the process.
- » **Renewals** – streamlined process for trademark and patent renewals.

The broad suite of services offered by invention promotion companies often includes the trademark and patent services listed above. However, in addition there is a particular focus on 'design to market' services, including:

- market research;
- product development;
- product launch and promotion;
- advice; and
- prototypes.

As can be seen in the figure below, based on our website review the most popular service is trademark registrations, with 62% of IP providers offering this service.

Figure 44. IP services offered by IP provider's websites

Source: *EI website review*

5.3.1. Outsourcing of services

A significant number of IP providers outsource some of their services. Notably, 9 of 11 interviewed IP providers outsourced services to some degree. The degree to which this occurs and the outsourcing arrangements varies across the providers.

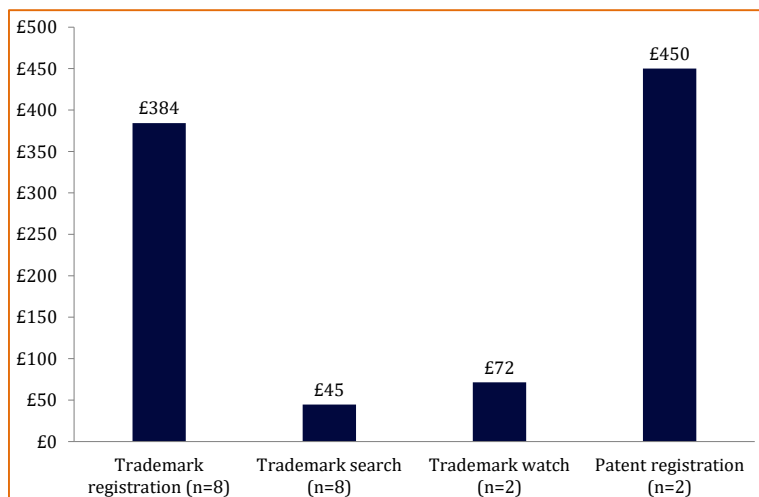
- » One provider told us they only outsource on an ad hoc basis “*when one of their projects / clients requires some specific domain expertise*” i.e. technical knowledge in a specific area. In this instance, the contract remained between the provider and the client, as the work feeds directly into the final output delivered to the client.
- » One invention promotion company outsources all “*legal issues*” to a Patent or Trademark Attorney regulated by the Intellectual Property Regulation Board under a consultancy agreement (between the IP provider and the Attorney).

5.3.2. Delivery channels

The channels through which IP providers communicate with their clients varies on the type of service and the provider. For example trademark searching services are often provided online through a search engine feature on the website. Whereas, some patent and invention promotion services still have a heavy reliance on post and face-to-face.

5.4. Fees and charging structures

Based on our website review of 34 IP providers, the average price of trademark and patent services (limited pricing information available on the other services) is illustrated in the figure below. As can be seen by the base sizes, a large proportion of providers do not advertise prices on their website.

Figure 45. Average price of IP services³³

Source: EI provider websites

Interestingly, one provider charges a flat fee (subscription service) to all inventors, in which clients can then access all IP services available to them including, trademark, patent and invention promotion related activities.

5.5. Staff qualifications and experience

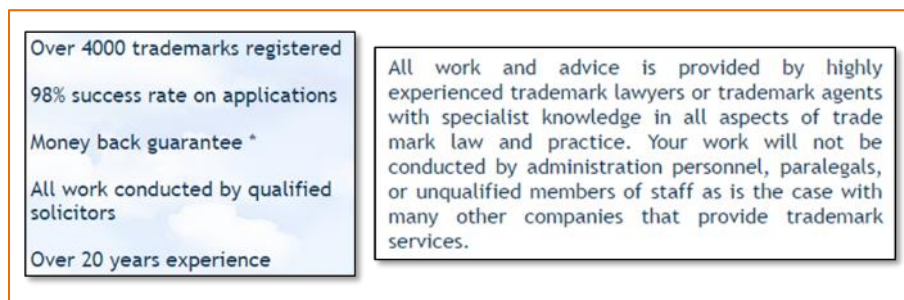
The mix of staff employed varied amongst providers we spoke to.

- » 8 of 11 providers employ law degree qualified and / or European Patent Attorneys or European Trademark Attorneys.
- » One indicated that trademark and patent searches are mostly carried out by graduates from technical backgrounds, or people with low level engineering qualifications.
- » Relevant industry, technical and specialist knowledge / experience appeared more important to providers than being legally qualified, especially with regards to patent applications, one provider responded that *“it is not necessary to have law degrees – we would rather choose someone who doesn’t have a law degree”*.
- » Related to the above, the qualifications of those being outsourced to depend on the service required, but typically involved outsourcing to those who are UK authorised patent and trademark attorneys.
- » One provider told us that has was a non-practising UK solicitor.

While some providers indicated on their website the staff qualifications and experience, information was not always forthcoming or clear about who was actually providing the legal services. We note that one provider’s website states in one place *“All work conducted by qualified solicitors”*, whilst elsewhere on the website it states that *“All work and advice is provided by highly experienced trademark lawyers or trademark agents with specialist knowledge in all aspects of trade mark law and practice.”*

³³ Trademark price is including the UK registry fee of £170 (1 class in the UK, excluding VAT)

Figure 46. Advertisement of staff qualifications

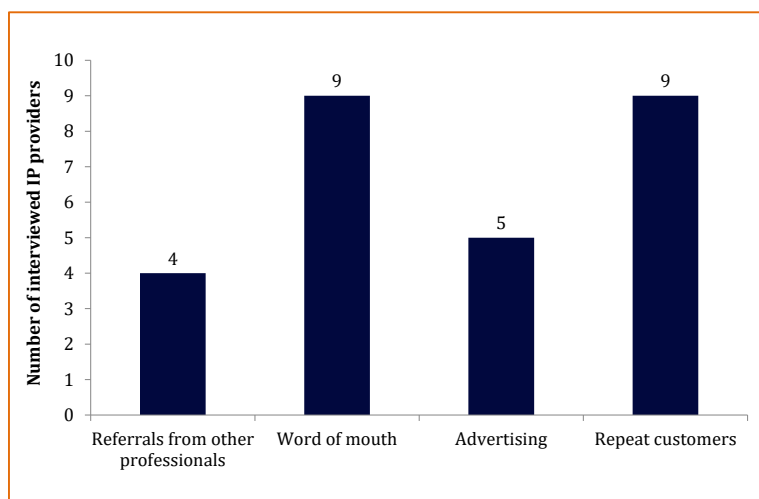


Source: Provider website

5.6. Marketing and client acquisition

Providers that we spoke to primarily thought word of mouth and repeat clients were the most important marketing channels for them. As can be seen in the figure below, fewer providers relied on referrals and advertising.

Figure 47. IP provider marketing



Source: EI provider interviews

"We only work on the basis of recommendations and word of mouth, and we do not use any advertising"

5.6.1. Advertising

Trademark and patent providers who largely operate using online channels have a greater reliance on client acquisition through website traffic and there is some use of Google AdWords. In particular:

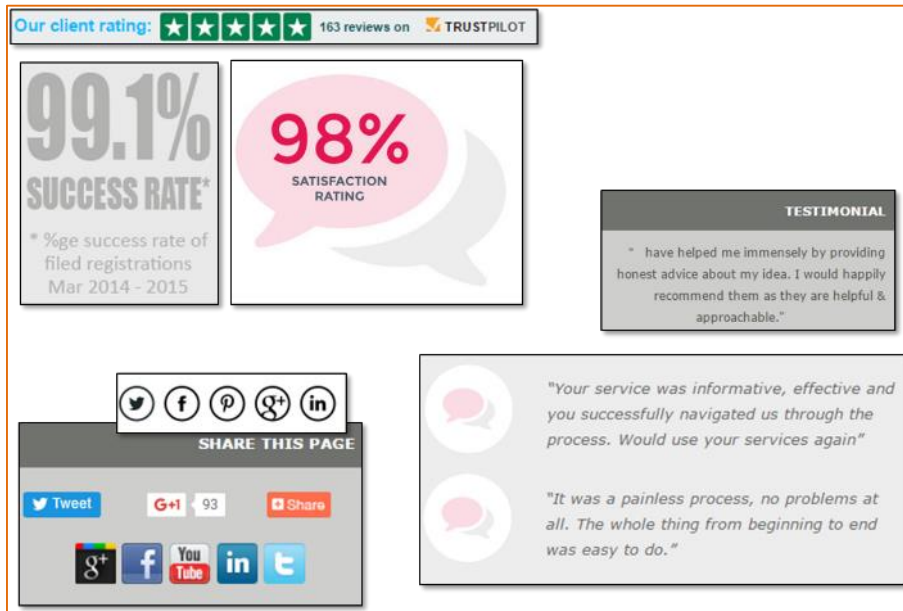
- » One provider had previously used Google AdWords in the past, but said that the return on investment had been very low, whilst another said they also used it in the past but no longer.
- » Another told us they attract most clients through the internet / their website, through the use of Google and web searches, and they spend around 30% of their revenue on advertising.

- » Another provider spends £50 per month on Google, and also advertises on other online directories.

5.6.2. Client testimonials

It is common for providers to use client testimonials on their websites. These tend to advertise satisfaction and success rates of services, examples of this can be seen in the figure below.

Figure 48. Use of client testimonials, client satisfaction scores and social media

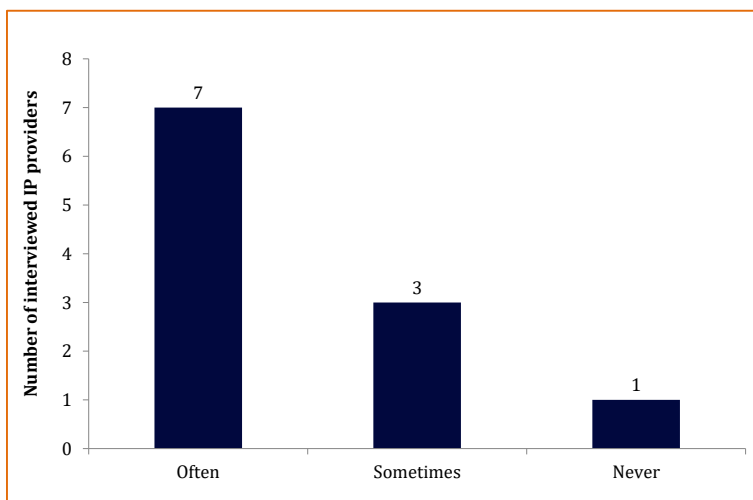


Source: Provider websites

5.6.3. Cross-selling of services

As can be seen in the figure below, 7 of 11 providers said clients often buy more than one service from them, compared to one that said clients never do.

Figure 49. Extent clients buy more than one service from a provider



Source: EI provider interviews

Several providers mentioned protection and design services are often cross-sold, and most of those clients who buy more than one service are recurring clients.

5.7. Client base

Based on the provider interviews, we understand most clients are SMEs, and in some cases individuals.

- » All providers said they served SMEs or start-ups.
- » One provider said they usually deal with multinational corporates, and rarely SMEs.

Interviewees said that knowledge and experiences of legal services varied by client

“Some of our longer standing clients were IP savvy, but that novices could also be savvy, as there is a lot of information out there”

“Our customers are usually individual inventors and start-ups, and have very limited knowledge about IP”

5.8. Voluntary protections and quality controls

5.8.1. Membership of voluntary regulation bodies and quality controls

IP providers appear to have a limited appetite for voluntary regulation. 9 of 11 interviewed providers did not belong to any voluntary regulation organisation. Our review of provider websites and interviews shows that:

- » Two providers are members of the International Trademark Association (INTA).
- » Three providers voluntarily comply with the British Standards BS8538 for intellectual property services (BS), and the Intellectual Property Awareness Network (IPAN), as a way to “signal honesty and reputability”.
- » One provider is a listed professional representative with the EU Office of Harmonization in the Internal Market (OHIM), with one of their partners also being a member of the ITMA, in order to “boost client confidence in their services”.
- » As previously mentioned, some providers are European Patent Attorneys, one provider we spoke to said they adhere to the Institute of Professional Representatives before the European Patent Office (‘epi’) code of conduct and regulations and therefore did not see any benefit in joining other organisations.
- » Some providers feature the logos of the INTA, IPO and OHIM but did not explicitly make reference to them / state they were members.

In addition to the above, we have seen evidence of provider’s upskilling their staff with one provider telling us how they conduct in-house training on all IP matters provided by their legal counsel.

Below, the following figure discusses in more detail, the voluntary regulation bodies used by IP providers.

Figure 50. Voluntary regulation bodies and schemes for IP providers***International Trademark Association***

The International Trademark Association (INTA) is a not-for-profit worldwide membership organisation of trademark owners and legal advisers, who work to support trademarks and related intellectual property in order to protect consumers and to promote fair and effective commerce.

INTA's membership base represents some 6,700 organisations from 190 countries.

British Standards BS8538 for IP

The BS was developed by the British Standards Institution (BSI) in conjunction with other associations. The BSI is a national standards body that represents UK interests that 'helps organisations make excellence a habit'. These standards can be purchased by anyone wishing to voluntarily comply with its standards, for £152 (for non BSI members).

Intellectual Property Awareness Network

The Intellectual Property Awareness Network (IPAN) is a not-for-profit IP awareness network. Their aim is to improve the understanding of patents, trademarks, designs, copyright and other IP rights and their value to society.

IPAN's membership base includes a range of 37 professionals and business organisations.

5.8.2. Attitudes towards regulation

Attitudes towards voluntary regulation were varied, with those who take voluntary regulation measures typically doing so to reassure their clients, however other reasons cited by providers are:

- » Bridging the gap between users of IP and legislators.
- » Professional networking and education.

Those that do not partake in a voluntary regulation suggests that they "...didn't see a reason to join these organisations" and it "doesn't affect them at all, so we have no necessity to belong to those", or they generally weren't aware of them and the associated benefits.

