

“A framework to monitor the Legal  
Services Sector”

Using the Oxera Framework

July 2012

# We will cover:

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- Relevance – why a framework is useful
- Context – *Hypothetical probate regulator*
- Theory – background to the framework
- Application – *Hypothetical probate regulator*
  
- *Range of regulators here = range of different perspectives*
- *Open discussion*
- *No rights or wrongs*

# Relevance – general

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- Targeting of regulatory protection for consumers
- Assessing impacts and proportionality of specific elements of regulation
- Consistent data collection and terminology
- Economic definition of the legal services market

# Relevance – Regulatory Objectives

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## **S.28 Approved regulator's duty to promote the regulatory objectives etc**

- (1) In discharging its regulatory functions (whether in connection with a reserved legal activity or otherwise) an approved regulator must comply with the requirements of this section.
  
- (2) The approved regulator must, so far as is reasonably practicable, act in a way—
  - (a) which is compatible with the regulatory objectives, and
  - (b) which the approved regulator considers most appropriate for the purpose of meeting those objectives.
  
- (3) The approved regulator must have regard to—
  - (a) the principles under which regulatory activities should be transparent, accountable, proportionate, consistent and targeted only at cases in which action is needed, and
  - (b) any other principle appearing to it to represent the best regulatory practice.

# Relevance – Better regulation

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- **Meeting better regulation principles**
- **Limited resources so need to prioritise activity**
- How do you analyse and understand the market(s) in which those you regulate operate?
- How do you understand if existing regulation is necessary?
- How do you understand if regulation is working?
- How do you demonstrate this to others?

# Relevance – Bad regulation

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- *“It is clear what bad regulation is. It is regulation that does not achieve its ends, is overly expensive, intrusive, resented and rigid, and lacking in understanding of the objectives of the overseen”.*
- *“Over-prescriptive and costly regulation puts the British professions at a disadvantage compared with their Continental competitors and increased costs put in jeopardy the government’s intentions to ensure that innovative SMEs should be encouraged to flourish in the UK”.*

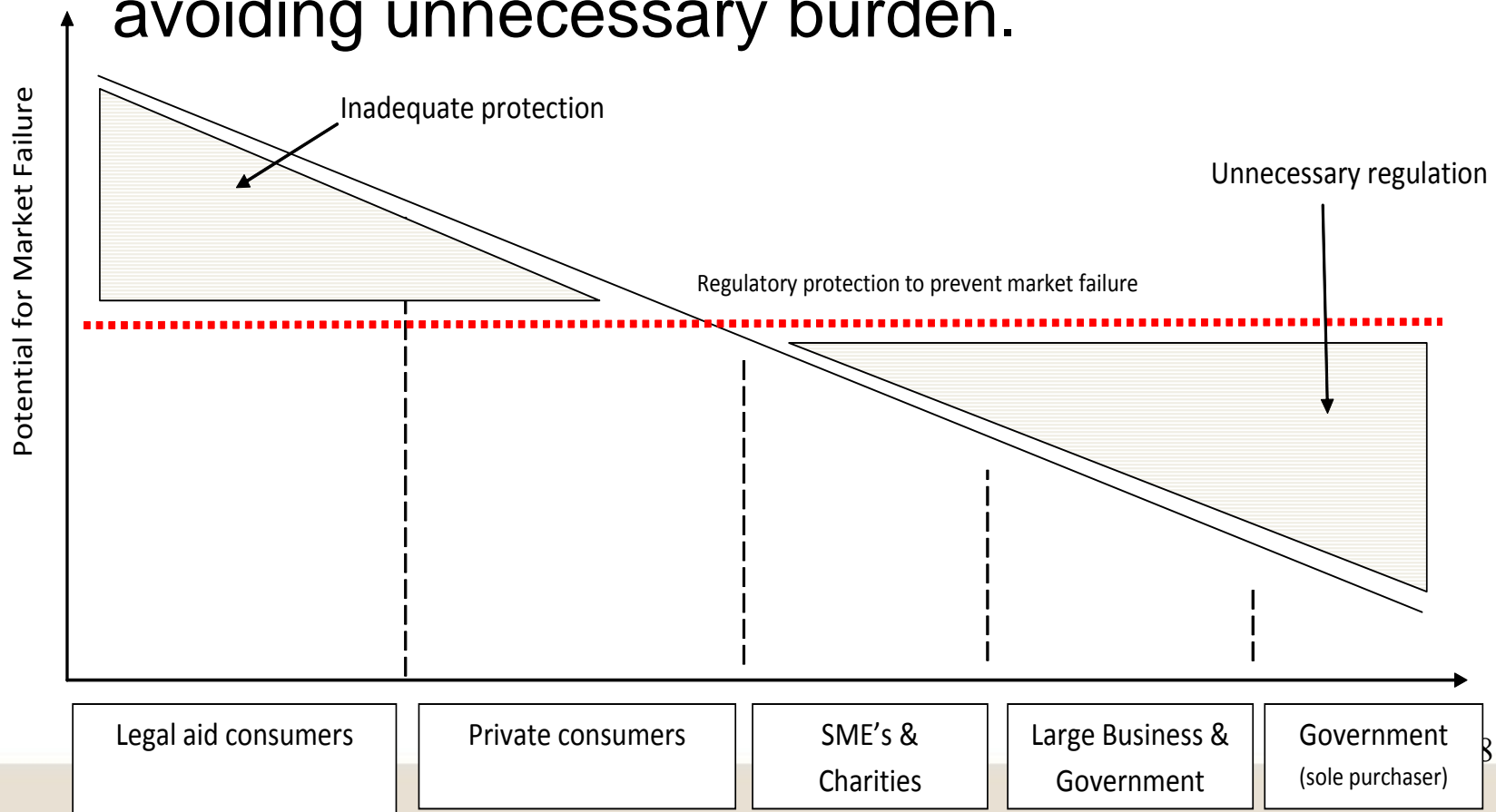
# Relevance – Example: OFR, SRA, & Client Care



