

Investigation into the cost of regulation in the market for legal services in England and Wales

Regulatory economist role specification

Purpose

1. This document sets out the specification for the economist role in the cost of regulation project. The purpose of this role is to undertake an independent assessment of the cost of regulation in the legal services market in England and Wales and to determine where the regulatory burdens fall within that market.

Background

2. The Legal Services Board (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 eleven frontline approved regulators². All the approved regulators share these regulatory objectives with the LSB.
3. In July 2012 the Government published its first triennial review of the functions of the LSB. It recommended retaining 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. The Taskforce identified five principles to be the basic tests of whether any regulation is fit for purpose:
 - Proportionality: regulators should intervene only when necessary; remedies should be appropriate to the risk posed with costs identified and minimised
 - Accountability: regulators should be able to justify decisions and be subject to public scrutiny
 - Consistency: Government rules and standards must be joined up and implemented fairly
 - Transparency: regulators should be open, and keep regulations simple and user-friendly
 - Targeting: regulation should be focused on the problem and minimise side effects.
4. Regulators must target their regulatory arrangements carefully as regulation imposes costs as well as the intended consumer benefits. Regulatory costs are important to monitor. They are passed either directly or indirectly to suppliers of legal services resulting in all or some of:

¹ See <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, Association of Chartered Certified Accountants, Institute of Chartered Accountants of England and Wales, Institute of Chartered Accountants of Scotland (ICAS are authorised as a regulator but as yet do not regulate any providers of legal services).

- Reduced profitability
 - Reduced quality
 - Increased price.
5. Regulation and its accompanying arrangements can also affect the operation of the wider market, by imposing barriers to entry and exit and restricting competition within the market. The LSB believes that the best way to achieve its regulatory objectives is through market liberalisation and regulatory simplification. Disproportionate regulation must be removed or reformed, and regulation targeted to where it is needed, to ensure that competition can deliver better outcomes for consumers of legal services.
 6. Given this, it is necessary to consider the costs imposed by regulatory arrangements carefully to ensure that they are consistent with best practice and risks posed to the regulatory objectives. The LSB's work aims to both assess the costs imposed by regulation and legal regulatory structures and to understand those areas where regulatory burdens could be reduced while still delivering the regulatory objectives.
 7. Specifically we have 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 Office for Legal Complaints – this will be achieved by analysing published data and publishing the 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 costs, and discussion with providers.
 8. To ensure impartiality, we have appointed an independent expert on the legal market and are seeking to recruit an independent expert on the economics of regulation to steer and contribute to the project in conjunction with a small team at the LSB.

Aims and objectives of the investigation

9. This investigation seeks to support the LSB by developing and delivering a detailed and thorough assessment of the cost burden that regulation places on the legal sector. This investigation will culminate in a report in the summer of 2015 comprising of some or all of:
 - Direct regulatory costs imposed on regulated individuals and businesses
 - Costs imposed by the regulatory framework, including the LSB and Office for Legal Complaints

- Indirect regulatory costs faced by regulated individuals and businesses in complying with legal services regulation
 - Regulatory burdens imposed by professional bodies on regulated individuals and businesses.
10. The ultimate objective is to produce a set of recommendations for reducing the overall cost of regulation.
11. The costs of regulation are very broad, and have a number of different elements. This investigation will seek to account for the costs of regulatory compliance that are over and above the costs that a well-managed business would incur in the absence of regulation. Research by the Solicitors Regulation Authority into the cost of outcomes focused regulation³ showed that firms would often attribute costs to regulation, but then also claim that good business practice necessitated the intended outcome of the regulatory requirement in any event.
12. Previous research commissioned by the LSB shows the challenges of considering single aspects of regulation in isolation⁴, and how the behaviour of regulators in applying their rules has an impact on the overall regulatory burden⁵.
13. Our own in house analysis using limited published accounts of the approved regulators shows a broad trend of increasing annual cash⁶ expenditure per authorised person⁷ over the past seven years. Some of this will be attributable to the set up costs of the new regulatory framework under the LSA. However, because of mandatory membership rules permitted under the LSA, in the case of solicitors and barristers these increases are driven in part by increases in expenditure at the Law Society and the Bar Council, as well as at the Solicitors Regulation Authority and the Bar Standards Board⁸.
14. Further, analysis by the Legal Services Consumer Panel⁹ shows that while the unit cost of the Legal Ombudsman¹⁰ has fallen by 5% in the past three years, it