Views and opinions towards statutory regulation were mixed across the providers we interviewed. Only one provider is in favour of regulation in the sector because "there are a lot of dishonest companies", with 4 of 11 providers being against regulation and 6 being less "black and white" about their views. Key messages are as follows:

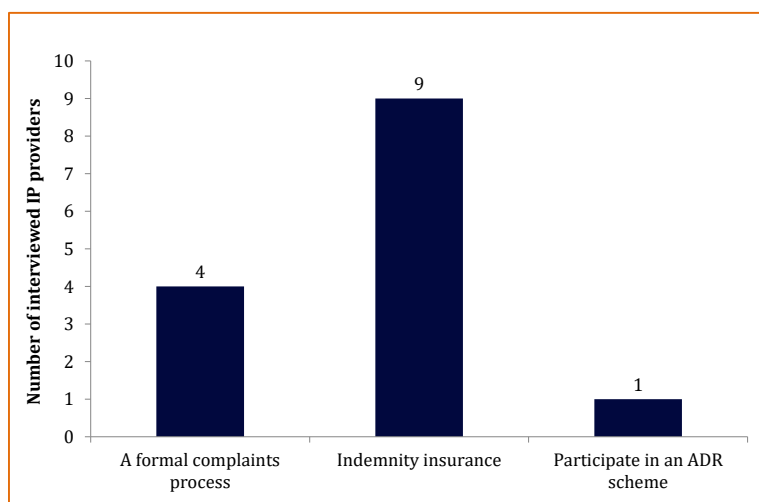
- » One provider thought "the UK was leading the way by not regulating the sector and other countries are limiting competition by regulating".
- » Another said "there should be considerations about the burden of statute on ten or so companies in the UK".
- » Most providers were concerned about the additional costs statutory regulation would impose, given unregulated providers' 'low cost' is a main competitive advantage over regulated providers.
- » To successfully deter under performing companies and those who are fraudulent, would depend on the type and terminology of any regulation.
- » A barrier to good IP services is the lack of transparency and overcharging in the industry.

Relatedly, one provider who used to practice as a solicitor no longer does in order to avoid the regulatory burden and red tape associated with it.

5.8.3. Complaints procedures and indemnity insurance

The following figure illustrates the prevalence of indemnity insurance and complaints procedures amongst IP providers we have interviewed. As can be seen a significant amount of them (9 of 11) held indemnity insurance, however, only 4 of 11 have a formal complaints procedure, with just one of the providers participating in an ADR scheme.

Figure 51. Do providers have the following?



Source: EI provider interviews

Those providers that were sole practitioners did not see the immediate benefits of participating in an ADR scheme, although, they were “*not adverse to it*”. Moreover, they do not tend to have a formal complaints procedure as such, but rather handle complaints directly themselves. Notably, the three providers who fall into the ‘sole practitioners’ category said they had not received a single complaint since their respective incorporations.

5.8.4. Online review websites

We have identified three online review websites containing reviews for trademark providers only:

- Trustpilot;³⁴
- Reviews.co.uk;³⁵ and
- Freeindex.³⁶

All of the review websites allow clients to give written reviews of the service that they receive, along with an overall rating. Providers are able to post replies to comments, and in the case of negative reviews, providers often apologise and / or give explanations.

³⁴ <https://uk.trustpilot.com/>

³⁵ <http://www.reviews.co.uk/>

³⁶ <http://www.freeindex.co.uk/>

The table below shows the average score for trademark provider websites, where available.

Figure 52. IP review scores

IP provider	Trustpilot (score out of 10)	Reviews.co.uk (score out of 5)	FreeIndex (score out of 5)
'A'	9.3 (28 reviews)		
'B'	9.2 (157 reviews)		
'C'		4.92 (62 reviews)	
'D'			4.3 (2 reviews)

Positive reviews reflect a number aspects of the service, such as:

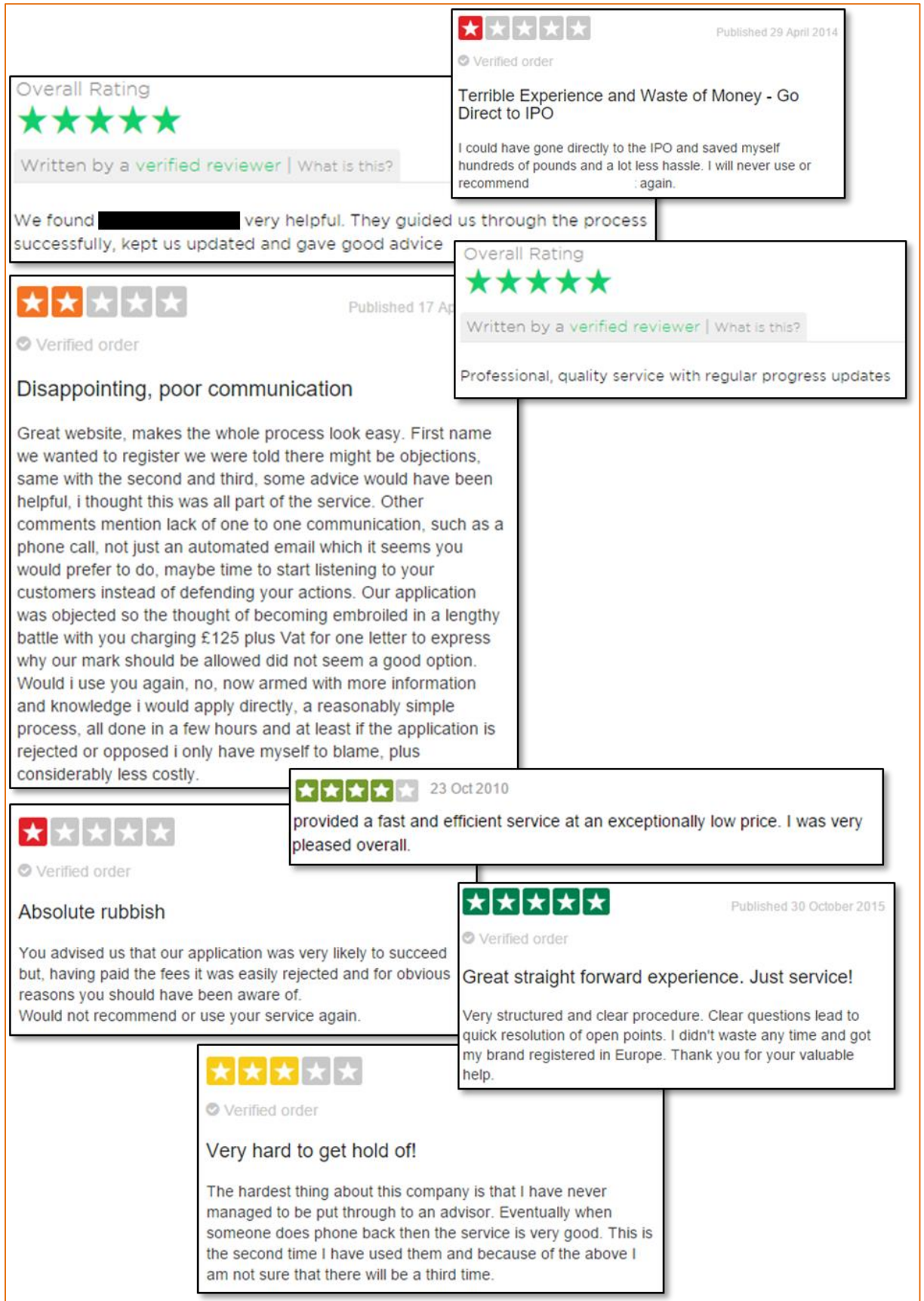
- fast, efficient and low price of service;
- the ease and straightforwardness of the process;
- clear and understandable instructions; and
- good online websites which are easy to use.

Negative reviews on the other hand reflect:

- poor communication, in particular around the use of phones;
- poor advice surrounding pass / fail of applications; and
- unnecessary need for the service i.e. clients think it's not worth the money and should apply themselves, directly to the IPO.

The points above are illustrated by quotes obtained from the review websites in the following figure.

Figure 53. Quotes from online reviews



Source: online review websites February 2016



6. Potential benefits and risks

6.1. Overview

This section sets out the potential benefits and risks, as identified through our research, which consumers could experience as a result of using unregulated providers. It is important to note at the outset that we have not sought to evaluate the technical quality of the legal advice offered by these providers. Where possible we have made comparisons between regulated and unregulated providers.

Our research suggests that consumers may benefit from the following features of the legal services offered by unregulated providers:

- » **Lower prices**, on average, than are offered by regulated providers (in will writing and divorce).
- » Greater **price transparency and certainty** (in will writing and divorce).
- » **Service differentiation** (e.g. in-home and online channels).
- » **Good levels of client service**.

The potential benefits that may flow from these features include greater access, choice and fairness in the supply of legal services. These benefits may flow to clients of unregulated providers in the first instance, but also clients of regulated providers through competition.

For these potential benefits to be fully realised, however, it is critical that consumers are able and willing to make an informed choice between providers – both between regulated and unregulated providers – and also between providers within these groups. An informed choice can be facilitated by a number of market participants, including:

- providers – e.g. by publishing prices on their websites;
- other clients – e.g. sharing experiences with friends and family;
- intermediaries – e.g. online review websites and local authorities; and
- public bodies, such a regulators.

There is evidence that each of these plays a role in the supply of legal services offered by unregulated providers. However, there is also evidence that many consumers do not know:

- whether a provider is regulated or not; nor
- what 'being regulated' means in practice in terms of: (a) the quality of legal advice they should expect to receive – and therefore the risk of receiving poor quality legal advice; and (b) the opportunity for support and redress if they receive poor advice.

These features of the legal services offered by unregulated providers raises the risk that some consumers may choose providers on the basis of the more visible aspects of service, rather than the providers that are best placed to meet their needs – thus compromising the benefits set out above.

In the following sections we discuss features of the services that could deliver benefits or create detriment. Each is assessed against the LSCP's Consumer Principles framework.³⁷

³⁷ 'The consumer interest, Using consumer principles', LSCP, 2014

<http://www.legalservicesconsumerpanel.org.uk/ourwork/ConsumerEngagement/documents/UsingConsumerPrinciples2014.pdf>

6.2. Features of the services that could deliver benefits

6.2.1. Lower prices

We have observed that unregulated providers often charge lower prices than regulated firms for wills and divorce. This may be due to a number of factors, such as:

- lower staff costs;
- greater efficiency (e.g. through the use of automation and case management systems); and
- lower regulatory compliance costs.

Furthermore, unregulated legal service providers may be able to charge lower prices than regulated firms because of differences in service level. For example, in the case of online divorce providers the price of a 'DIY' package may be less than services through regulated firms simply because an intrinsically less resource intensive service is being supplied. Unregulated providers also rarely offer general advice as part of their package, whereas regulated providers will do.

We note, however, that services are not directly comparable because regulated firms are offering a service that comes with regulatory protections.

Lower prices could give rise to consumer benefits in terms of the following Consumer Principle.

» **Access.** Lower prices can increase access to justice as services become more affordable.

Figure 54. Evidence of lower prices in the areas of law covered by this research

Wills and estate administration
As is presented in section 3.4.1, unregulated providers charge on average lower prices for wills than regulated providers. The differences vary between studies, however, for a 'simple' will, all sources show a lower price for unregulated providers.
Divorce
As is detailed in section 4.4, for an amicable divorce, a solicitor charges £722 on average for an uncontested divorce, whereas online divorce providers charge between £36 and £173. The solicitor fees include 'general advice', whereas unregulated providers' fees do not cover this so the service offered is not directly comparable.
Intellectual property
Based on our website review, we found unregulated providers charge on average £384 for a trademark registration and £450 for a patent registration. We do not have evidence as to the price level charged by regulated firms.

6.2.2. Price transparency and certainty

We have observed a relatively high degree of price transparency and certainty from unregulated providers, specifically:

- offering a fixed fee; and
- publicly displaying prices (e.g. on websites).

Price transparency can benefit consumers in two main ways. Firstly, it allows consumers to make informed choices about the services they are seeking to obtain. Price transparency will

better allow consumers to choose services which are right for them. Secondly, in the case of flat, fixed fees, the consumers will not face the risk of legal fees escalating beyond their expectations.

Price transparency could therefore benefit consumers through the following Consumer Principles:

- » **Choice.** Price transparency allows consumers to compare services based on price and supports free choice.
- » **Fairness.** Price transparency reduces the chance of consumers facing escalating legal bills.

Figure 55. Evidence of price transparency in the areas of law covered by this research

Wills and estate administration
As presented in section 3.4, approximately half of the websites we reviewed advertised the price they charged for a simple will. Furthermore, almost all of the advertised prices were flat, fixed fees. OMB Research (2016) also finds that unregulated will writers are more likely to display their prices on their websites than solicitors.
Divorce
All of the divorce provider websites that we reviewed, with the exception of one, displayed flat, fixed fees for their services. Of a sample comprising almost entirely of solicitors, OMB Research (2016) found that 74% of the providers charged a fixed fee, 17% an estimate of the total cost and 11% an hourly rate.
Intellectual property
About half of the IP provider websites that we reviewed displayed some pricing, and all displayed pricing was on a flat, fixed fee basis. We do not have evidence of price transparency at regulated firms.

6.2.3. Service differentiation

We have observed unregulated providers offering differentiated and innovative services. Specifically, we have seen some unregulated providers:

- offering services entirely through online channels and using sophisticated software; whilst other unregulated providers
- provide home visits as standard.

The use of online channels is a trend seen across other industries, and in legal services in other countries.

Unregulated providers' offerings give consumers a choice of how to access legal service, for example over the internet or in-home. Furthermore, unregulated providers often proactively seek out new clients, potentially increasing levels of access further by reaching consumers who might otherwise not have sought assistance.

Service differentiation by unregulated providers is also consistent with ERC (2015).³⁸ It found that unregulated providers are markedly more likely to have introduced a new or improved service in the previous three years, compared to solicitors or barristers' chambers.

Service differentiation and innovation can benefit consumers through the following Consumer Principles.

- » **Choice.** Unregulated legal service providers widen the choice of services available to consumers.
- » **Access.** Differentiated services can be easier for consumers to access.

Figure 56. Evidence of service differentiation in the areas of law covered by this research

Wills and estate administration
Automated / DIY providers allow the client to draft their will without the assistance of another individual. Most other unregulated providers conduct home visits as standard.
Divorce
Unregulated providers offer services through online channels. The majority of providers also offer a 'DIY' service, and some offer access to 24/7 online case management.
Intellectual property
Some unregulated providers offer trademark and patent services through online channels. Other providers are able to offer 'commercial' advice, along with the legal services.

6.2.4. Good levels of client service

We have generally observed high levels of client service. This could benefit consumers through the following Consumer Principle.

