

Research specification: in-depth investigation into the cost of regulation in the market for legal services for regulated entities

Purpose

The purpose of this research is to undertake an in-depth investigation into the cost of regulation faced by entities regulated by the Solicitor Regulation Authority and the Council for Licensed Conveyancers. There is a separate research tender for an investigation into those regulated as individuals¹.

This is part of the LSB's work to undertake an independent investigation into 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

The LSB was 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. We will seek to achieve this pursuing our regulatory objectives and providing regulatory oversight for the eleven frontline approved regulators². All the approved regulators share these regulatory objectives with the LSB.

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

¹ See <https://research.legalservicesboard.org.uk/about-lsb-research/research-specifications/>

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).

- Targeting: regulation should be focused on the problem and minimise side effects.

Careful targeting is key as regulation imposes costs (including unintended costs) as well as bringing benefits. These costs are passed either directly or indirectly to suppliers of legal services resulting in all or some of:

- Reduced profitability
- Reduced quality
- Increased price
- Behavioural changes, such as not undertaking beneficial activities or being less innovative.

Regulation and the accompanying regulatory arrangements of the individual frontline regulators 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.

Given this, it is necessary to consider the costs imposed by regulation carefully to ensure that they are consistent with both best practice and any risks posed to the regulatory objectives. The LSB's investigation 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.

Specifically we have committed to:

- Opening an honest and transparent debate about the cost of regulation in legal services - this will be achieved by publication of all of our analysis and by engaging with, and inviting feedback from, stakeholders
- Understanding the costs imposed by the LSB and Office for Legal Complaints – this will be achieved by analysing available data and publishing the results
- Understanding more about the cost of regulatory arrangements imposed by the approved regulators – this will be achieved through this research project and wider discussions with providers.

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 regulation 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.

Previous research commissioned by the LSB shows the challenges of considering single aspects of regulation in isolation, and how the behaviour of regulators in applying their rules has an impact on the overall regulatory burden. Our own in house analysis using the limited published accounts of the approved regulators shows a broad trend of increasing annual cash³ expenditure per authorised person over the past seven years. Some of this will be attributable to the set up costs of the new regulatory framework under the Legal Services Act 2007 (the Act). However, because of mandatory membership rules permitted under the Act, 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 Board⁴.

Further, analysis by the Legal Services Consumer Panel shows that while the unit cost of the Legal Ombudsman⁵ has fallen by 5% in the past three years, it still remains among the most expensive ombudsman schemes in England and Wales.

The outputs of this work will clearly touch on some sensitive areas for the entire legal services regulatory and representative community. To ensure impartiality, we have appointed two independent experts, one with specialist knowledge of the legal market and the other a regulatory economist, to steer and contribute to the overall investigation in conjunction with a small team at the LSB. They will be engaged throughout various parts of this research project to provide input and expertise.

The LSB project team will be conducting a wide scale online survey of the legal profession in October and November 2014. This survey will gather views on the cost of regulation and also aims to generate respondents for the more in depth work covered by this research project. The survey is due to close in late November. As regulation under the Act attaches to both individuals and entities, the LSB's survey is tailored to collect data from both. The survey is designed to generate participants for this more in depth work.

Aims and objectives

The primary aim of this research is to carry out a detailed and thorough assessment of the totality of regulatory costs that entities regulated as legal services providers face to be able to practise, using the findings from the survey to focus on the main areas of concern. The research is not expected to assess these costs against any benefits of regulation, which is likely to be the next stage of the investigation.

³ ie not adjusted for inflation, but taking into account changes in the number of approved persons

⁴ 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.

⁵ The Legal Ombudsman is the ombudsman scheme administered by the Office for Legal Complaints, as required by [s115](#) of the Legal Services Act 2007:

However, it could identify common areas where providers may be able to reduce their compliance costs.

The research will build an evidence base for regulators and policy makers in this sector to base their future work upon. Challenges will include:

- the selection of appropriate segments to cover
- how to collect cost and time information from entities in a consistent way, bearing in mind the likelihood of gaps in entities' data records.

We are not aware of this type of study ever having been conducted within the legal services sector before. However, a [study](#) commissioned by the Financial Services Authority⁶ is often held up as a good example of how the cost of regulation can be investigated in the service sectors. We note that the FSA study entailed contact with participants on a number of occasions and given the nature of the legal sector expect that a similar approach will be required for this work, but with a variety of methods of contact and engagement.

