

Cost of Regulation – Proposed research approaches

Context

1. The cost of regulation project is designed to produce a set of recommendations for reducing unnecessary burdens of regulation, which can be implemented across the regulatory community in the future. Research to establish what the costs are, and how they break down, is a major element of this project. Without a solid evidence base the recommendations coming from the research will be seen as lacking credibility.
2. This paper sets out the proposed approach for undertaking research to deliver an evidence base for the project. This is designed to support decision making on which approaches to take in advance of agreeing this approach with the independent experts and starting the procurement process.
3. 'Costs' in this project scope entail:
 - i. Expenditure of regulators over time
 - ii. A snapshot of full compliance costs of regulation faced by providers;
 - iii. A snapshot of incremental cost of regulation faced by providers – what they do in addition to good practice.
4. Further details can be found in the project scoping paper. The project approach is guided by two independent experts – a regulatory economist and a market specialist.
5. This paper draws on the advice from the independent economist considering the **ideal** approach to research in this project, setting out a range of questions for the research to consider. This note builds on that but considers the practical constraints we face. The main research constraints are:
 - i. **Costs** – this project has £80k (32%) from the LSB external research budget set aside for this year. During the planning process the scope of the project has changed and the research needs have changed accordingly. Any additional costs will mean delaying or cancelling other planned research projects to make up the shortfall. That means undertaking work in house and targeting external research on to key areas.
 - ii. **Complexity** – we are the oversight regulator for 8 different active regulators, who regulate in a variety of ways, have different cost categories, regulate both individuals and businesses, and regulate a variety of business models of differing sizes. To capture all or some of these differences in any research requires a sufficiently large sample size.
 - iii. **Data availability** - costs are not generally recorded in a way that makes collection and analysis simple, nor have past attempts to calculate costs at legal services firms been successful. This holds true even where the respondents have a strong degree of self interest in responding, for example to the guideline hourly rates survey to help inform negotiations for litigation fees, or for the Law Society Firms' Finances survey looking at regulatory compliance costs. Our in-house analysis of published information on regulatory budgets and expenditures shows this is true for the

- representative bodies and regulators, and confirms that data for regulatory expenditure prior to the LSA is unlikely to be available.
- iv. **Co-operation** - it is unclear what level of cooperation we can expect to get from regulators, representative bodies, regulated businesses and individuals in terms of providing data on which to develop an understanding of costs, or in terms of responding to surveys to collate such data. As set out above, the experiences of the Law Society and others show the challenges of getting this information.
 - v. **Representativeness** - while we would ideally seek to gather a representative sample in any quantitative work, this will not be achievable given other constraints. Representativeness would allow meaningful analysis to be undertaken in each segment. To get a representative sample for each regulator would require a total sample across the regulators of around 600¹. The addition of parameters in terms of organisational size and market segment serves to increase these numbers significantly. For example to get at least one firm at the different size points (small, medium, large), the different business structure types (sole practitioner, partnership, LLP, company, ABS), the four types of consumers groups (individuals, small businesses, large businesses, and government), whether they provide services in house or to the public, and the seventeen different market segments generates a target sample size of over 3,000. In comparison, the FCA cost of regulation study² was based on just 68 in depth interviews, in a sector with significantly more than 10,500 firms.
 - vi. **Change** - given the time scales involved, a number of the approved regulators may have different approaches to regulation by the time the project concludes. That means that the research outputs must capture the current regime, and be flexible enough to support interpretation of any changes put in place in the near future.

Proposed approach

6. The proposed approach seeks to balance each of these constraints to deliver a robust set of research findings to support the project. The proposed approach comprises three separate research projects. These are:
 - i. Analysis of **practising certificate fees over time**
 - ii. In house managed large scale **survey** of all of the regulated community to feed in the views of the regulated, generate broad estimates, and provide a sample for more in depth interviews
 - iii. Small scale but **in depth interviews** with regulated entities (for the SRA, CLC, BSB and IPREG) and regulated individuals (SRA, CLC, BSB, IPREG, IPS, MoF and CLSB), from key legal services market segments.
7. Each project is described in detail in the following tables.

¹ Based on a confidence interval of +/- 10% at a 95% confidence level. This breaks down as SRA entities - 96; CLC entities - 68; IPREG entities - 65; BSB entities (Individuals regulated as sole traders) - 95; IPS individuals - 95; CLSB individuals - 82; MoF individuals - 86.