- » **Quality/safety.** Consumers receive high quality client service.

Figure 57. Evidence of good levels of client service in the areas of law covered by this research

Wills and estate administration
As shown in section 3.7.2, clients of unregulated wills providers have high and broadly comparative levels of satisfaction with regulated providers.
Divorce
As shown in section 4.8.4, consumers give, in general, high satisfaction scores to online divorce providers.
Intellectual property
Section 5.8.4 shows relatively high levels of satisfaction with unregulated IP providers.

³⁸ 'Innovation in legal services', ERC et al., 2015 <https://research.legalservicesboard.org.uk/wp-content/media/Innovation-Report.pdf>

6.2.5. Competitive effects

We have been told that regulated and unregulated providers compete for some of the same clients, and that some regulated firms are reacting to the presence of unregulated firms.

Increased competition in legal services markets could benefit consumers through the above potential benefits being encouraged in the regulated side of the market as well. This could give rise to benefits through the Consumer Principles identified in the above sections.

6.3. Features of the services that could create risks

6.3.1. Lack of awareness of regulatory status and its implications

Evidence suggests that, in general, a significant proportion of consumers are unaware of the regulatory status of their provider. For example, LSCP Tracker (2015) found that 14% of individuals who obtained legal advice were unaware of the provider's regulatory status. Results from Ipsos Mori (2016) also show a significant proportion of consumers do not check their provider's regulatory status, and the main reason for this is that they assume the provider is regulated. Some consumers did not know how to find out if a provider was regulated, and others did not think that regulatory status was important.

Furthermore, through conducting this research we found it difficult, on occasion, to determine the regulatory status of a provider. This was particularly an issue within IP due to the fact that a regulated individual can provide regulated advice through an 'unregulated firm'. In contrast, for both wills and estate administration and divorce, providers are regulated at the firm level.

In addition to the Consumer Principles identified for the risks below, unawareness of regulatory status and its implications also presents a risk in terms of the following Consumer Principle.

- » **Fairness.** Uninformed consumers may be more at risk of being unaware of regulatory status or its implications.

Figure 58. Evidence of unawareness of regulatory status in the areas of law covered by this research

Wills and estate administration
As detailed in section 3.7.3 above, a significant proportion of clients of unregulated wills providers do not check the regulatory status of their provider. The main reasons for this are: they assume the provider is regulated; they don't think regulation is important; and they do not know how to find the relevant information.
Divorce
Providers are generally clear that they are not solicitors, and that if a divorce is 'complex' advice should be sought from a solicitor. Consumers may be unaware that most unregulated providers will not offer general advice and oversight that regulated firms will routinely provide to clients. This could be particularly valuable in relation to consent orders e.g. ensuring that the terms are in the best interest of the client.

Intellectual property

Through our website review we found unregulated providers are generally transparent about who they are and who they employ.

However, determining the regulatory status is not straightforward as either the firm or the individuals providing the service could be regulated. Furthermore, the distinction between a European Patent Attorney and a UK Chartered Patent Attorney may create confusion.

Some websites use official logos, such as those of the IPO and OHIM. This could mislead consumers as to the provider's regulatory status.

6.3.2. Differences in consumer protections

Unregulated providers are not necessarily covered by redress mechanisms. Some voluntary regulation bodies offer protections, but membership of such bodies is mixed. Clients of unregulated providers may not benefit from:

- access to an ADR scheme;
- indemnity insurance;
- access to a compensation fund; or
- a redress mechanism to deal with firm closure.

We note that some unregulated providers have access to an ADR scheme and have indemnity insurance. Whereas, we are not aware of any unregulated firms being covered by compensation funds or redress mechanisms to deal with firm closure.

These factors pose risks in terms of the following Consumer Principle:

» **Redress.** Consumers may not be able to obtain redress, if a problem was to occur.

Figure 59. Evidence of consumer protections in the areas of law covered by this research

Wills and estate administration

Membership of voluntary regulation bodies is commonplace – based on our website review we estimate that 42% of providers are SWW members and 15% are IPW members. 20% of the providers that we interviewed also had staff who were members of STEP. All of these organisations require their members to have a formal complaints procedure.

Interviews with providers suggest that there is a high prevalence of both formal complaints procedures and indemnity insurance within firms.

Both providers and voluntary regulation bodies that we spoke to identified the lack of redress available to clients if an estate administrator fraudulently takes from an estate. We were told that if, for example, a solicitor 'takes off' with a client's money the SRA's compensation fund can reimburse the client, whereas indemnity insurance taken out by unrelated providers will not cover theft.

Both providers and representative bodies identified the risk of a provider going out of business and subsequently losing clients' wills.

Divorce

Through our website review and discussions with providers, we understand that membership of voluntary regulation bodies is low. However, one provider's staff are members of the Institute of Paralegals.

Existence of internal redress mechanisms is mixed. All of the four providers that we spoke to had a formal complaints procedure, whilst only half reported having indemnity insurance.

We identified eight separate divorce providers, but understand only five are still active. There appears to be significant market entry and exit with no regulatory oversight of how clients' interests are protected through closure.

Intellectual property

Membership of voluntary regulation bodies is low and internal redress mechanisms is mixed. From our provider interviews:

- most providers had indemnity insurance; however
- existence of formal complaints procedures and participation in ADR schemes were low.

We are aware that one large provider of trademark services has recently exited the market.

6.3.3. Lack of transparency

We have seen examples of providers not being transparent about the services they are providing. Specifically, we have seen statements and logos on websites that may be misleading, and online reviews which complain about lack of transparency.

Lack of service transparency can pose a risk to consumers through the following Consumer Principle.

» **Quality / safety.** Consumers may purchase a service that they do not want or need.

Figure 60. Evidence of lack of transparency in the areas of law covered by this research**Wills and estate administration**

We did not find any specific evidence for wills and estate administration providers.

Divorce

As shown in section 4.8.4, online reviews highlight instances where consumers have not fully understood the services they are buying.

As is detailed in section 4.8.1, claims on provider websites about membership of organisations can be misleading.

Intellectual property

Online reviews illustrate that providers may not be transparent about their services, particularly that a client could undertake the work themselves without advice.

6.3.4. Poor client service

As detailed in section 6.2.4 above, we generally observed high levels of client services. We did, however, see specific examples of poor quality service, specifically in relation to:

- loss of confidential information; and
- poor communication.

We also note that some of the characteristics of the services being provided may increase service quality risks. Poor quality drafting in wills and patents, for example, may only be identified years later, and due to the amount of elapsed time the provider may not face any repercussions. In-home selling may also be susceptible to 'strong' selling techniques and psychological effects, as discussed by LSCP (2011).³⁹

As set out above, it is important to remember that this research is predominantly a supply-side analysis and does not allow for an assessment of the technical quality of advice or services provided.

Poor service can pose a risk to consumers through the following Consumer Principles.

- » **Quality / safety.** Poor service will directly impact quality.
- » **Information.** Poor service may include inaccurate information being provided to a client or the loss of confidential information.

Figure 61. Evidence of poor quality service in the areas of law covered by this research

Wills and estate administration

Ipsos Mori (2016) shows comparable levels of satisfaction to regulated providers. Unregulated providers we spoke to reported low levels of complaints.

STEP (2011)⁴⁰, based on a survey of its members, identified a number of risks with providers of wills (both regulated and unregulated). Specifically:

- invalid wills drafted by "unqualified" providers;
- untrue claims;
- unrecoverable wills due to providers going out of business;
- hidden fees; and
- fraud in estate administration.

Through our website review and provider interviews we did not identify evidence that supports any of these factors. However, it should be noted that in this area concerns are most likely to arise some years down the line and therefore our methodology was not well suited to examining these.

³⁹ 'Regulating will writing', LSCP, 2011

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/consumerpanel_will_writingreport_final.pdf

⁴⁰ 'Cowboy will writing, Incompetence and dishonesty in the UK wills market', STEP, 2011

https://www.step.org/sites/default/files/Comms/reports/Will_Writing_Report.pdf

IFF Research (2011)⁴¹ assesses the technical legal quality of wills, and finds little difference between solicitors and specialist will writers.

Divorce

Online reviews of divorce providers are generally positive, with the exception of one provider which has only negative reviews. Providers also reported relatively low levels of complaints in the provider interviews. BDRC (2015)⁴² found that 64% of online divorce provider clients were 'very satisfied', compared to 55% for face-to-face providers.⁴³

Online review websites reveal two specific issues of concern:

- clients being sent other individuals' divorce papers; and
- poor communication.

Intellectual property

Online reviews of IP providers are generally positive, and providers reported low levels of complaints in the provider interviews.

Online review websites reveal issues of poor communication.

⁴¹ 'Understanding the consumer experience of will-writing services', IFF Research, 2011
http://www.legalservicesboard.org.uk/what_we_do/Research/Publications/pdf/lwb_will_writing_report_final.pdf

⁴² 'Comparing methods of service delivery: A case study on divorce', BDRC, 2015
<https://research.legalservicesboard.org.uk/wp-content/media/21104-BDRC-Continental-Online-services-Divorce-case-study-17-03-15-v2.pdf>

⁴³ Online divorce providers included both regulated and unregulated firms, and the sample size of consumers was low



7. Annexes

Annex A – Survey data

7.1.1. Legal Needs Survey 2015 – Ipsos Mori (2016)

Ipsos Mori were commissioned to conduct an online survey of individuals in relation to their needs and experiences of legal services. This study followed on from a similar one conducted in 2013.

54% of individuals who answered the survey reported a legal issue, and therefore completed the whole survey. A sample size of 8,912 individuals with legal issues was achieved.

The survey explored how individual consumers identified and responded to legal problems they faced in the last three years. It covered aspects of the journey individual consumers take, from first identifying that they have a legal need, to the action they take to address this need, ending with the legal services used. Each element of the consumer journey was investigated in detail to explore how choices were made, satisfaction with the process chosen and whether the choices made led to a resolution of the problem.

Legal needs were defined by presenting a sample of adults with a list of 29 descriptors of potential legal issues. The survey covered a broader range of legal problems considering issues from transactional consumer problems to rights issues. The survey explored up to three legal issues experienced by each of the respondents – detailed questions were asked in relation to 16,694 issues faced by the respondents.

Here we set out our own analysis of the survey, specifically in relation to wills, estate administration and divorce. Our analysis focuses on two groups of providers, specifically:

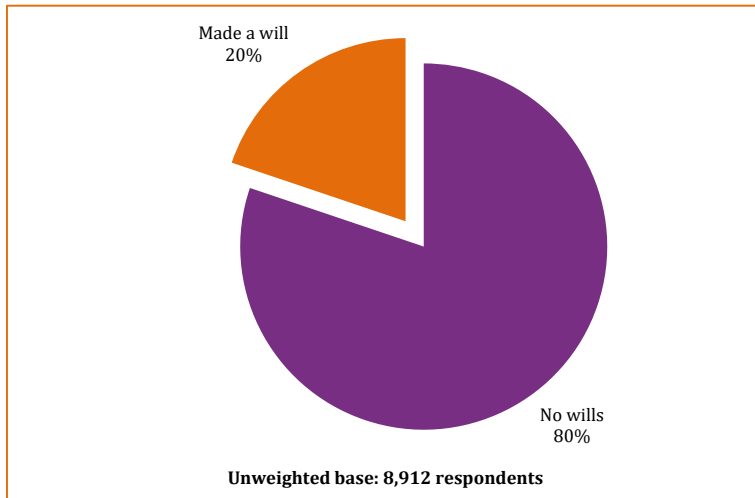
- » **Unregulated providers.** Providers that fall within this category are “employment advisers”, “specialist will writers”, “McKenzie Friends”, “online services / companies”, “business / human resources consultancies” and “any other bodies / organisations / individual professionals”.
- » **Legal professionals.** Providers that fall within this category are “solicitors”, “barristers”, “licensed conveyancers”, “notaries”, “trademark attorneys”, “patent attorneys”, “cost lawyers”, “other lawyers”, “immigration advisers”, “probate practitioners” and “legal executives”.

We have further focused on paid for service providers, that is, where respondents answered the following with regards to payment of the services: “yes – paid for all of it”, “yes – paid for part of it”, “no win no fee agreement”, “no – it was covered by the estate”.

7.1.1.1. Will writing

20% of the respondents made a will in the past three years, as the figure below illustrates.

Figure 62. Proportion of respondents making a will

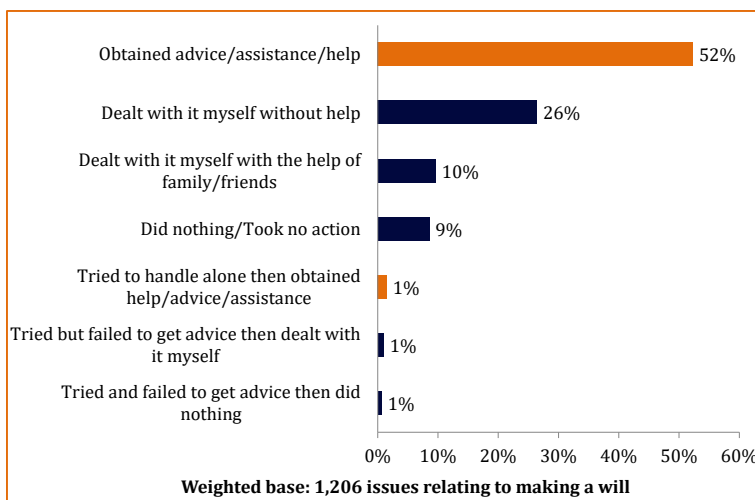


Source: EI analysis of Ipsos Mori (2016)

Of the 1,766 respondents who made a will, 1,121 were asked further questions about it. This gives a weighted base size of 1,206 issues relating to making a will.

Respondents were asked what actions they had taken in order to make a will. The following figure shows what actions respondents took. 52% of respondents who made a will got assistance straight away, and a further 1% obtained advice after trying to handle it themselves.