- "Firms need to think carefully about how to deliver an appropriate approach to client care
- "For example, if a firm specialises in family law and has a client base where some do not speak English particularly well, it is unlikely that simply putting a lot of information into a long client care letter will be sufficient. Yet there are firms who have told me that they do just that!. They do it because it is what they have always done, they thought it was compliant with the old code, and are assuming it will continue to be compliant.
- "Under the old regulatory framework, compliance might have been achieved by providing that client with a letter detailing all the ins and outs of the legal process, and what the firm would be providing. For many clients under the new regime, this may fit their needs; for others it may not.
- "It is clear that the same approach for each client does not always work, particularly when they are vulnerable."

# Relevance – Better regulation

- Protecting the right groups of consumers and avoiding unnecessary burden.





# Minimising burden

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- *“AR’s raised their frustrations at being asked to provide data, which is time consuming and costly to produce, for the purposes of generating stats, graphs and charts etc. with no real benefit to either legal practitioner or the consumer”*
- Scalable - Not about data for data’s sake – Remember: *so far as is reasonably practicable*
- Better regulation means transparency
- Transparency means providing sufficient information

# Relevance - Regulatory standards

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- *“We would expect an AR/LA with a good understanding of the market(s) it regulates to be able to provide evidence about the types of consumer problems that occur, the extent to which supply-side substitution is possible, the barriers to supply-side substitution, the risk of consumer detriment that arises and an assessment of whether any regulatory action is required to mitigate that risk”.*

# Context – *Hypothetical probate regulator*

# Hypothetical example: The Probate Regulator & Complaints

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- Scenario:
  - Probate regulator only regulates probate. One of a number of regulators of probate.
  - LEO reports Probate Complaints rise by 25% in two year period.
  - LEO classify these as complaints about costs.
  - Press headlines interprets this as falling quality and consumers being 'ripped off'.
  - Government and Consumer groups pressure for action from the probate regulator

# Hypothetical example: The Probate Regulator & Complaints



- Your Chair wants you need to look at 3 possible courses of action:
  1. Price regulation on all probate work e.g. 10% of value of the estate.
  2. Specific CPD for providers of probate
  3. Providing more information to consumers on probate services.
- For each course of action list:
  - what evidence the Probate Regulator needs to collect in determining the next steps
  - what are the possible unintended consequences
- Write these up on a flipchart