Issues and scope

This research is designed to build on the outputs from the survey work to explore regulated entities' experience and perceptions of legal services regulation and develop quantifiable measures of the costs imposed by specific areas of regulation. It is for the successful contractor to design an approach and methodology which then can be applied to assess the above aims and objectives, but among the questions we consider should feature in the analysis include:

- What is the cost of regulation as a proportion of total costs regulated entities face?
- Is there any evidence that there are potential cost savings associated with some regulations?
- How do the level of costs and burden of compliance vary by size of entity?
 - Do smaller/larger firms appear to face a higher level of cost?
- What costs are incurred complying with regulation that go over and above what entities would incur anyway by adhering to good business practices (incremental costs)?
 - Do the levels of incremental regulatory costs vary across different market segments, and across approved regulators?
 - What categories of costs do firms/practitioners consider to be incremental regulatory costs? Is there any distinction in these perceptions across different practice areas or by size of firm?
- What proportion of costs incurred annually as a result of regulation are incurred directly (in the form of fees), as compared to indirectly (as compliance costs)?

⁶ Available here http://www.fsa.gov.uk/pubs/other/deloitte_cost_of_regulation_report.pdf

- How much *time* is spent annually, on average, on complying with regulation?
 - Who incurs this time (senior/junior staff; administrative or support staff)? What is the average time cost of compliance?
 - What about the relative efficiency of time spent on compliance – ie: are some firms spending more senior time complying with regulation than is necessary?
- Are there any opportunity costs associated with regulation?
 - Is there evidence that complying with regulation prevents entities from undertaking other activities?
 - What are the ‘distraction’ costs associated with regulation? Is it possible to assess the magnitude of such costs?
- Is there any association between the level of costs and choices that firms make about compliance and risk?
- Do the level of costs, and burden of compliance, vary according to the customer groups served? Specifically, do entities engaged in activities which are end-consumer/individual focused face higher costs than, for example, entities engaged in activities serving large customers, more sophisticated corporations?
- Are there any threshold incentive effects (ie the effects that boundaries/categories defined by regulation can have on business incentives)?

This list of questions is not exhaustive, and the supplier should develop their own approach and methodology which best fulfils the aims and objectives of the research project. The methodology and approach should be agreed with the LSB early in the work. A key issue to consider will be a lack of information on costs generally in this sector. This will make isolating and quantifying specific regulations challenging. This also means standard measures such as expressing regulatory cost as a percentage of total operating cost will require careful consideration. Bidders should consider how they would manage this issue.

In terms of sample sizes, we recognise that the outputs of this study will not be statistically representative especially given the potential for self selection bias in the survey. However we are keen to get the widest range of participants and will expect bids to consider how best they would cover all segments of the market.

Figure 1. Number of SRA and CLC regulated entities in each market segment

	Solicitors Regulation Authority regulated entities	Council for Licensed Conveyancers regulated
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		entities
Business affairs, corporate structure, finance and tax	2,932	-
Civil liberties	129	-
Consumer	289	-
Conveyancing – residential	4,764	225
Conveyancing – commercial	4,352	225
Crime	2,117	-
Employment	3,563	-
Family	4,278	-
Immigration and nationality	1,341	-
Injury	2,713	-
Intellectual property rights	510	-
Other	5,453	-
Property, construction and planning	3,431	-
Welfare and benefits	368	-
Wills, trusts, and probate	4,752	29

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:

- Overall cost. Please include appropriate breakdowns
- Proposed team composition, expertise and management, and the organisation's diversity policy
- The ability of the research team to write about complex technical issues in clear accessible language
- Demonstration of understanding of the project
- Approaches to addressing informational challenges

No previous knowledge of legal services is required. Experience of assessing the economic impacts of regulation would be an advantage. Suppliers may bid for either one or both of the Research tenders. Subject then to assessment of bids, the LSB

reserves the right to award contracts to different suppliers for each project or to the same supplier for both.

Deliverables

Output

The principal output for this research should be a final report with executive summary for publication, plus a publishable anonymised data set, summary presentation, and short standard benchmarking reports. We would expect the cost to include presentation of the research at a launch event.

Prior to the publication of the final report, we would also expect to receive a draft final report. The circulation of draft outputs to the LSB must be timely and allow adequate time for proper consideration and review. The Supplier must agree specific dates to co-ordinate with the wider programme milestones early in the time.

There will also be review meetings at key points during the contract period, including for: agreeing the analytical approach and method to be applied; review of survey analysis; feedback on the interim findings etc.

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 would wish to see how the supplier intends to interact with the other research project on individuals, where there are possible overlaps. We value tenders that are concise.

Duration

The research should commence in December 2014. Tenders should set out dates for completing key milestones such as information gathering, analysis, synthesis and report writing. The report should be finalised by May 2015.

Contact

Tenders with any queries about this research specification should contact Olivia Marley on 020 7271 0067/ olivia.marley@legalservicesboard.org.uk or Rob Cross on 020 7271 0091/ robert.cross@legalservicesboard.org.uk.

Tenders must be submitted by 5pm on 14 November 2014.