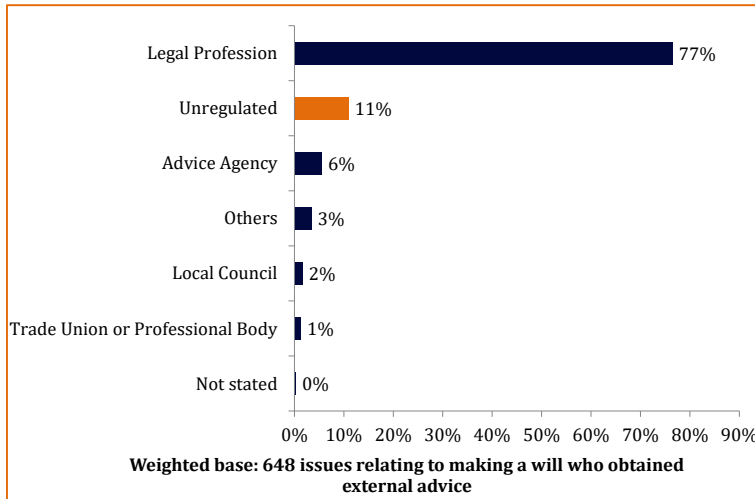
Figure 63. Which of these descriptions best indicates how you went about dealing with your issue?



Source: EI analysis of Ipsos Mori (2016)

77% of respondents who made a will had a legal professional as their main adviser, compared to 11% who obtained advice from unregulated providers.

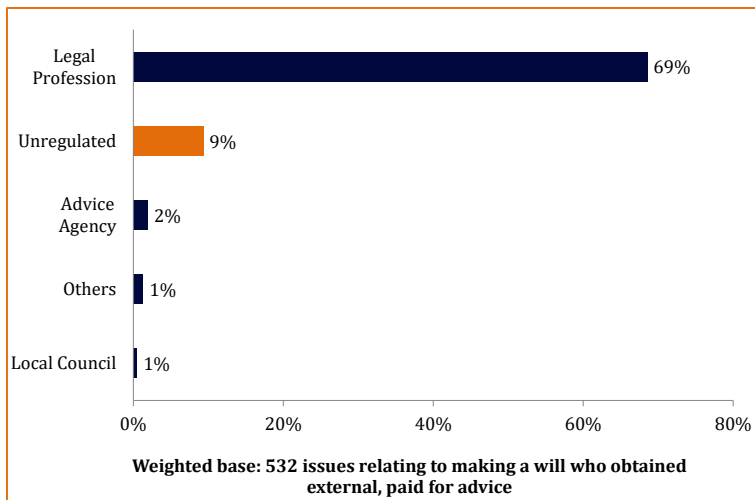
Figure 64. Which of the people that you contacted was your main adviser?



Source: EI analysis of Ipsos Mori (2016)

82% of the external advice for wills was paid for. That is, 117 respondents did not pay for the advice they received, and 532 did.

Figure 65. Which of the people that you contacted was your main, paid for adviser?

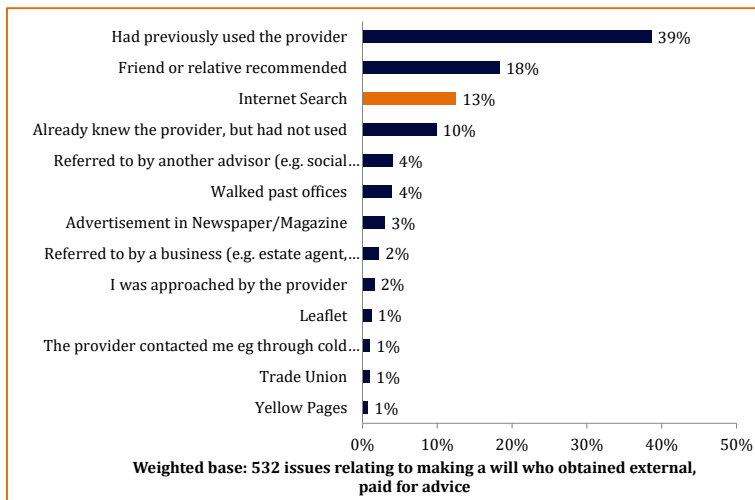


Source: EI analysis of Ipsos Mori (2016)

Based on the above figure, there are 56 unweighted counts and 61 weighted ones where the respondents obtained paid for advice from an unregulated provider. This allows us to present more granular splits in our subsequent analysis between legal professionals and unregulated providers.

Respondents who made a will and obtained paid for advice were asked how they had found their main adviser. 39% of respondents had previously used the provider, 18% followed a recommendation from friends or relatives, and 13% searched the internet, as the following figure illustrates.

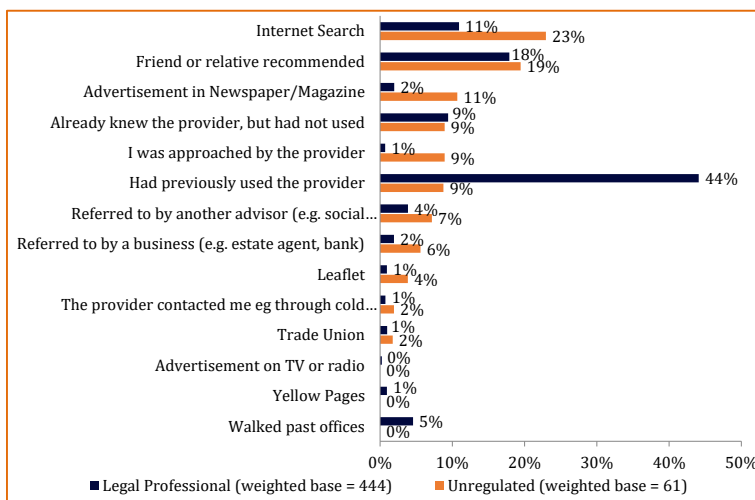
Figure 66. How did you find the main, paid for provider you used?



Source: EI analysis of Ipsos Mori (2016)

We further analysed how the respondents who obtained paid for advice from legal professionals and from unregulated providers found the main adviser they used respectively. This is summarised in the figure below.

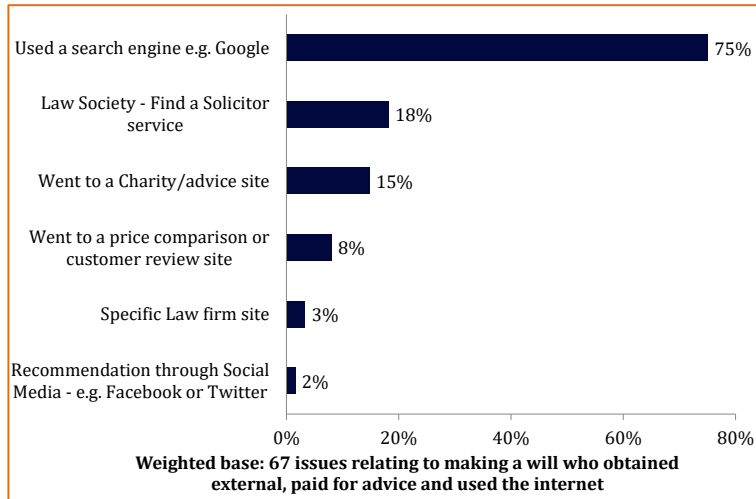
Figure 67. How did you find the main, paid for provider you used?, by legal professionals and unregulated providers



Source: EI analysis of Ipsos Mori (2016)

The 13% of respondents from Figure 66 who had found their main, paid for adviser through an internet search were further questioned as to how they searched for the provider. 75% of respondents found their main, paid for adviser through a search engine such as Google, as the ensuing figure illustrates.

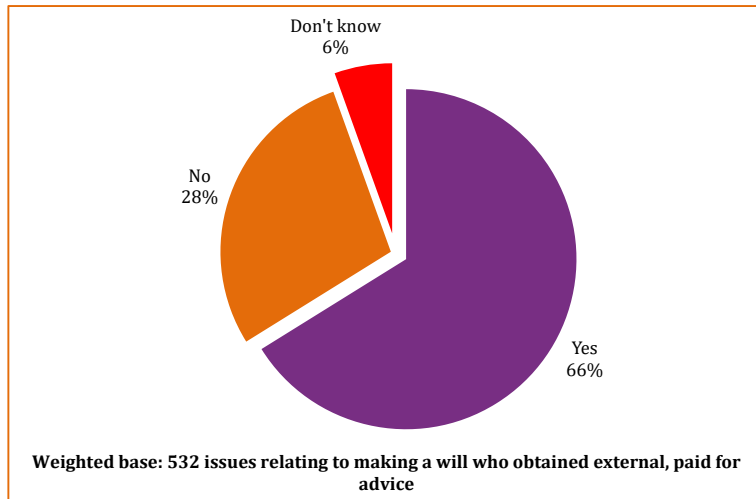
Figure 68. You said you used the internet, which of the following did you do?



Source: EI analysis of Ipsos Mori (2016)

Respondents who had made a will in the past three years and obtained help were also asked whether they had checked the regulatory status of their main, paid for provider. 66% of respondents had checked this, compared to 28% who did not, illustrated in Figure 69 below.

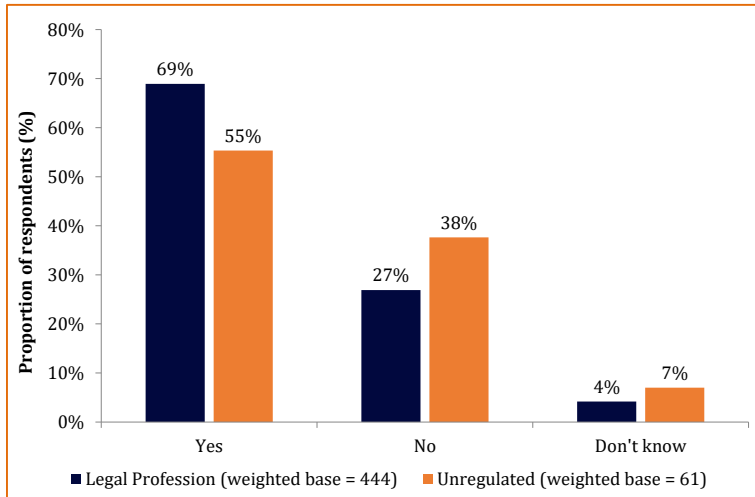
Figure 69. Did you check whether your main, paid for provider was regulated?



Source: EI analysis of Ipsos Mori (2016)

The figure below illustrates that a slightly higher percentage of respondents using unregulated providers as their main, paid for provider did not check their regulatory status. However, 55% of respondents who chose an unregulated, paid for provider checked their regulatory status and proceeded with them.

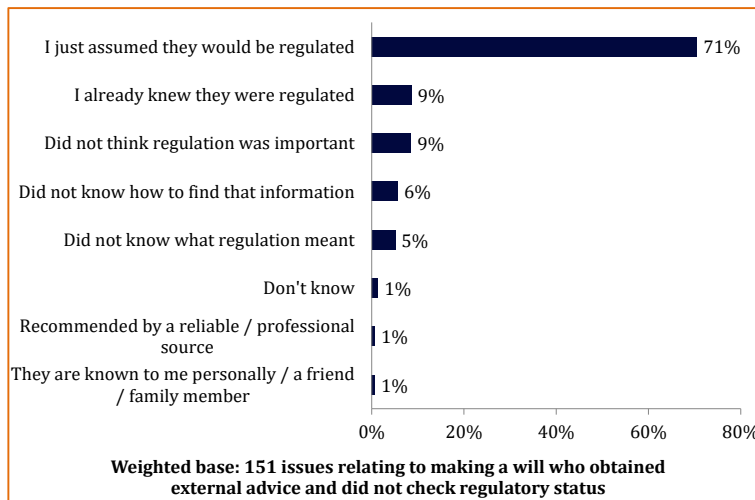
Figure 70. Did you check whether your main, paid for provider was regulated?, by legal professionals and unregulated providers



Source: EI analysis of Ipsos Mori (2016)

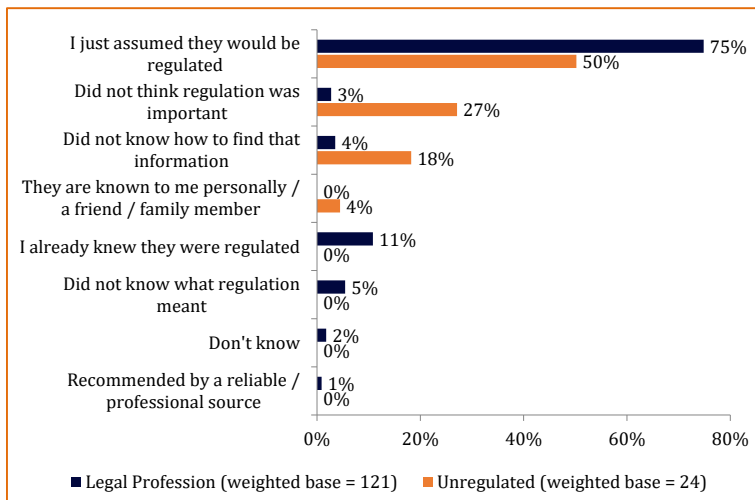
The 28% of respondents from Figure 69 who did not check the regulatory status of their main, paid for provider were questioned as to why they had not done so. The main responses are shown in the next figure.

Figure 71. Why did you not check whether your main, paid for provider was regulated?



Source: EI analysis of Ipsos Mori (2016)

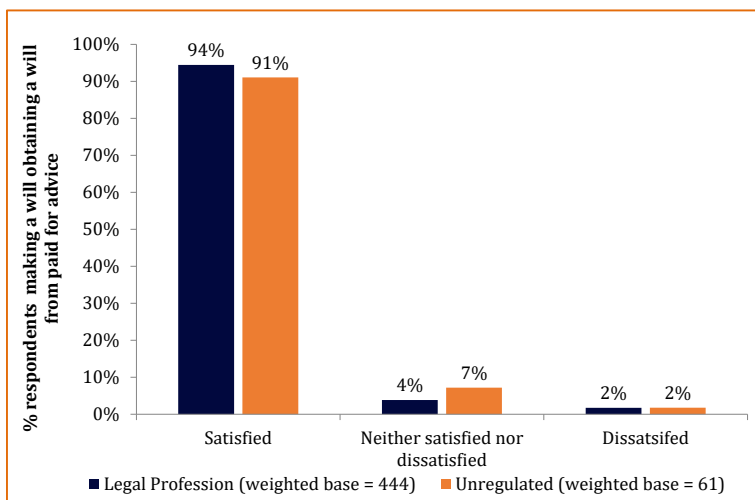
Figure 72. Why did you not check whether your main, paid for provider was regulated?