# Theory:

# What is the legal services market?

Market: The action or business of buying and selling; a commercial transaction, a purchase or sale; OED 2011

# A traditional view:

## Legal Services in England & Wales

331k people employed in legal services in UK

### Unreserved

Unknown number of persons offering unreserved services in E&W. In excess of 130,000 people

### Reserved

136k persons authorised to offer reserved services

Legal practice

In House

80% Legal Practice  
persons authorised to offer reserved services

20% In House  
persons authorised to offer reserved services

NFP  
E.g. 769  
CABs,  
56 Law  
Centres

For Profit  
E.g. –  
1,823  
members of  
the Society of  
Will Writers

NFP

For Profit

Solicitors  
- 87,270

Barristers  
- 11,706

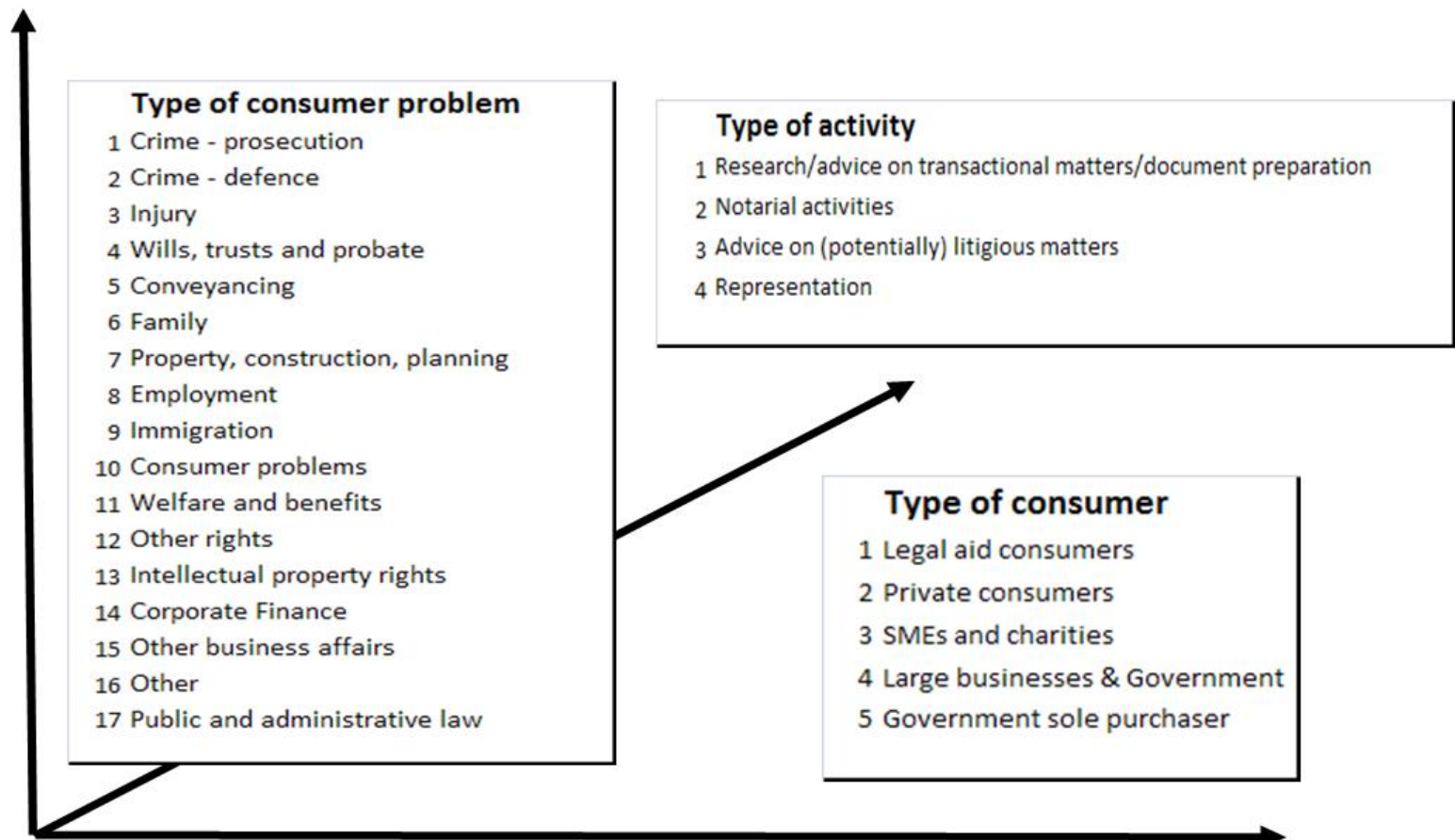
Others -  
9,672

Solicitors –  
23,311

Barristers -  
3,040

Others –  
1,557

# Oxera identifies a group of markets....







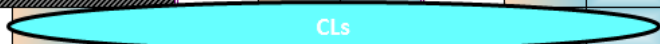
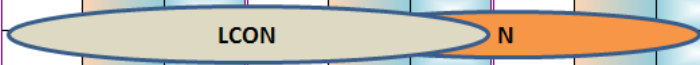




# ..and different regulatory barriers to entry for type of supplier



Type of Consumer	Legal aid consumers			Private consumers			SMEs and charities			Large business & Government			Government sole purchaser		
