

Research Specification: Scoping a project to understand the proportionality of legal services regulation

Purpose

The purpose of this research is to develop an approach to collecting and analysing data to help the support the LSB in developing a future project looking at the proportionality of regulation in legal services. The full project looking at proportionality will be commissioned separately following the conclusion of this project.

Background

The LSB has been set up to reform and modernise the legal services market in the interests of consumers, enhancing quality, ensuring value for money and improving access to justice across England and Wales. The LSB will achieve this pursuing its regulatory objectives¹ and providing regulatory oversight for the eight approved frontline regulators². All approved regulators share these regulatory objectives.

In July 2012 the published the Government's report of its first triennial review of the functions of the LSB. It recommended to retain the functions and form of the existing LSB. Our response to the triennial review made it clear that we continue to hold the pursuit of the regulatory objectives central to our work. To achieve these objectives we believe that regulation should be consistent with the principles of better regulation developed by the Better Regulation Taskforce in 1997. Five principles were identified as the basic tests of whether any regulation is fit for purpose:

1. **Proportionality:** regulators should intervene only when necessary; remedies should be appropriate to the risk posed, and costs identified and minimised.
2. **Accountability:** regulators should be able to justify decisions and be subject to public scrutiny.
3. **Consistency:** Government rules and standards must be joined up and implemented fairly.
4. **Transparency:** regulators should be open, and keep regulations simple and user-friendly.
5. **Targeting:** regulation should be focused on the problem and minimise side effects.

All regulators must target their regulatory arrangements carefully as regulation imposes costs, as well as the intended consumer benefits. Regulatory costs are important to monitor as they are passed either directly or indirectly to suppliers of legal services resulting in some combination of all or some of: reduced profitability; reduced quality; and/or increased price. Furthermore regulations and the wider accompanying arrangements can effect the operation of a competitive market, placing barriers to entry and exit to the market and preventing competition within the market.

¹ <http://www.legislation.gov.uk/ukpga/2007/29/section/1>

² The Law Society, General Council of the Bar, Council for Licensed Conveyancers, The Institute of Legal Executives, The Chartered Institute of Patent Attorneys, The Institute of Trade Mark Attorneys, Association of Cost Lawyers, Master of the Faculties.

Given this, it is necessary to consider the costs imposed by regulatory arrangements carefully to ensure that they are consistent with regulatory best practice and risks posed to the regulatory objectives. Our work aims to both assess the costs imposed by regulation and legal regulatory structures and seek to understand those areas where regulatory burdens could be reduced while still delivering the regulatory objectives.

Specifically we committed to:

- Opening an honest debate about the cost of regulation in legal services - this will be achieved by publication of all of our analysis and by inviting feedback from stakeholders.
- Understanding the costs imposed by the LSB and OLC – this will be achieved by analysing published data and publishing resulting reports.
- Understanding more about the cost of regulatory arrangements imposed by the frontline regulators – this will be achieved through research and analysis looking at specific areas of regulation.

The LSB believes that the best way to achieve the regulatory objectives is through market liberalisation and regulatory simplification. Disproportionate (where unnecessary or ineffective) regulation must be removed or reformed, regulation targeted to where needed, to ensure that competition can deliver better outcomes for consumers of legal services.

This project is specifically focused on developing a methodology and plan for assessing the proportionality of specific regulatory arrangements imposed by legal services regulators. In particular the cost of regulation in the context of its desired aims and the broader principles of better regulation. The end assessment should include direct (e.g. cost to a firm) and indirect impacts (e.g. barrier to entry preventing competition).

The LSB commissioned the Regulatory Policy Institute to consider the economic features of the legal services market that can be seen to justify regulatory intervention³. RPI grouped the potential justifications into three areas: public policy objectives; problems caused by the nature of legal services; and problems caused by sector organisation. This analysis can support the development of a framework for judging the intended benefits of regulatory arrangements.

In any area of regulation, the specific characteristics of the market (whether the nature of the product/service or the buyers, sellers or structural organisation of the market) will impact on the particular need for regulation. Such market characteristics are vital to an assessment of the proportionality of regulation. It is further necessary, when considering the proportionality of regulatory intervention, to consider the diversity of the market itself. To help understand how best to analyse market diversity and consider the specificity of different market segments we commissioned OXERA to develop a market segmentation model⁴. This model provides a structure that can be used to analysis the differential impact of regulatory arrangements across the wider legal services market.