Source: EI analysis of Ipsos Mori (2016)

Respondents were questioned as to their overall satisfaction with using the service. The following figure demonstrates the proportion of respondents using legal professionals to make a will who were satisfied and dissatisfied with the service overall, as well as the ones using unregulated providers.

Figure 73. Satisfaction with main, paid for adviser, by legal professionals and unregulated providers



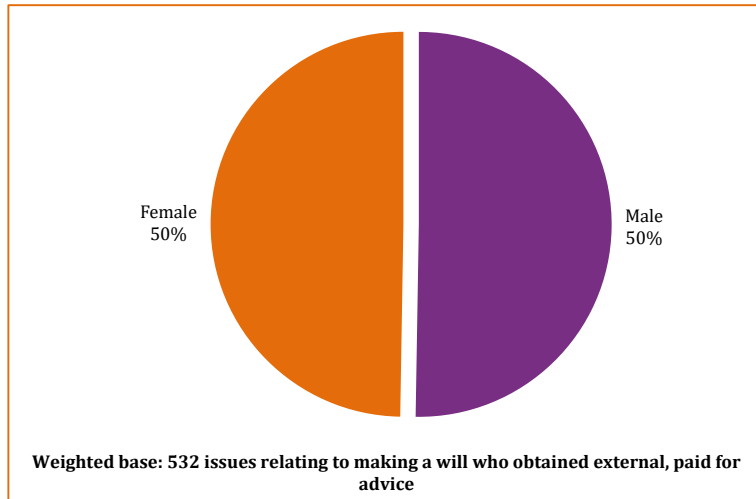
Source: EI analysis of Ipsos Mori (2016)

7.1.1.1.1. Demographics

The ensuing figures illustrate the demographic characteristics of respondents making a will and getting paid for advice.

The gender split of the respondents is 50:50, as can be seen on Figure 74.

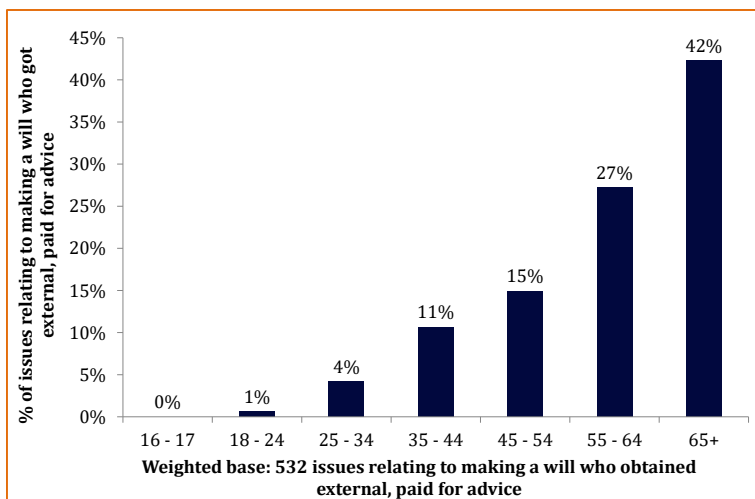
Figure 74. Gender



Source: EI analysis of Ipsos Mori (2016)

The following figure shows the age distribution of the respondents who made a will and got paid for help.

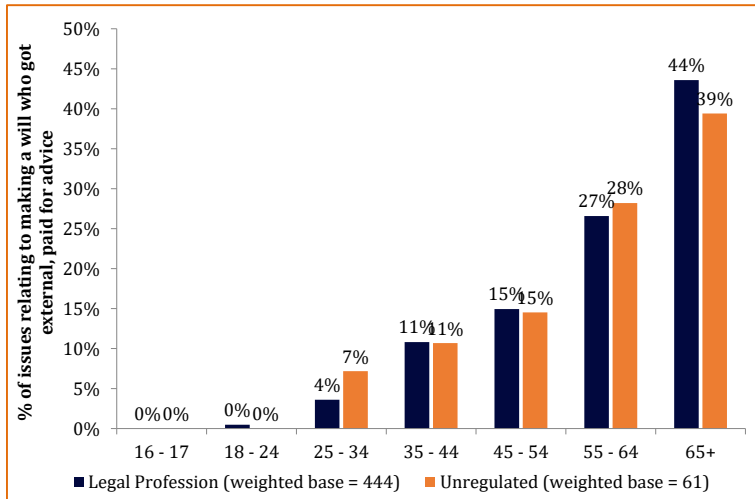
Figure 75. Age distribution



Source: EI analysis of Ipsos Mori (2016)

We also looked into whether there were demographic differences between respondents who got paid for advice for wills from legal professionals and those that obtained advice from unregulated providers. The following figure illustrates the differences.

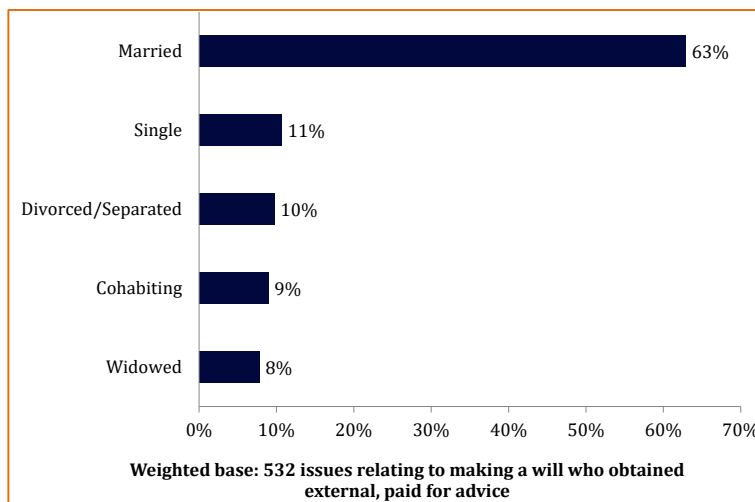
Figure 76. Age distribution, by legal professional and unregulated provider clients



Source: EI analysis of Ipsos Mori (2016)

Figure 77 illustrates the civil status of respondents who obtained paid for advice for making a will.

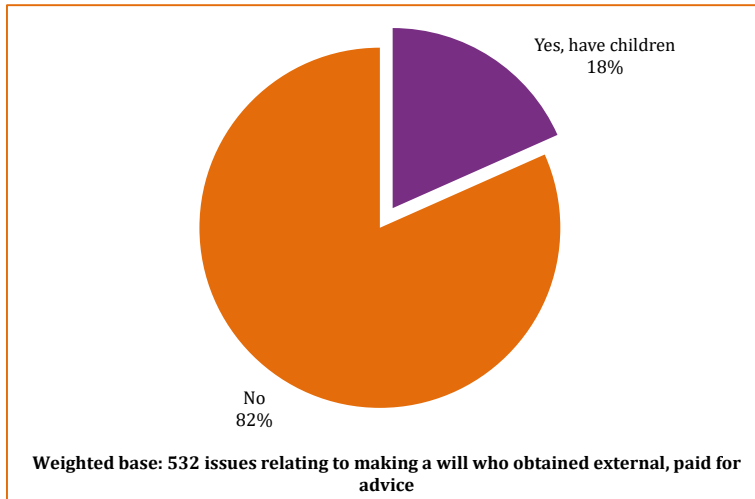
Figure 77. Civil status



Source: EI analysis of Ipsos Mori (2016)

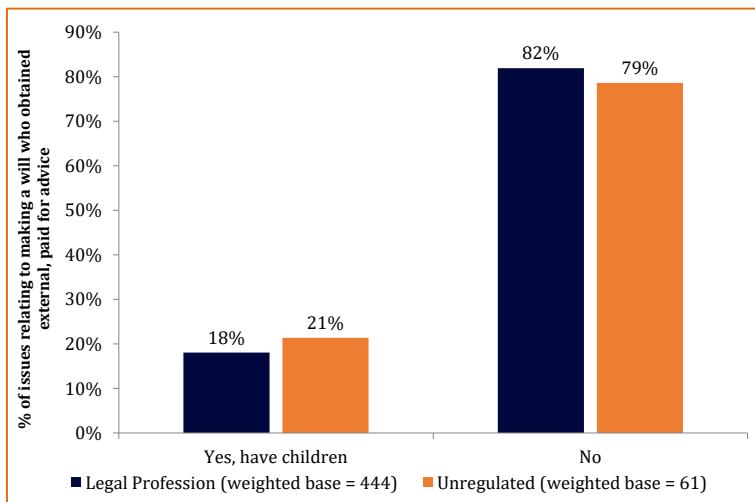
The next figure shows the presence of children amongst those respondents. As Figure 78 shows, 18% of respondents making a will in the last three years and getting paid for advice have children.

Figure 78. Children



Source: EI analysis of Ipsos Mori (2016)

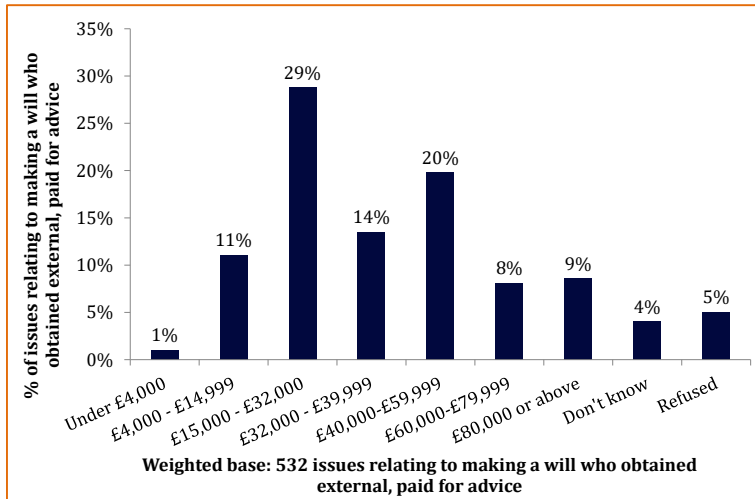
Figure 79. Children, by legal professional and unregulated provider clients



Source: EI analysis of Ipsos Mori (2016)

The following figure shows the income distribution of respondents who made a will in the past three years and got paid for advice.

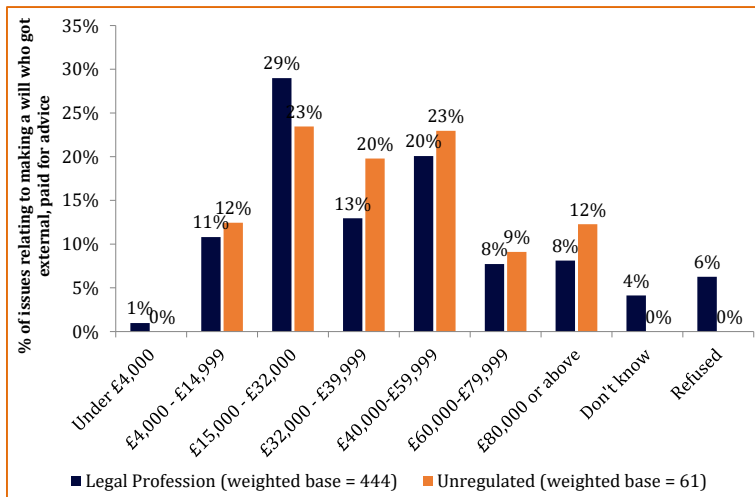
Figure 80. Income



Source: EI analysis of Ipsos Mori (2016)

We also looked into whether there are differences across clients that used legal professionals compared to those that used unregulated providers as their main, paid for advisers for wills in terms of income, illustrated below.

Figure 81. Income distribution, by legal professional and unregulated provider clients

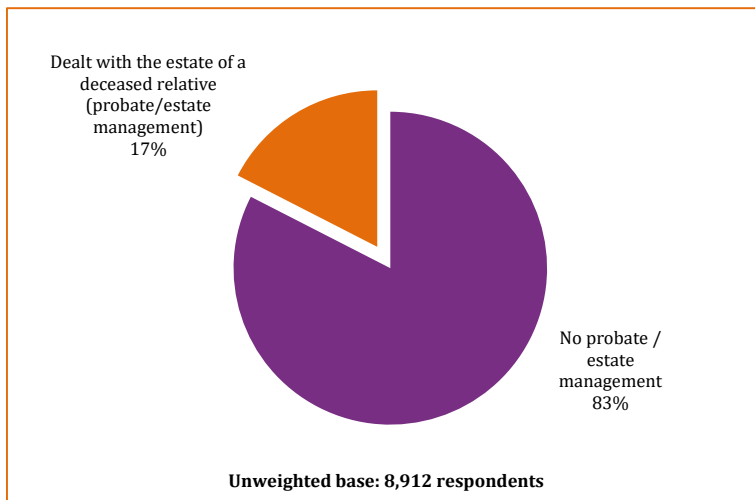


Source: EI analysis of Ipsos Mori (2016)

7.1.1.2. Estate administration

17% of respondents dealt with the estate of a deceased relative in the past three years, as can be seen from the figure below.

Figure 82. Proportion of respondents dealing with the estate of a deceased relative

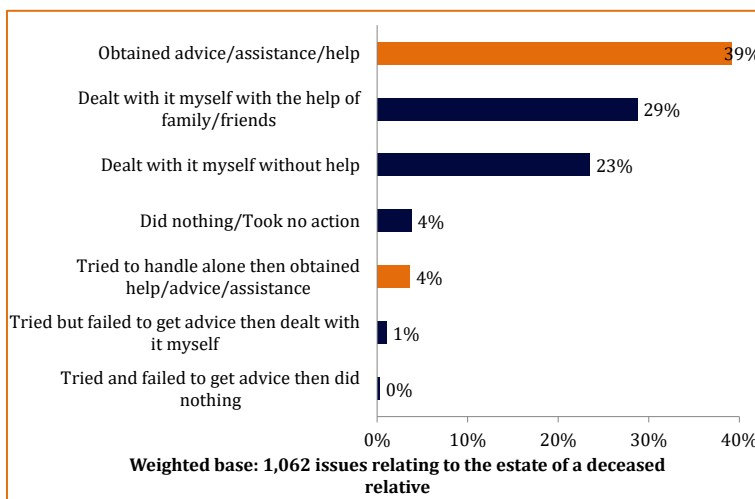


Source: EI analysis of Ipsos Mori (2016)

Of the 1,556 respondents who dealt with the estate of a deceased relative in the past three years, 1,043 respondents were asked further questions about their experiences. This is a weighted base of 1,062.