	Research	Advice	Representation	Research	Advice	Representation	Research	Advice	Representation	Research	Advice	Representation	Research	Advice	Representation
Type of Activity															
Type of consumer problem															
Crime - prosecution															
Crime - defence															
Injury															
Wills, trusts and probate															
Conveyancing															
Family															
Property, construction, planning															
Employment															
Immigration															
Consumer problems															
Welfare and benefits															
Other rights & civil liberties															
Intellectual property rights															
Corporate Finance															
Other business affairs															
Other															
Public & admin. law															



# Scalability –

## Conveyancing example

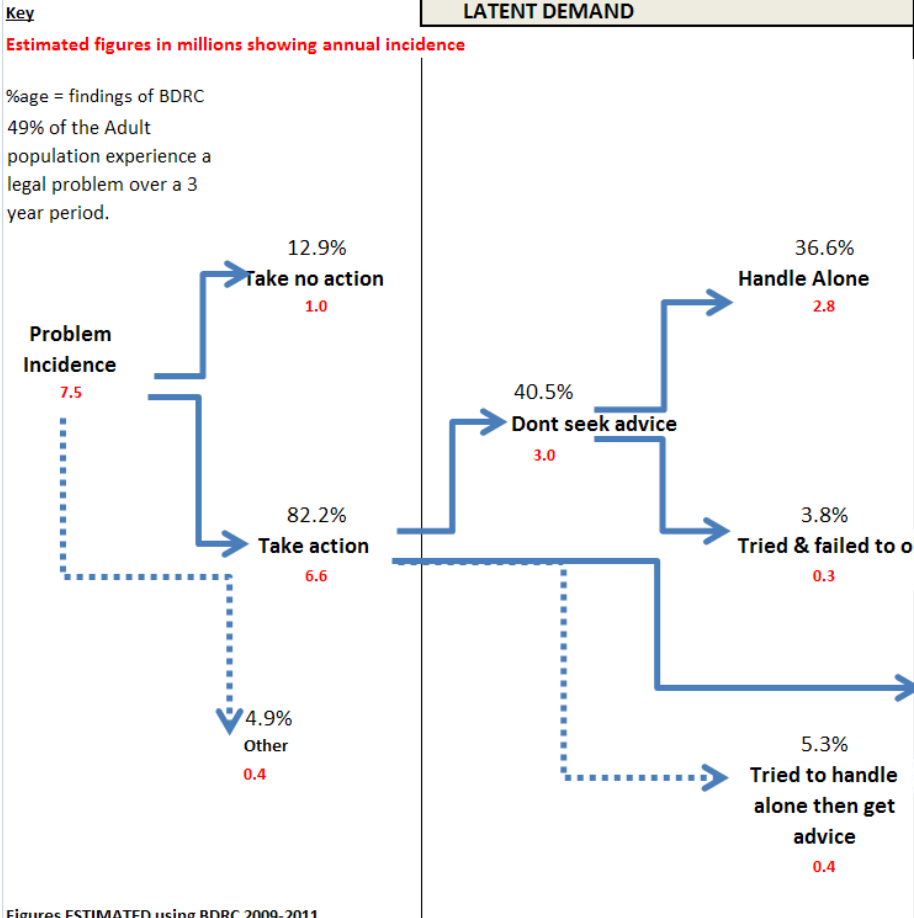
- Designed to cover the whole range of legal services
- BUT scalable to focus on specific areas

The type of consumer problem	Conveyancing	Residential	Commercial
The type of consumer		Private consumers	<ul style="list-style-type: none"> <li>- SMEs and charities</li> <li>- Large business and government</li> </ul>
The type of activity		Research, advice on transactional matters and document preparation.	Research, advice on transactional matters and document preparation.

