



The regulated communities' views on the cost of regulation – comments from survey participants

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Overview

As part of the cost of regulation survey of legal service providers in late 2014, the LSB asked providers whether there were any other areas they would like the LSB to investigate as part of the cost of regulation project. The LSB will use the evidence provided in these comments alongside all the other evidence compiled during the discovery phase of the cost of regulation project to inform our future priorities. We encourage front line regulators to take a similar approach.

We received a total of 967 survey responses from across the regulated legal professions. 249 of the survey respondents provided suggestions about areas that the LSB investigate further. The top five areas that respondents commented on were:

1. Proportionality
2. Regulator value for money
3. Continuing Professional Development
4. PII
5. Duplication

This note does not attempt to include all the comments on each area, rather this provides an overview of typical comments¹. Respondents self-selected to give comments which means these comments reflects the underlying bias of the individual respondent. Any views are those of the respondents and do not represent those of the LSB.

Some of the views set out below are as follows:

1. Several respondents thought sole practitioners had a disproportionately high cost of regulation while others suggested ways to make the cost of the practising certificate fairer to different legal providers.
2. Some respondents felt that a variety of regulators were over regulating without delivering any benefit to their professions and without being held to account for over regulation.
3. On CPD one respondent suggested that training courses had become unreasonably expensive for professionals to attend.
4. On PII there was a real spread of comments with some pointing out that they were forced to be over-insured and that the process of applying for PII was very bureaucratic.
5. Several respondents drew our attention to areas of duplication in the regulation they must comply with.

¹ A full set of [all comments](#) exists on the LSB research website.

Comments by theme

Proportionality

The LSB received a number of comments which indicate a desire from providers for regulators to consider the size of and scope of the practices they regulate. The area of proportionality received 41 comments which makes it the most frequently mentioned area for further investigation.

The LSB received a number of comments suggesting that regulators need to consider the size of and scope of the practices they regulate. These include a number of comments about the regulation of sole practitioners. In the words of a **solicitor** the LSB should investigate the “*excessive and unreasonable additional practising costs for sole practitioners*”. Another **solicitor** states that “*Sole practitioners who do not employ any staff appear to be subject to the same internal reporting requirements as larger practices and it is sometimes baffling to have to ‘report’ on how you are supervising your own activity*”. A **solicitor** suggests that the LSB investigate “*Where regulation is inappropriate because of the nature of the business e.g. sole practitioners where multiple roles are held by the same person and policies and handbooks are required even if there are no employees*”.

A **solicitor** gave an example from their own professional life to highlight how regulation could feel disproportional to the individual solicitor: “*I work through my own law firm authorised by the SRA on a freelance basis for one or two in-house legal departments in commercial companies. Under a single engagement letter for each client, I provide services in the same way as a member of the in-house legal team. I take on a new client not more than every two or three years, have very low risk of claims, no risk of complaints (if I perform badly, they will just not give me any more work) and do not handle client money. The regulatory regime is excessive and largely irrelevant for people like me. It would be better if I were subject to a much lighter touch regime, as I could then be more confident I have met all the requirements.*”

A **barrister** suggested that this concern with proportionality is not unique to solicitors “*Burdensome and unnecessary costs imposed on sole practitioners (a disproportionate amount of whom are BME) to have procedures that are meaningless (e.g. appeal from complaints)*”. A **solicitor** made the point that disproportionate cost applied to small firms as well as sole practitioners “*Disproportionate time spent on regulation by sole practitioners and firms with few partners*”. Another **solicitor** added that “*the cost of maintaining a risk register in a small firm is disproportionate*”. A **chartered legal executive** stated that “*there should be a difference between small and large practices, because the rules imposed are often irrelevant in small practices.*”

Apart from the need for regulation to be proportionate for small businesses and sole practitioners there were a number of general comments about specific regulations or regulatory processes which are perceived to be disproportionate. A **barrister** commented that “*the rules on direct public access need to be developed so it is easier for clients*”. A licenced conveyancer stated that “*it is not the areas of regulation, which generally the CLC deal with extremely well it is the cost of the regulation and the practice fee. High volume high turnover firms pay a disproportionate amount of the cost of regulation with no more benefit and often the high turnover is false turnover as it may include up to 60% referral fees. It would be much fairer to base the practice fee on the number of branches rather than a*

percentage of turnover, the amount of supervision is significantly affected by the number of branches supervised’.

A **chartered legal executive**, suggested that “*the Regulator is too excessive with minute detail and information and forensically finding historical data that is of no significance to anyone. They are checking client ledgers with £2 or £3 remaining which can just be written off*”.