If respondents had dealt with the estate of a deceased relative, they were asked how they went about it. As can be seen from the following figure, 39% obtained advice and an additional 4% got help after trying to handle it themselves.

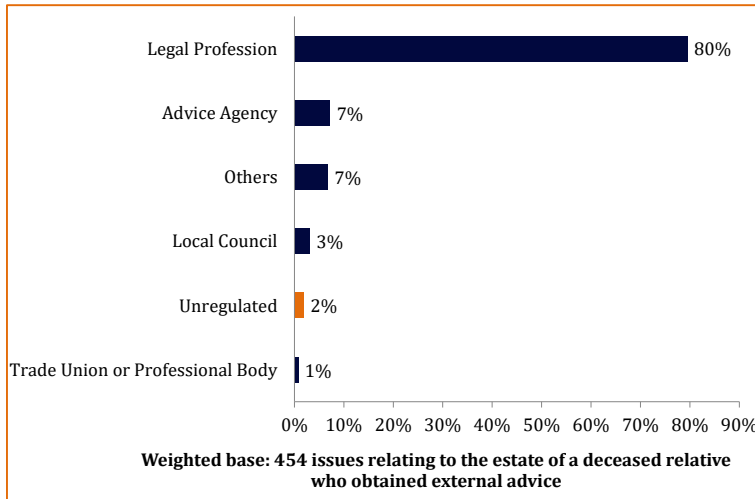
Figure 83. Which of these descriptions best indicates how you went about dealing with your issue?



Source: EI analysis of Ipsos Mori (2016)

Respondents were asked who their main adviser had been in dealing with the legal issue. The next figure demonstrates that 80% of respondents who dealt with the estate of a deceased relative in the past three years had a legal professional as their main adviser, compared to 2% who had an unregulated provider as their main adviser.

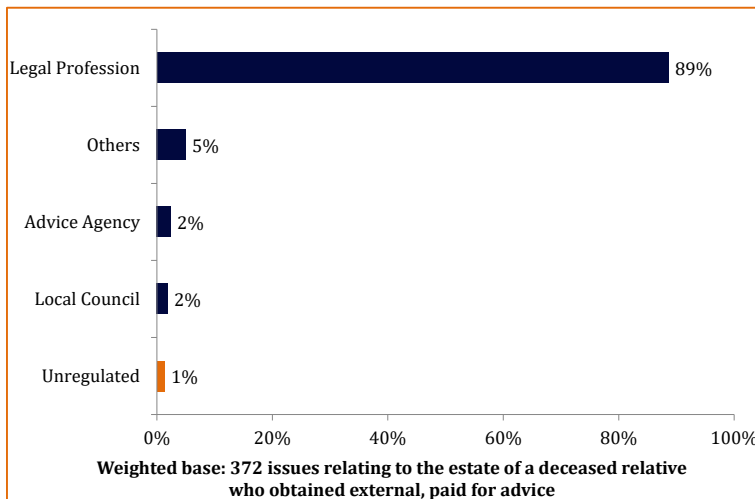
Figure 84. Which of the people that you contacted was your main adviser?



Source: EI analysis of Ipsos Mori (2016)

82% of the advice obtained was paid for. That is, 82 respondents did not pay for the advice they received and 372 did. The following figure illustrates that 89% of respondents who obtained paid for help had a legal professional as their main adviser, whereas 1% had an unregulated provider as their main adviser.

Figure 85. Which of the people that you contacted was your main, paid for adviser?



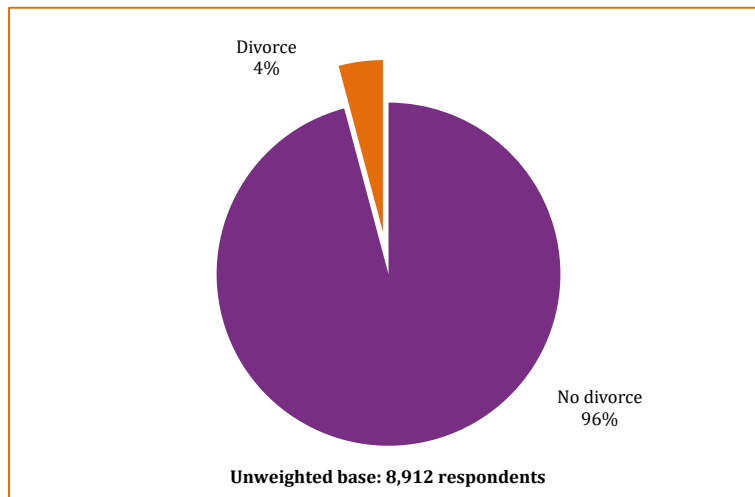
Source: EI analysis of Ipsos Mori (2016)

Both, the weighted and unweighted count of respondents obtaining paid for advice from unregulated providers is 5. We therefore do not compute subsequent splits of the data.

7.1.1.3. Divorce

The following figure illustrates that 4% of respondents had a legal issue that they identified as being a divorce.⁴⁴

Figure 86. Proportion of respondents reporting a divorce



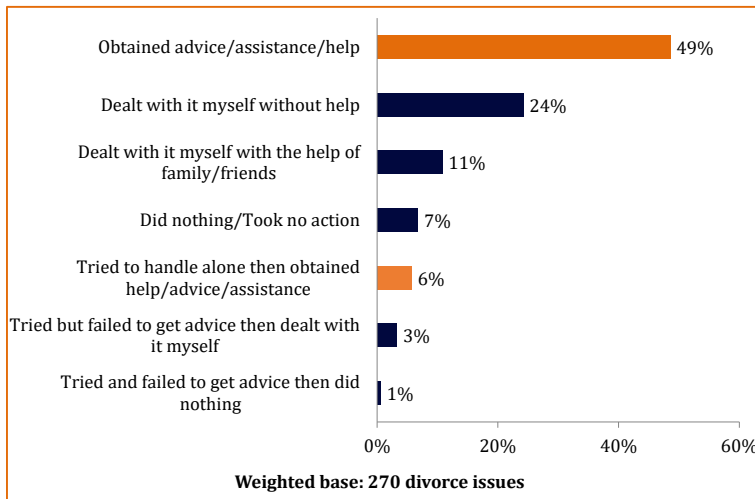
Source: EI analysis of Ipsos Mori (2016)

Of the 370 respondents that reported to have experienced a divorce in the past three years, 332 were asked further questions about it. This gives a weighted base size of 270 issues relating to divorce.

Those respondents were asked what actions they had taken. As can be seen in the figure below, 49% of respondents obtained advice and an additional 6% sought advice after trying to handle it themselves.

⁴⁴ Where respondents identified their issue as being a “divorce / dissolution of marriage or civil partnership”, they were asked to identify the issues specifically. In this analysis we focus on the issue that respondents identified as being “divorce (including divorce proceedings)”. It does not include the following, but related, issues: “formal separation from spouse”, “dissolution of a formal Civil Partnership”, “formal separation from a Civil Partner”, “break-up with partner you were living with”, or “other”.

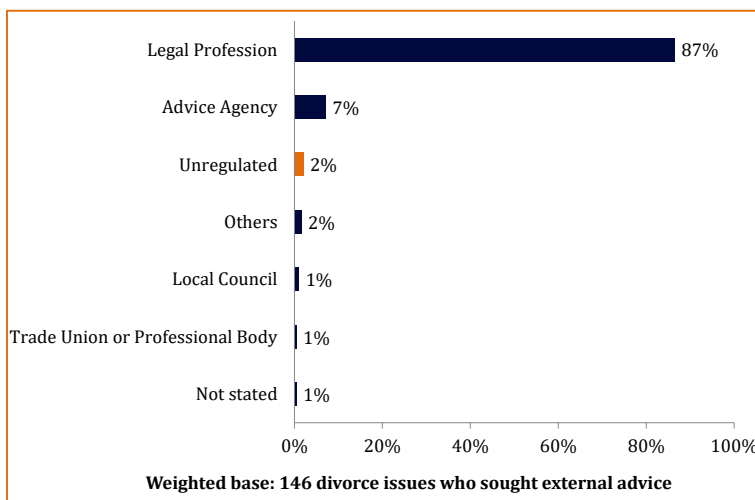
Figure 87. Which of these descriptions best indicates how you went about dealing with your issue?



Source: EI analysis of Ipsos Mori (2016)

Respondents who had obtained help were asked who their main provider had been. The following figure illustrates that 87% had a legal professional as their main adviser, and 2% an unregulated provider.

Figure 88. Which of the people that you contacted was your main adviser?

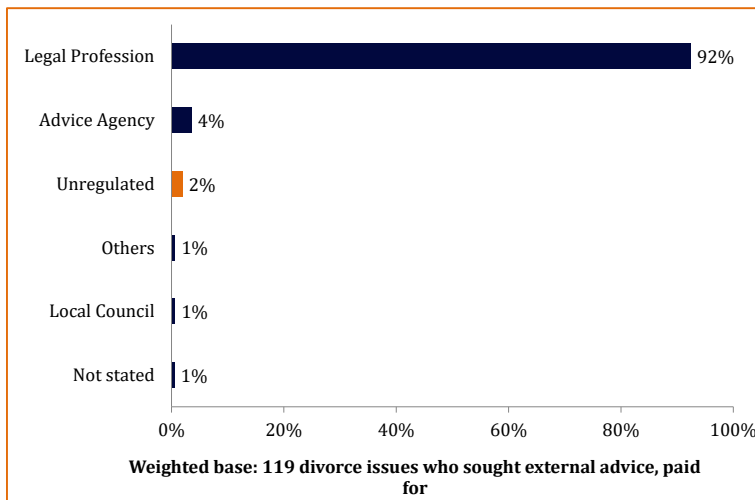


Source: EI analysis of Ipsos Mori (2016)

81% of the external advice obtained for divorce was paid for. That is, 27 respondents did not pay for the advice they received, and 119 did.

92% of respondents who got external, paid-for, advice for their divorce did so from legal professionals, whereas 2% obtained assistance from unregulated providers.

Figure 89. Which of the people that you contacted was your main, paid for adviser?

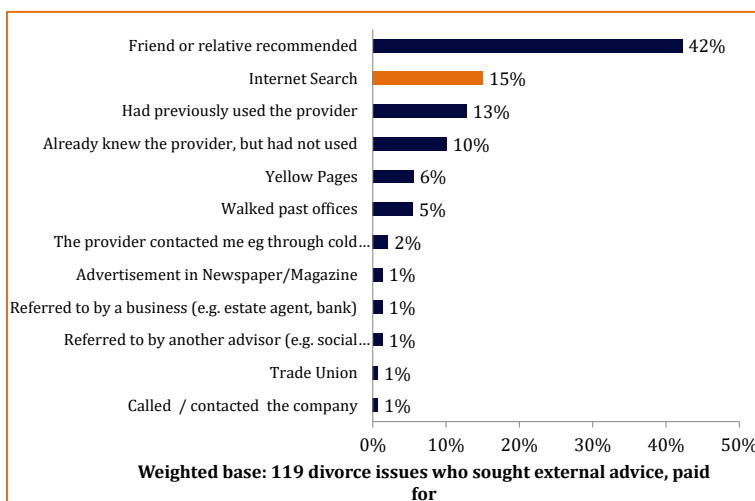


Source: EI analysis of Ipsos Mori (2016)

The weighted count of respondents obtaining paid-for advice from unregulated providers is 2 and unweighted 3. Due to the small sample size, we do not compute splits in the subsequent paragraphs based on regulatory status. We also do not use this data to estimate the number of clients unregulated providers serve, for the same small sample reason.

Respondents who had got paid for advice were also questioned as to how they found the main adviser they used. 42% of respondents experiencing a divorce and obtaining paid for advice found their main provider through recommendations from friends or relatives. 15% found their main, paid for provider through an internet search.

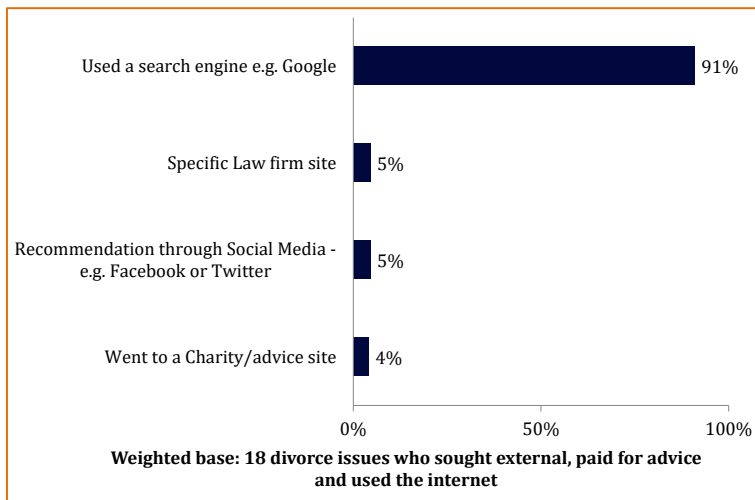
Figure 90. How did you find the main provider you used?



Source: EI analysis of Ipsos Mori (2016)

The 15% of respondents who had found their adviser through an internet search were further asked how they searched for the provider on the internet. 91% of respondents who had found their main, paid for provider through the internet found them through a search engine such as Google.

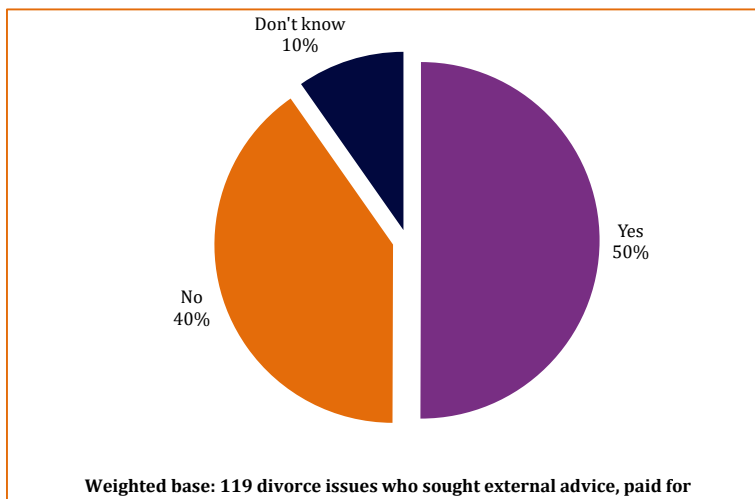
Figure 91. You said you used the internet, which of the following did you do?