# Demand side substitution: Individual consumers



**POTENTIAL WHOLE MARKET**



**MARKET DEMAND**

**Sources of Advice - Any query**

Source of Advice	Use
General Enquiries at your local council	2.6%
Council Advice Service	2.3%
Trading Standards	2.0%
Another Council/Government Department	1.9%
Specialist will-writer	2.2%
Citizens Advice Bureau	11.8%
Law Centre	1.4%
Another Advice Agency	2.6%
Trade Union/Professional body	2.1%
National or local charity	1.0%
<b>Solicitor</b>	<b>45.4%</b>
<b>Barrister</b>	<b>1.3%</b>
<b>Licensed Conveyancer</b>	<b>2.3%</b>
<b>Notary</b>	<b>0.2%</b>
<b>Trade Mark Attorney</b>	<b>0.1%</b>
<b>Patent Attorney</b>	<b>0.1%</b>
<b>Law Cost Draftsman</b>	<b>0.2%</b>
Other Lawyer	0.8%
The Police	2.4%
Your employer	0.8%
An insurance company	3.0%
A doctor or other health worker	1.0%
A Jobcentre	0.6%
A social worker	1.0%
An MP or local councillor	1.1%
Accountant	0.4%
Bank/Building Society	1.6%
Financial Adviser	2.1%
Trust Corporation	0.1%
Claims Management Company	1.1%
Employment Adviser	0.6%
Immigration Adviser	0.1%
Any other body/organisation	4.1%

**AUTHORISED PERSONS DEMAND**

Use more than one source of advice

Source of Advice	Use	Value
Solicitor	45.4%	1.4
Barrister	1.3%	0.0
Licensed Conveyancer	2.3%	0.1
Notary	0.2%	0.0
Trade Mark Attorney	0.1%	0.0
Patent Attorney	0.1%	0.0
Law Cost Draftsman	0.2%	0.0

**1.6**  
**21%**  
 of those with a problem

Figures ESTIMATED using BDRC 2009-2011



# Applying the model

# Hypothetical example: The Probate Regulator & Complaints

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- Revisit:
  - 3 courses of action and the evidence identified
  - Applying the framework how does this change?
  - Write these up on a flipchart



# Hypothetical example: The Probate Regulator & Complaints

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- Using Oxera Framework basic areas include:
  - Which lawyers provide probate services
  - What are the entry requirements
  - Which consumers use probate services
  - Extent of probate ‘clustered’ with other problems
  - Detailed analysis of LEO complaints data (consumer, provider, etc)