A **patent attorney** stated that “*there is more than simple financial cost. Regulation is an undue mental and financial burden, and creates its own worries. Actually regulation is optional for my firm, and I submit to it at present, but there is a growing disquiet and over time I expect that Patent Attorneys will move away from the regulated environment. Whereas up to 10% of my time is spent on regulated activities, about 30% of my time is spend on client work, so the ratio of regulated activities to client work is 1:3 which is unacceptably high*”.

There were also some comments about the amount of regulation and whether regulation was always as proportionate as possible. A **solicitor** stated that “*It is not just one rule - it is the general way we are authorised which imposes a lot of regulation which creates a lot of time and cost in compliance. The overall compliance/regulation should be reduced which would therefore reduce the time/cost of compliance.*”

Finally, a **notary** stated that that “*the fee payable is now too high. Most Notaries exercise their qualification at a low level but the regulations assume it is the major part of what we do. In other words, the fee is not related to the volume of work (and thus the risk of negligence)*”.

Regulator value for money

The LSB received a number of comments where providers raise questions about the value for money provided by regulators. The area of regulatory value for money received 29 comments which makes it the second most frequently mentioned area for further investigation.

A **barrister** stated that: “*Regulators give the appearance of active hostility to the profession and seem to look to cause trouble to justify their own existence. The Regulator itself is not held to any reasonable account for what it does*”.

A number of **barristers** raised questions about the value for money of the LSB e.g. “*What value the LSB adds to the primary purpose of regulation*”. Another barrister suggested the “*the abolition of the Legal Services Board. There is a cost to having a complex regulatory structure, not just because you need to take additional time to work your way through it, but rather some of what comes from the LSB is confirmation bias, to the extent to which I wonder whether or not the LSB understands legal services at all*”. Finally another **barrister** commented on the relationship between the LSB and the BSB by stating that there are “*too many layers of regulation. Some unnecessary regulation seems to derive from the LSB finding things for the BSB to do*”.

A number of **patent attorneys** commented about the value for money of IPReg. One respondent echoed the generic comments about regulators making work for themselves [to justify their existence] “*IPReg is making work for itself. The IP profession has an excellent track record and low risks and yet IPReg are making us do things that we just simply do not need to do and which is increasing costs for us. These costs have to be passed on to the consumer*”. Another respondent complained about “*Poor liaison by IPREG with professionals*

regulated by it. Rather in the manner of "we do our regulating and you sort out any issues you have yourself". Finally, another respondent raised the issue of an "increase in IPREG salary costs - out of kilter with general inflation".

Finally the LSB received comments from a number of **notaries public**. One respondent questioned whether the disciplinary record justified the current level of regulation "As *Notaries our Disciplinary record is very good and may not justify the contribution to the LSB or Ombudsman*". Building on this theme another respondent suggests that the evidence around complaints does not justify the information required from the Master of Faculties. "There is far too great a burden placed on our regulator in having to complete questionnaires and provide information, the cost of which is passed onto the profession and this cost has increased substantially over the last 2/3 years. For the size of the profession and the evidence of grounds for complaint, the requirements are too demanding and costly".

A **patent attorney** pointed out that "a regulator may naturally wish to do a lot of regulation even if for cost reasons little or no regulation is required based upon past performance of a profession".

Continuing Professional Development

Continuing professional development (CPD) was the area that received the third most comments with 23 responses. This area has been the focus of reform and review since the survey.

Comments about CPD general generally split into two groups. The first group as represented by a **patent attorney** is seeking a clarification of "what constitutes proper CPD given the roles of the regulated professionals".

The second group is concerned about the cost of CPD and whether the cost arising from it are reasonable. In the words of a **patent attorney**: "The cost of many CPD courses, seminars and lectures are very high. The legal institutes provide CPD free of charge, but it is not sufficient in scale to meet the requirements. Regulation has opened the door for independent organisations to provide training, but they do so at a very high cost - all of which is eventually passed onto clients, and the public. In this respect regulation has increased costs to the public, and not necessarily provided any benefit." Another **patent attorney** questions the "time taken up by training of professional and support staff and whether this is excessive in comparison to the benefits". Finally, a **solicitor** encourages the LSB to investigate "CPD - which I understand is being reformed in any event".

PII

The LSB received 22 responses about Professional Indemnity Insurance (PII). These comments cover issues around the process surrounding PII and raises questions around the proportionality of PII for some professionals.