Source: EI analysis of Ipsos Mori (2016)

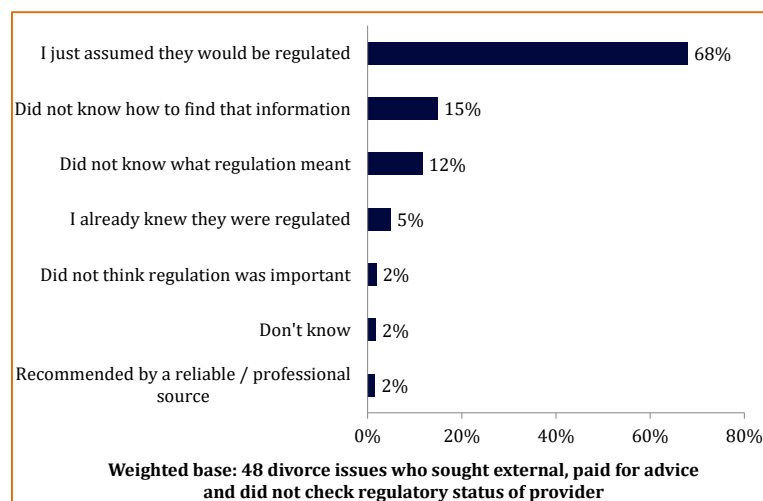
Respondents who had obtained paid for advice were further asked whether they checked the regulatory status of their main provider. 50% of respondents experiencing a divorce in the past three years and getting paid for advice said that they checked their main provider’s regulatory status. 40% did not check the regulatory status of their main provider and 10% did not know whether they checked it or not.

Figure 92. Did you check whether your main, paid for provider was regulated?



Source: EI analysis of Ipsos Mori (2016)

The 40% who experienced a divorce and who did not check the regulatory status of their main, paid for provider were asked why they did not check their regulatory status. The following figure illustrates the responses.

Figure 93. Why did you not check whether your main, paid for provider was regulated?

Source: EI analysis of Ipsos Mori (2016)

7.1.2. Legal Needs Survey 2015 – small businesses

YouGov were commissioned to conduct an online survey of small businesses in relation to their needs and experiences of legal services. This study followed on from a similar one conducted in 2013. The fieldwork was conducted in March 2015.

Small businesses were defined as small, private sector businesses and not-for-profit organisations, employing fewer than 50 people (including the owner-managers). A sample size of 10,528 was achieved.

Respondents were asked about their experience of problems they faced that may be considered as having a legal context or implications. A problem was defined as an issue that diverted or distracted them or anybody else within their business, in a significant way, from everyday work activities or responsibilities. Only problems that started within the last 12 months, or problems that started longer than 12 months ago but were still ongoing at the time of interview, are included. Respondents were prompted whether they had experienced one or more of 85 significant problems across several different categories (trading, tax, employment, premises, finance/debt, intellectual property, licensing/regulation, structure).

We first outline the findings of a separate study that focused solely on the survey, and then present the findings of our own analysis, which focusses on intellectual property advice.

7.1.2.1. Blackburn et al (2015)

The LSB commissioned Blackburn et al. at the Small Business Research Centre, Kingston University to undertake an analysis of the results of the online survey. Some of the relevant findings from this study are as follows:

- » The number of legal problems reported by small firms reduced significantly compared to the previous study in 2013. The most common problems related to trading (19% of firms reported such a problem), employment (6.5%) and taxation (6%). 2.9% of firms reported a problem related to intellectual property.
- » Other businesses were the main source of problems. About half the time the problem was perceived to have arisen due to the 'other side' being at fault.

- » About half of firms reporting a legal issue said it had a negative impact; about one quarter of them reported loss of income and one fifth reported health related problems. By 'scaling up' the reported lost revenue to the UK population of firms, it is estimated that the total annual losses to small firms due to legal problems is £9.79bn.
- » The large majority of firms had little contact with legal advisers. Less than one in 10 either employed in-house lawyers or had a retainer with an external provider. Over half of firms experiencing a problem tried to resolve it by themselves, and when advice was sought, accountants were consulted more often than lawyers.
- » Unsurprisingly, the cost of legal advice was found to be a major deterrent to taking up legal advice – about half of respondent disagreed with the statement 'lawyers provide a cost-effective means to resolve legal issues'. Those who actually used a lawyer have a much more positive view of their cost effectiveness.

In addition to the descriptive statistics that were used to arrive at the above finding, the authors also conducted regression analysis to investigate what factors affect the probability that a firm will experience a legal need. The analysis suggests that a firm is more likely to have an intellectual property problem if: it is older; it operates in the production or transport & communication sectors; or has between 10 and 49 workers. The analysis suggests that a firm is less likely to have an intellectual property problem if: it operates in finance or insurance & real estate; and has only one worker.

7.1.2.2. Our own analysis of the small business survey

Here we set out our own analysis of the small business Legal Needs Survey, especially in relation to intellectual property advice. We note that the data does not allow for identification or separation of unregulated providers. Our analysis is divided into three sections:

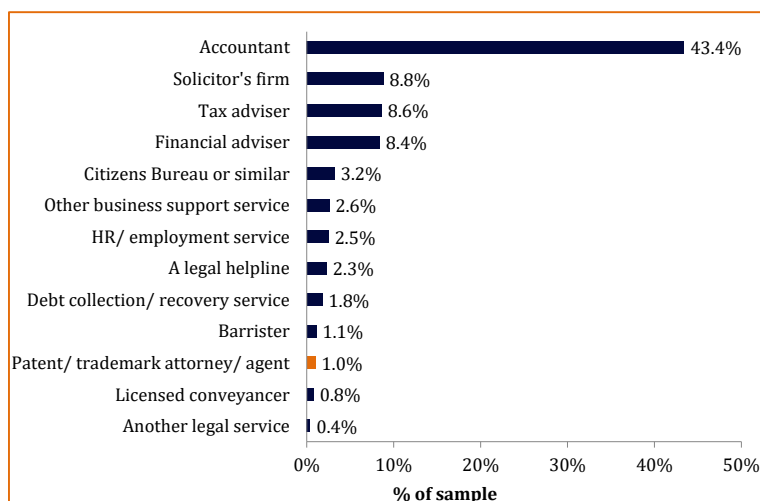
- » **Overview of respondents** gives a brief representation of the total sample which answered the survey.
- » **Use of intellectual property advice providers** identifies which providers are being used for assistance with intellectual property problems.
- » **Experience of intellectual property problems** explores the frequency and experiences of intellectual property problems.

Overview of respondents

From the total sample size we have cleaned out 164 observations as 160 cases were PLCs, 3 cases had no data and three cases had no size data (2 of those were PLCs and were cleaned out anyway). Consistent with Blackburn et al. (2015), our total sample size is 10,528. We have applied the same weights that reflect the UK business population as whole (BIS, 2014). Here we briefly present a quantitative description of the characteristics of the sample.

Use of intellectual property advice providers

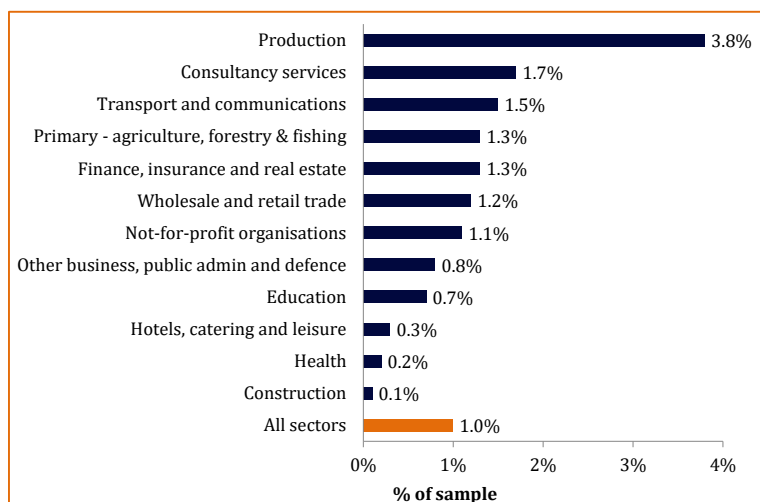
Respondents were asked which, if any, of a range of independent professional services the business had made use of in the last 12 months. As Figure 94 shows, accountants are the most used external services providers, followed by solicitor's firms and tax advisers. Only 1% of businesses used patent/ trademark attorneys/ agents (which could include both regulated and unregulated providers). This could be because not many businesses require external intellectual property advice, because other providers handle their IP issues (e.g. solicitors, legal helplines, etc.), or they handle it themselves.

Figure 94. Use of business support services in the past year

Source: EI analysis of Small Business Legal Needs Survey 2015

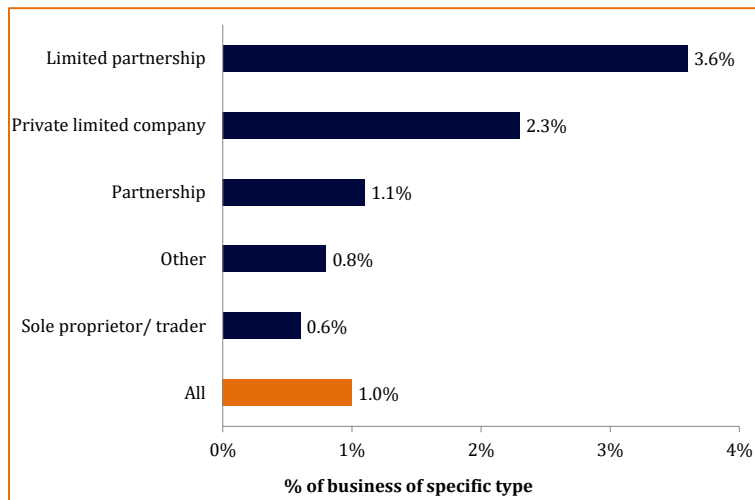
We have looked at the businesses who used patent/ trademark attorneys/ agents by sector and by their legal status.

Figure 95 shows that patent/ trademark attorneys/ agents were mostly procured by businesses in the production sector for external advice, followed by businesses in the consultancy services and transport and communication sectors.

Figure 95. Use of patent/ trademark attorney/ agent, by sector

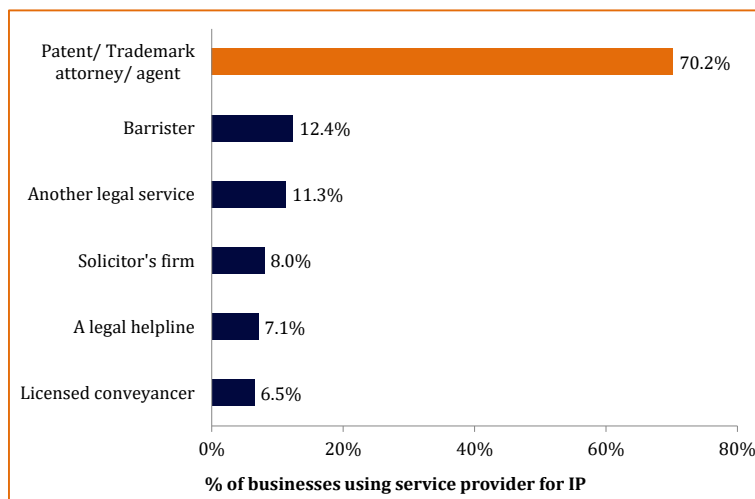
Source: EI analysis of Small Business Legal Needs Survey 2015

The figure below shows which types of businesses sought external advice from patent/ trademark attorneys/ agents. As can be seen, 3.6% of limited partnerships that sought external legal advice sought it from patent/ trademark attorneys/ agents.

Figure 96. Use of patent/ trademark attorney/ agent by legal status of business

Source: EI analysis of Small Business Legal Needs Survey 2015

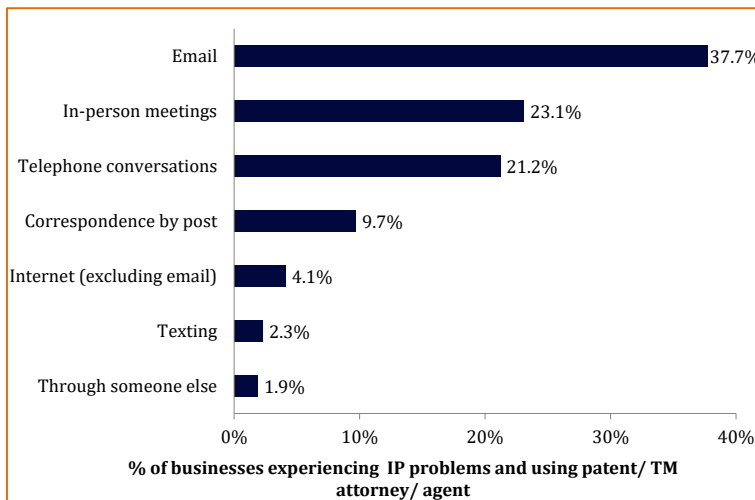
Respondents who experienced intellectual property problems received external advice mostly from patent/ trademark attorneys/ agents. A small tail of businesses who received IP advice did so from barristers, other legal services, solicitors, legal helplines and licensed conveyancers.

Figure 97. Intellectual property service delivery

Source: EI analysis of Small Business Legal Needs Survey 2015

Businesses who received external advice from trademark/ patent attorneys/ agents, did so mostly by email, followed by in-person meetings and phone conversations.

Figure 98. Mode of service delivery, patent/ trademark attorney/ agent

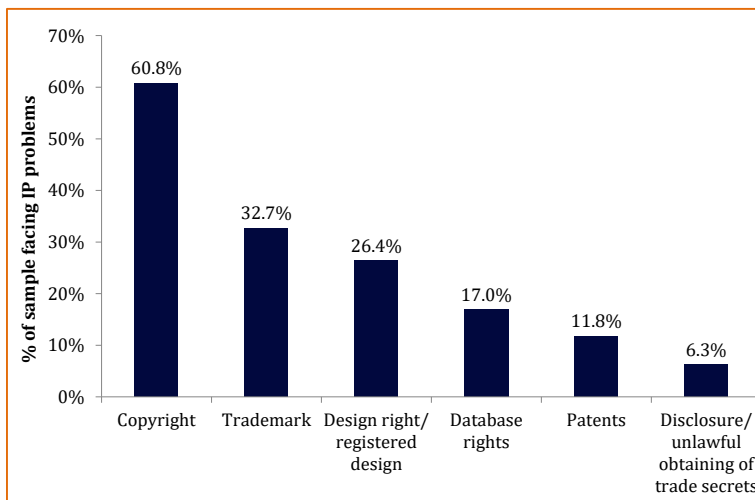


Source: EI analysis of Small Business Legal Needs Survey 2015

7.1.2.3. Experience of intellectual property problems

The majority of IP problems that businesses faced were copyright infringements, followed by trademark infringements on their business' IP.