# Hypothetical example: The Probate Regulator & Complaints



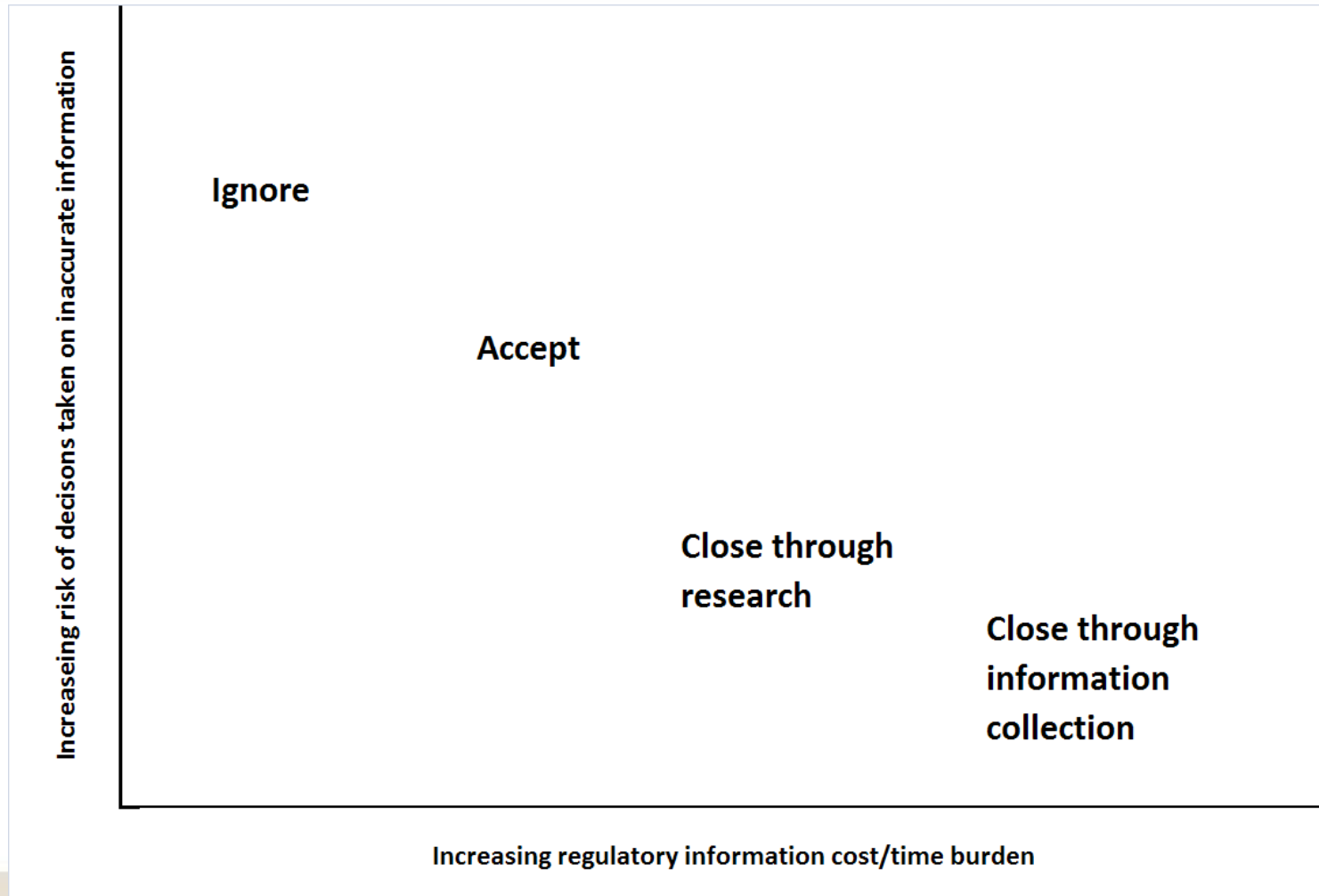
- Oxera List of Indicators (Annex 2 of the report):
  - Quality
    - Probate Registry rejection rates
    - Compliance rates with quality regulations by probate entities
    - Changes to qualifications for authorised staff
  - Consumer complaints rates across legal services
    - LEO activity to raise awareness
    - Assess whether better enforcement of 'signposting'
  - Changes to market entrants
    - Significant market entry
    - Barriers to entry preventing new market participants
    - Trends in volume of probate applications

# Applying the model – information

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- Do you have all the information you need?
- Yes → transparency
- No:
  - Lots of information already published:
    - See “Market impacts of the Legal Services Act – Interim Baseline Report”
  - Share and publish what is available
    - Do other have the information
  - **Not** advocating information collection for the sake of it
    - Cost benefit analysis

# Applying the model – information



# Applying the model - Indicators and data

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- Section 3. Provides a range of indicators to monitor change:
  1. Drivers
  2. Market functioning
  3. Composition of supply
  4. Market outcomes
    - Detail set out in Annex 2
- Section 4
  - Practicalities of collecting and interpreting the data

## In summary:

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1. Designed to provide a systematic way of targeting regulation and understanding change
2. Applies to whole market BUT rarely necessary so scalable
3. Not automatic information collection
4. Economic description but regulatory application
5. Better regulation does mean thinking about 'market' context

Thank you for your time

Any questions?