A **notary and solicitor** suggests that the process of acquiring PII cover has become more uncertain than it used to be. "Somehow we have gone from there being a master policy, to the solicitors' indemnity fund, to each firm having to get professional indemnity insurance in the open market. My experience of the current system is that it does not work. Too much depends on luck in the present system". Several respondents raised the issue of PCF applications and PII applications requiring largely the same information but in different formats which creates substantial administrative burdens on professionals. In the words of a **solicitor**: "It would be helpful if regulators and insurers could agree a set list of areas of work

so that costs breakdown into areas of work did not have to be separately calculated". Another solicitor echoes this concern: "online renewal of authorisation and renewal of practising certificates cumbersome and lengthy. Categories of work in that process should be the same as in the PII renewal." Another **solicitor** suggests that "PII renewal should be staggered so it can be renewed not just on one or two dates a year". Finally a **solicitor** suggests that the LSB investigate "not only cost but the ease of getting PII and the attitude and procedural requirement of the insurers towards solicitors".

A significant proportion of respondents raised different issues around proportionality of PII. A **solicitor** commented that "6 years run off cover is completely unnecessary and adds enormously to the cost of PII". Another **solicitor** is unhappy with the one size fits all approach to PII and questions whether the current model has a built in cross subsidy for certain types of firms "A one size fits all approach is wholly inappropriate to a diverse profession. At the moment small and efficient firms subsidise large and inefficient organisations protected by the establishment - as evidenced by the recent hysteria when the SRA rightly proposed reducing the minimum PII cover. Firms like mine bitterly resent being forced to carry vastly excessive cover that will never be necessary to cross-subsidise large commercial ventures in the cities. A **patent attorney** suggests that the LSB investigate the "linkage between regulation and access to Professional Indemnity Insurance for small entities or sole practitioners".

A **patent attorney** suggests that there might sometimes be duplicate cover for certain activities "I am self-employed, acting as a part-time consultant to one specific law firm. In order to comply with IPREG's code of conduct, I have to register as an individual firm and obtain insurance (even though my work for the law firm's clients is covered by their insurance). I understand IPREG's reasoning, but it has added significant expense and I'm not entirely convinced of the benefit to me or the law firm". A **barrister** raises a similar point about possible duplicate insurance cover "the barrister usually comes into a case (unless he has Direct Access to the public) after a solicitor has first seen the case and spoken to the client. Why is it necessary for the 'small business' self-employed barrister to pay professional insurance as well? The solicitor's firm already pays it. Can it not be assumed that liability for any professional work undertaken in the capacity as agent for the solicitor will also lie with the solicitor? The only people benefiting from this double up in insurance payments are the insurance companies".

Duplication

The LSB gathered 16 comments from providers about the duplication of regulation. The majority of responses referenced the cost to legal providers of being regulated by different regulators. One **solicitor** said the "duplicity" of regulation creates overlapping requirements, while a **barrister** said that having separate regulators "duplicates costs" and that fundamentally the BSB Handbook is "far too convoluted and poorly designed". Another comment, again from a **barrister**, asked why they "had to be regulated by the ICO, at a cost, when [they] can also be disciplined by the BSB for Data Protection issues'. A second **barrister** plainly stated that their biggest issue with the cost of regulation is 'being regulated by both the Bar Standards Board and the Bar Council".

The only **chartered legal executive** with a view on duplication felt that it was too much of a burden for regulated bodies to "employ regulated staff with different regulators [therefore incurring the cost of] complying with multiple regulators".

For a **solicitor** performing debt collection, the main concern was the new requirement for a consumer credit licence, and the “*inevitable...conflict of interest between the two regulatory codes*”. The point is made that there is a duty to ‘*act in the client’s best interest*’ but also to *treat customers (defaulters) fairly*. SRA has published new proposals in this area since the survey closed.

One **solicitor** commented that in places, some regulation is creating a burden as some tasks would be done regardless in the interest of good business practice. They said ‘*keeping formal risk registers does nothing but duplicate work that most firms cover in other ways*’.

Complaints handling procedure

In total, 13 responses referenced complaints handling as the biggest regulation-related issue facing legal services providers at present. An example of complaints handling being an issue was given by a **licensed conveyancer** who pointed out that, as a sole practitioner, they have “*never had any complaints...and yet [the] regulator requires [them] to keep a complaints record*”.

A **barrister** believed that complaints procedures “*could be greatly simplified*” which would potentially in turn lower the regulatory burden of complaints handling on legal services providers.