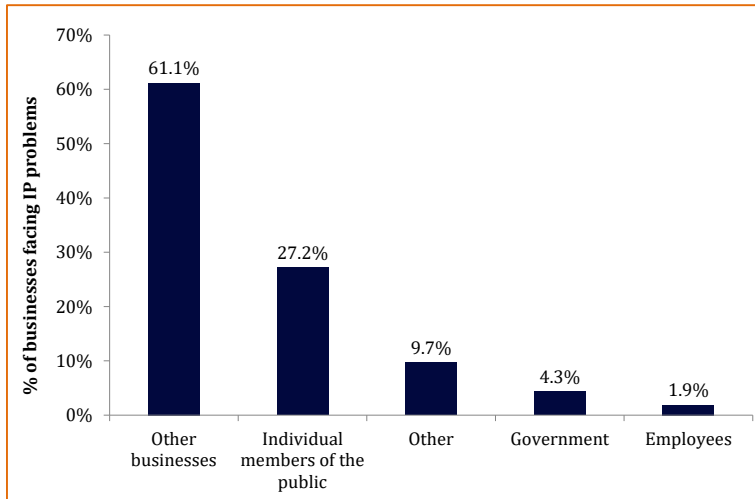
Figure 99. Experience of IP problems – type of problems



Source: EI analysis of Small Business Legal Needs Survey 2015

Respondents whose most recent issue was an intellectual property problem (1.3% of the total sample), experienced the majority of problems with other businesses (61.6%), followed by individual members of the public (27.2%).

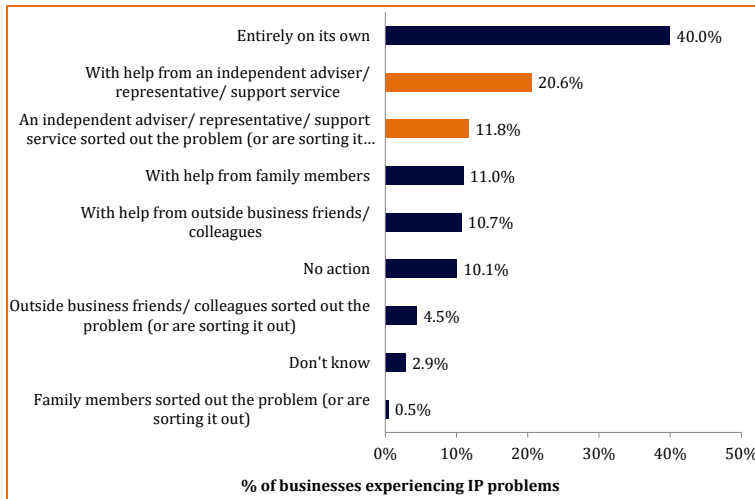
Figure 100. Origin of intellectual property problems



Source: EI analysis of Small Business Legal Needs Survey 2015

The majority of businesses who faced an IP problem solved it entirely on its own, followed by help from an independent adviser/ representative/ support service, as can be seen on the figure below.

Figure 101. Dealing with IP problems



Source: EI analysis of Small Business Legal Needs Survey 2015

If businesses dealt with IP problems with help from outside business friends/ colleagues and/ or with help of an independent adviser/ representative/ support service, the majority of these were barristers (23.6%), accountants (18.0%) or solicitors (14.2%).

Figure 102. Business received help from business friends/ colleagues and / or help of an adviser / representative / support service that were:



Source: EI analysis of Small Business Legal Needs Survey 2015

Annex B – Dr Andrew Mell’s review of voluntary and self-regulation

The Legal Services Board has asked Economic Insight to examine the provision of unregulated legal services so that they can gain a better understanding of the supply-side of this sector of the market. To that end, I have been asked to review the economic literature on self-regulation and voluntary regulation and come to a view on the applicability of this literature to the provision of legal services. This note provides a brief survey of the economic literature that is relevant in this area.

The rest of this note is organised as follows. Section 1 discusses why regulation of some sort might be important in the provision of legal services, particularly as regards the three areas raised by the Legal Services Board:

- will writing and estate management;
- family law; and
- intellectual property.

Section 2 considers the economic literature covering relational contracting and self-enforcing agreements as a means of self-regulation. Finally, Section 3 concludes by considering the extent to which these principles are applicable in the provision of legal services.

1 The Market for Used Cars

The provision of legal services may be vulnerable to the problem of asymmetric information. Asymmetric information is an area first brought to economists’ attention by Akerlof (1970) with reference to the market for used cars. Akerlof’s observation was that used cars vary in quality. Buyers would be willing to pay a higher price for a good quality used car unlikely to breakdown in the near future than they would for an ‘old banger’ likely to breakdown halfway down the street. The problem is that they can’t tell whether a used car is high quality or low quality until after they’ve paid for it. So they would only be willing to pay an average price for a given used car available on the market. This average price might be lower than the minimum price the seller of a high quality car would require in order to part with their car. As a result, high quality used cars are withdrawn from the market and only low quality used cars are traded, despite the facts that there are gains to trade between car buyers and owners of high quality used cars.⁴⁵

Legal services may be vulnerable to the problems of asymmetric information. A legal professional will know far more than a prospective client about the quality of the services they are providing. The quality of services offered by legal professionals may vary because of the ability or experience of the professional or because of the level of effort the professional exerts. The quality of the services that were offered may not be discovered by the customer until sometime after the services were discharged.⁴⁶

The problems of asymmetric information in the market for legal services could compromise the ability of the market to deliver high quality legal advice. Uncertainty about the quality of the legal services they are purchasing could lead buyers to lower their willingness to pay. Of course the provision of higher quality services comes at a higher cost to the provider. Better lawyers

⁴⁵ An accessible introduction to the issues of asymmetric information can be found in Mell and Walker (2014, Chapter 9).

⁴⁶ Indeed, in the case of writing a will, the quality may never be discovered by the client, but might only become clear to their immediate family after they die.

have better outside options and all lawyers expect to be paid for their efforts. So uncertainty over quality could drive the price consumers are willing to pay below what good lawyers require in order to exert effort.

2 Voluntary & Self-Regulation

There are several ways in which the issue of asymmetric information could be resolved.

2.1 Internalized Moral Regulation

Internalised moral pressure, or peer pressure might act as an internal break on providers of legal services and prevent them from offering a substandard service. Such internalised norms could operate through professionals' self-identification as a lawyer as an example of the economics of identity pioneered by Akerlof and Kranton (2000). If that is the case, then any trade associations maintaining records of the behaviour of their members would be acting like assurance organisations described by Baron (2010).

Such internalized moral pressure would effectively change the payoffs of providers of services. Providing substandard service would become more costly overall than providing a quality service. Although the actual cost of providing substandard service would still be lower, there would be an additional psychological cost to providing substandard service as opposed to a quality service. This additional psychological cost could be a result of violating an internalised moral norm, or of acting contrary to their 'identity' as a lawyer.

2.2 The 'Folk Theorem'

Perhaps the most obvious way of resolving such issues would be via repeated interactions. If the customer requires the services of a legal professional on a regular basis, they can police the relationship themselves by resolving to 'punish' the legal professional by the withdrawal of their custom should the standard of service ever fall short of what they expect. They might give the professional an opportunity to make redress before resorting to that threat. If the legal professional is patient enough, then the present value of future custom from a client will be greater than any benefit they may get from shirking their responsibilities in any period and they will continually provide high quality services. Such a solution is referred to by economists as the 'Folk Theorem'.

A problem arises with this solution in industries where there is little repeat custom. This will be especially relevant in the fields of will writing and divorce. An individual is not likely to write many wills, and (hopefully) will not be a repeat customer of a divorce lawyer. In such circumstances, the 'threat' of the withdrawal of future custom is irrelevant as there will be no future custom. However, economists have noted that although there may be no future custom from the customer faced today, there will be future custom from other future customers. How a lawyer treats customers today may very well affect the willingness of future customers to do business with them. Kandori (1992) and Okuno-Fujiwara and Postlewaite (1995) produce models demonstrating the theoretical underpinnings of such self-regulation for fear of community punishment.

2.3 A Role for Organisations

However, for these models to produce outcomes where quality services are provided, information must flow smoothly throughout the community. That is the only way other

potential customers will know to avoid doing business with a provider who has provided low quality services in the past. As Akerlof (1970) points out, market participants have every incentive to set up market institutions which allow them to trade. Many institutions can be explained as a means of promoting information flows so that those with a record of failing to make restitution after providing substandard services can be identified.

For example, Greif (1993) argues that the Maghrebi Traders of the 11th century in the Mediterranean represent an example of an institution promoting such information flows. Milgrom, North and Weingast (1990) make a similar argument with respect to the medieval “law merchant”, and Greif, Milgrom and Weingast (1994) make a similar argument with respect to the merchant guilds as a way of enforcing multilateral punishments against medieval rulers. A more recent example comes from Bernstein (1992) who examines the extra-legal mechanisms used by diamond traders to ensure honest trade.

An excellent survey of this literature is contained in Dixit (2003, 2004) which suggests that various trade associations have developed similar functions. The most obvious example with which most people will be familiar would be Credit Reference Agencies which report to various lending institutions on the past behaviour of borrowers as a means of assessing their likelihood of default.

That such organisations allow their members to coordinate punishment responses against people who cheat their members is an obvious benefit. However there is frequently a more subtle benefit. These organisations, when they are truly effective, also grant their members the right to be punished. It may at first appear unclear why such a right is valuable. However, Schelling (1960) points out that, the right to be sued is the power to make a promise: to borrow money, to enter a contract, to do business with someone who might be damaged. If suit does arise, the “right” seems like a liability in retrospect; beforehand it was a prerequisite to doing business.⁴⁷

So the right to be punished is valuable, because without it, one lacks the ability to make a promise.

Given that Schelling is talking about the right to be sued, that raises the question: Why is the law an insufficient guarantor and why is there a role for trade associations in punishing their members? There are many potential answers, and Dixit (2003, 2004) offer a few. For our purposes here, the main reasons are:

- » Use of the formal legal process is frequently time consuming and expensive. Bodies such as trade associations can make judgments much more quickly.
- » Bodies such as trade associations frequently have expertise and experience which allows them to make much more accurate judgments in their own fields. By contrast, courts are generalists whose rules of evidence may lead them to ignore information that is genuinely useful in some fields.

To an extent, such organisations could be seen as developing and policing a group reputation for their members. The reputation has value for all of the members, because it generates the expectation of a high quality of service from potential customers. This expectation increases their willingness to pay. In particular the promise that a member will be punished if they do

⁴⁷ Schelling (1960, p.43)

anything to bring that reputation into disrepute is valuable for two reasons. First, it offers reassurance to potential customers; and second, it prevents other firms from free-riding on that group reputation.

The presence of a threat of some kind of punishment does seem to be important for such voluntary regulation to be successful. Lenox and Nash (2003) examined industry self-regulation in terms of reducing environmental damage from industrial activities. Their work suggests that programs that lack the power to expel non-compliant members tend to attract worse polluters. It seems that worse polluters are tempted to join such programs if there is no enforcement as they can then free-ride on the public relations benefits of others' pollution control efforts.

2.4 Reduced Barriers to Entry

A potential regulatory concern as regards trade associations concerns their potential to be anti-competitive in providing a forum for their members to share information, particularly about the prices they are charging. However, the considerations above suggest a reason their impact might actually promote competition. Klein and Leffler (1981) and Shapiro (1983) have shown how large upfront irretrievable investments are frequently required for a firm to invest in their reputation in order to persuade potential customers that they will provide high quality services. By building and policing a group reputation for high quality a trade association can reduce barriers to entry and so promote competition.

3 Application to the Provision of Legal Services

There are various reasons why one might expect to see voluntary and self-regulation emerge in the provision of legal services.

First, as stated above, there are opportunities in the process of legal training to instil in lawyers a sense of identity as a legal professional. Personal integrity can be an important part of that identity as a legal professional. In that way a psychological cost will be incurred whenever the professional acts in a manner that is contrary to that personal integrity, such as providing a substandard service. Such an internalised mechanism can operate even in the absence of trade associations. However trade associations could be complementary by increasing the moral pressure to conform to such norms and so increasing the psychological costs of failing to conform.

Another mechanism through which a form of voluntary regulation may be effective is repeat purchases. The providers of legal services provide high quality services because if they do not, they will lose the potential repeat purchases of that client. This mechanism can also operate even in the absence of any trade associations. However, it is only likely to work if customers are sufficiently likely to require the services of a specialist legal professional again. This may be a possibility in certain areas of intellectual property law, but seems unlikely in the cases of family law and will writing and estate management.

A final method of voluntary regulation that we should expect to see in the legal profession is where practitioners voluntarily sign up to a trade association of some kind. The association has the power to take disciplinary action against its members. Membership of the association provides consumers with the assurance that they will get a high quality of service and so increases their willingness to pay. The association effectively builds, licenses and polices a collective reputation for practitioners. This gives some bite to the most extreme form of

disciplinary action such an association can take, which is expulsion from the association. Expulsion means that a practitioner can no longer benefit from the association's group reputation.

In this context, it is notable that the Society of Will Writers has a code of conduct which governs, among other things, how members should deal with complaints. This code warns that "Any breach of this Code of Practice is considered by the Society as a serious matter and may result in disciplinary proceedings being instigated by the Society against the Member."⁴⁸

The code of practice, and the threat of disciplinary proceedings constitute, for the professional, the right to be punished. The right to be punished is valuable because it provides the power to make a credible promise. Without that power, no customer would believe that a professional will exert costly effort and will only be willing to purchase low quality legal services. Provided the benefits in terms of continued business outweigh the costs in terms of fees and costly incorrect adjudications against the professional, the professional will be willing to purchase such a right to be punished.

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⁴⁸ See <http://www.willwriters.com/code-of-practice/>

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