³ <https://research.legalservicesboard.org.uk/wp-content/media/Why-regulate-legal-services-RPI-report.pdf>

⁴ <https://research.legalservicesboard.org.uk/wp-content/media/A-framework-to-monitor-the-legal-services-sector.pdf>

Aims and Objectives

This project is aimed to support the LSB by developing a full project plan for delivering an analysis of the proportionality of legal services regulation. This part of the project is not intended to produce and analyse the actual costs of regulation, instead it should prepare the LSB for a later project which would deliver this analysis. This project should provide the LSB with project plan that could be put out to tender for an external research team to deliver. In particular it should:

- Identify from a long list of regulations (see Issues and Scope below) those that should be included in the full study as they have the greatest potential for reform to deliver improvements in the regulation of legal services
- Outline the risks intended to be addressed by the regulatory arrangements and the extent to which these regulatory arrangements appear targeted on these risks
- Set out the data available to measure the cost of the regulatory arrangements
- Scope out a practical original data collection designed to fill evidence gaps (including detail about approach, necessary sample size and type of questions)

The project resulting from this preparatory study will be commissioned separately by the LSB in an open competition. The successful company tendering for this project would, of course, be welcome to tender separately for the full project at a later date.

We would expect the research team to work closely with the LSB team throughout the project to ensure that the project is closely aligned with the objectives of the LSB.

Issues and scope

In order to understand more about the proportionality of legal services regulation we must go further than simply collecting compliance costs. While compliance costs are an important part of any assessment (net of the likely behaviour of firms in the absence of regulation), wider impacts of regulation could include barriers to entry to the market; restrictions on the way in which firms operate; restrictions on the range of services offered; restrictions on competition etc. Not all of the impacts of regulatory arrangements will necessarily be suitable for quantitative measurement, this project should assess how best to capture and measure all of the impacts whether through quantitative or qualitative analysis.

Working with the LSB we would expect this project to produce a shortlist from the following areas for study in the final report:

- Regulation of education standards (including CPD requirements)
- Separate business rule
- Separate client accounts
- Consumer information disclosure
- Regulated information returns
- Supervision
- Authorisation requirements (e.g. regulated businesses, ABS)
- Insurance requirements
- Compensation fund payments

There may be other regulatory arrangements worthy of analysis, we would expect the researcher to consider the broader regulatory environment and suggest those arrangements that they believe worthy of consideration. It is our expectation that the final project would consider the proportionality of up to six areas of regulation, though again we would expect to decide this in consultation with the researcher. We would expect this project to analyse the regulatory arrangements in sufficient detail to be able to make an informed recommendation on prioritisation. This analysis alongside the subsequent plan for further analysis should form the basis for this report.

We would expect the researcher to consider, in designing a project plan for future analysis, how the subsequent research project would address the following questions:

- What are the regulatory arrangements intended to achieve?
- What costs do they impose e.g. direct, indirect?
- What costs would be incurred in the absence of regulation
- How far could/should we try to capture the direct/indirect costs?
- What costs should we aim to capture?
- Are the regulatory arrangements as drafted and implemented likely to achieve their intended aims?
- What benefits do the regulatory arrangements deliver?
- What alternatives exist to address the objectives of the regulatory arrangements?
- Are the regulatory arrangements proportionate?
- Are there any more proportionate ways to address the objectives?

The research plan should set out detail about a practical plan for the collection of the data collected needed to address the questions about. This should both set out the sources of data already available and those where new data collection is required. Where new data collection is required, it should set out a clear outline for the data collection including: how the data would be collected, who would be approached, how large the sample size would need to be, and types of question needed.

The project should set out clearly the ideal information required for each area of regulatory arrangements, set against information sources and gaps where no information exists. Where gaps exist the plan should set out how these issues could be covered in the project and the relative strengths of approaches used.

The project should also set out clearly a proposed timeline for the project resulting from this planning project (starting from the future date of commissioning) and plan for the various activities that would be required.

Tender Evaluation Criteria

All projects commissioned by the LSB are subject to our standard terms of contract. Tenders will be evaluated on best value for money and will be assessed on the basis of:

1. Overall cost. Please include appropriate breakdowns
2. Proposed team composition, expertise and management and the organisation's diversity policy
3. The ability of the research team to write about complex technical issues in clear accessible language

4. Demonstration of understanding of the project.

Deliverables

Output

The output for this research should be a report with executive summary, suitable for publication, summarising:

- The regulatory arrangements proposed to be included in the full study
- Outline the risks intended to be addressed by the regulatory arrangements and the extent to which these regulatory arrangements appear targeted on these risks
- Set out the data available to measure the cost of the regulatory arrangements and detail about how data gaps could be filled in the subsequent project
- Scope out a practical original data collection designed to fill evidence gaps (including detail about approach, necessary sample size and type of questions)
- A project plan to take forward this work which could be used within the specification document for the subsequent project

Project plan

Tenders should include a project plan and time schedule for the work that identifies the main task and key milestones that will be used to monitor progress. The plan should be accompanied by a resource profile, giving a breakdown of the resources in person days allocated to each task. We would also expect the tenders to include a clear analysis of the potential risks and how they propose to mitigate them during the project. We value tenders that are short and concise.

Duration

The research should commence in February 2013. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. The report should be finalised by 28 March 2013.

Legal Services Board Contact Details

Tenders with any queries about the research specification should contact:

Alex Roy 020 7271 0060

Tenders must be submitted by 4pm on Friday 1 February 2013