Compliance COLP/COFA HOLF/HOFA

Another common theme from these comments were providers’ views on compliance with COLP/COFA and HOLF/HOFA. A **licensed conveyancer** said “*the amount of time taken up with such a wide range of compliance is entirely disproportionate to ever reducing fees*”, and a **solicitor** said that there is “*no need for small firms...to have a COLP and COFA*” as they do not have enough staff. Two other solicitors felt that “*simplification and clarification of the requirements for COLPS and COFAs*” would lessen the regulatory burden as “*in the majority of compliance risks there is no right or wrong answer so [legal providers] can spend too much time thinking about the issue*”. There was also a call for a ‘*regulatory body who can provide clear, practical and informed advice*’ on COLP/COFA and HOLF/HOLFA issues.

Misc. (everything else)

In addition to the areas set out above the LSB also received comments on a range of other issues.

- A **solicitor** stated that there “*should be choice and not just one regulator (the SRA) so that solicitors can decide who regulates them*”.
- A **licensed conveyancer** asked for a review of the “*cost of administering the refund or reallocation of minimal client balances remaining on a client account*”.
- A **solicitor** suggested a review of the “*cost of insurance for firms dealing only with low risk work and not holding client’s money - eg just doing crime*”.
- A **cost lawyer** wanted to be allowed to handle client money? “*Our rules should entitle us to properly handle client’s money in a designated client account. It is ludicrous that costs lawyers do not have that capacity and puts us at a distinct disadvantage to those who are not regulated. The Sols. accounts rules should simply be put in place for costs lawyers*”.
- A **barrister** highlighted ‘*information requests from regulators*’
- A **barrister** questioned “*the cost of diversity monitoring in this particular way has not been shown to provide value to the community at large nor to the professions. In*

particular, there is no evidence it assists social mobility. As it stands it represents poor value for money”.

- A **barrister** wanted “*more enforcement*” from the BSB.
- A **chartered legal executive** had views on regulation for in-house lawyers “*I am in house and as yet do not have my own reserved rights to handle litigation for the company. The rules mean that I cannot manage litigation without supervision, although a paralegal can handle litigation for the company! This clearly hasn't been thought through. If you are a charge rendering service, you should be required to have the rights, but if you act for and are an employee of a company, the requirement to hold the litigation rights should be removed*”.
- A **solicitor** wanted more clarity on money laundering “*Money laundering checks are important but the rules are unclear and the guidance also not especially helpful. There is an uneasy balance, with which I struggle, between using common sense to judge whether money laundering or criminality may be involved in work being done and more formal 'box ticking' processes. I think the former should prevail*”.
- A **solicitor** worried about “*The cost of 'gold plating' procedures to ensure compliance with OFR, rather than compliance with rules based regulation*”.
- A **solicitor** stated that “*The self-reporting requirements for breach of the code of conduct are far too unclear and far too much time is spent trying to fathom whether something is material or not and when to report or not, with fear that we don't know whether we have made the right call or not*”.
- A **barrister** called for regulators to slow down the pace of reform “*Our regulators regularly look to change rules or consult on new ideas. This takes considerable time and effort to analyse, consider and co-ordinate responses. Could they please slow down the pace - the rules have all been updated and changed recently and this should be allowed to bed in*”.
- A **solicitor** questioned the “*Cost and efficiency of SRA; Law Society advertising campaigns on personal injury (e.g. 'Don't be mugged by an insurance company') are unprofessional and irrelevant to my practice area (I act for insurers on commercial matters*”.
- A **solicitor** called for “*communications from regulators which are written in plain English and which don't mean I have to constantly look up a statutory or regulatory provision or term*”.
- A **notary** stated that “*it would be helpful if regulators and insurers could agree a set list of areas of work so that costs breakdown into areas of work did not have to be separately calculated*”. A **solicitor** called for a level playing field with the unregulated sector “*I am in favour of compliance. However the government appears to want all kinds of organisations to take on legal work and seem to think that they should be able to do so without the obligations that we are burdened with. We should either do away with regulation or have an even playing field for everyone*”.

Annex A: Detailed breakdown of numbers of responses

Proportionality	41
Regulator value for money	29
Continuing Professional Development	23
PII	22
Duplication	16
Complaints handling procedure	13
Don't Know	13
Compliance COLP/COFA HOLP/HOFA	12
Other	11
Client accounts	9
All regulations	8
File retention & audit	7
Practice Certificate Costs	7
Diversity	5
Money Laundering Compliance	5
Unregulated providers	5
OFR	4
Compensation fund costs	2
In-house lawyers	2
Legal Ombudsman	2
Pace of change	2
Permitted purposes	2
Plain English	2
Accreditation schemes	1
Choice of regulator	1
Conveyancing panels	1
Enforcement	1
Legal Aid Compliance	1