³ Measuring the impact of outcomes-focused regulation, SRA 2013 www.sra.org.uk/impactofr

⁴ The Proportionality of Regulation, Kyla Malcolm, 2013 - <https://research.legalservicesboard.org.uk/wp-content/media/2013-06-14-LSB-final-report-STC.pdf>

⁵ Understanding barriers to entry, exit and changes to the structure of regulated legal firms, Regulatory Policy Institute 2013 <https://research.legalservicesboard.org.uk/wp-content/media/RPI-Final-Report-for-LSB-and-TLS-15-December-2013.pdf>

⁶ I.e. not adjusted for inflation, but taking into account changes in the number of approved persons

⁷ See <http://www.legislation.gov.uk/ukpga/2007/29/section/18>

⁸ The Law Society and the Bar Council are the statutory approved regulators for solicitors and barristers respectively. Operating as representative bodies, they each delegate their regulatory functions to the Solicitors Regulation Authority and the Bar Standards Board respectively.

⁹ Benchmarking the Legal Ombudsman, LSCP 2013 http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/2013%2012%2005%20LeOBenchmarkingReportFinal.pdf

still remains among the most expensive ombudsman schemes in England and Wales.

15. There have been consistent calls from professional bodies and others for the burdens that the LSB places on the approved regulators and those they regulate to be explored. This was also a key theme within responses¹¹ to the Ministry of Justice's call for evidence for their review of the regulatory framework. This will require analysis of the LSB's areas of work and how they translate into additional burdens for others beyond that strictly required by the Act.
16. The costs flowing from the broader regulatory structure and in particular the burdens caused by the almost inevitable duplication inherent in the multiple regulator system with oversight will also need to be considered. This aspect will need to take into account any work that was transferred to the LSB from the previous system of 12 oversight bodies including Government and judiciary. However, proper scrutiny and accountability of LSB costs must not divert from identifying more major drivers elsewhere.
17. The outputs of this work will clearly touch on some sensitive areas for the entire legal services regulatory and representative community. This investigation must navigate political and informational challenges to produce a set of deliverable recommendations for reducing the overall cost of regulation, which can be implemented across the regulatory community in the future.

Key project milestones

18. The role will commence in June 2014 and finish in July 2015.

June 2014

- Recruit regulatory economist

July- August 2014

- Determine methodology and specification for project
- Agreement of feasibility and prioritisation issues
- Agreement of work programme
- Formation of Stakeholder Group
- LSB analysis of data gaps and options for addressing

July - September 2014

- Collection of available data

¹⁰ The Legal Ombudsman is the ombudsman scheme administered by the Office for Legal Complaints, as required by s115 of the Legal Services Act 2007:

<http://www.legislation.gov.uk/ukpga/2007/29/section/115>

¹¹ See <https://consult.justice.gov.uk/digital-communications/legal-services-review>

- LSB analysis of data

August 2014 - March 2015

- Commission external research
- Carry out internal research

March 2015

- Publish initial report summarising findings of external and internal research

May 2015

- Roundtable discussions with stakeholders

Summer 2015

- Finalise and publish report

Role specification

19. The selected economist will:

- Work jointly with the externally appointed legal services market expert, the LSB Head of Research and Development and the project manager to steer an investigation into the cost of regulation
- Help design the specification and methodology of the project to ensure its effectiveness and independence
- Advise on the feasibility of different approaches, and the necessary priorities
- Advise on the required primary research to support the investigation, and participate in the procurement and management of the external researchers
- Sit on a working group for the project which will include representatives from the approved regulators and representative bodies
- Comment on the final report in conjunction with the legal services market expert
- Be available to meet and discuss as required, including participation at LSB Board and wider stakeholder meetings

20. No previous knowledge of legal services is required. Experience of assessing the economic impacts of regulation would be an advantage.

21. To apply for this position please email Robert Cross at robert.cross@legalservicesboard.org.uk outlining your suitability for the role before 5pm on **11 June 2014**. This should include:

- Daily rate: please include breakdowns as appropriate
- Previous experience and demonstrable expertise and management skills
- Demonstration of understanding of the project, its challenges, and wider political context

22. If you have any queries about the role specification please contact Robert Cross on 020 7271 0091.