² http://www.fsa.gov.uk/pubs/other/deloitte_cost_of_regulation_report.pdf

	<p>regulators interpreting the 'permitted purposes' clause?</p> <p>(ix) Given the nature of costs incurred, is there any evidence of potential scale/scope economies in regulation, which might support arguments for consolidation/amalgamation/merger of ARs?</p>
Proposed approach	Building on existing LSB analysis, will we hire a cost accountant to review the Practicing Certificate fee applications expenditure and cost allocation over the 2010-2014 period, highlight trends in expenditure, and compare with other sectors. The cost accountant will be tasked with establishing the appropriate benchmark which may include international comparisons and comparisons with well managed organisations in the public or private sector.
Estimated costs	£10k-£15k Assumptions: Outside of research budget spending
Minimising complexity	No steps indentified.
Addressing data availability	Outline of approach at stakeholder meeting
Engaging approved regulators	Formal approach at Chair to Chair level
Engaging regulated firms and individuals	Not relevant for this project.
Timing	Outline of approach at stakeholder meeting – August Tendering exercise - November Consultant appointed - December Analysis - January – February Report completed – March
Key assumptions	Existing published data will be sufficient for this analysis.

<p>Research project 2: Survey of regulated individuals and entities</p>	<p>B. A snapshot of full compliance costs of regulation faced by businesses; C. A snapshot of incremental cost of regulation faced by businesses – what they do in addition to good practice.</p>
<p>Specific areas to consider (Source: Preliminary note on Ideal Methodology – Prof. Chris Decker)</p>	<ul style="list-style-type: none"> (i) What are the different types/categories of costs that are associated with regulation? (ii) How does the level of common categories/types of incremental regulatory costs vary across different market segments, and across approved regulators? (iii) Do firms draw a distinction between ‘one-off’, or transition, costs associated with regulation and the on-going costs of complying with the regulatory regime? (iv) 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? (v) What proportion of costs incurred annually as a result of regulation are incurred directly, as compared to indirectly? (vi) How much <i>time</i> is spent annually, on average, on complying with regulation? <ul style="list-style-type: none"> a. Who incurs this time (senior/junior staff; administrative or support staff)? What is the average time cost of compliance? b. Can we say anything about the relative efficiency of time spent on compliance – i.e.: are some firms spending more senior time complying with regulation than is necessary? (vii) Are there any opportunity costs associated with regulation? <ul style="list-style-type: none"> a. Is there evidence that complying with regulation prevents entities from undertaking other activities? For example, do the costs associated with certain restrictions imposed by regulation result in the firm foregoing activities or opportunities which, in turn, has had impacts in terms of foregone profit/revenue. b. What are the ‘distraction’ costs associated with regulation? Is it possible to the assess the magnitude of such costs? (viii) Is there any evidence that there are potential cost savings associated with some regulations? <ul style="list-style-type: none"> a. For example, would the removal of a specific regulation in one area potentially result in increased costs for a firm? (e.g.: cost impacts associated with the removal of Ombudsman arrangements).
<p>Proposed approach</p>	<p>Online survey developed and managed by the LSB. This is designed to gather views on the cost of regulation from those who are</p>

	<p>regulated, and build a sample for the third research project. Survey questions developed in house and tested with RSG, and Cost project independent experts</p> <p>Analysis of each regulated area produced by key parameters of:</p> <ul style="list-style-type: none"> - Regulator - Size (by no of employees to avoid sensitivity in turnover) - Business structure - Consumer type - Market segments
Estimated costs	<p>£Nil (in house resource for management and analysis)</p> <p>Assumptions: Research manager and research analyst resource time will be made available.</p>
Minimising complexity	<p>Tailor question framing to each different regulated community, and different navigation through the survey</p>
Addressing data availability	<p>Use survey to generate views on regulations and subjective information, as opposed to quantitative</p>
Engaging approved regulators	<p>Outline of approach at stakeholder meeting, and input on survey development but final survey design rests with the LSB.</p> <p>A special stakeholder group meeting to share results can be held in February based on the current timeline.</p>
Engaging regulated firms and individuals	<p>We need to get engagement from regulated firms and individuals to ensure sufficient participation in the third stage. That will require communications activity to alert the regulated community and explain why their views are vital.</p> <p>Assuming a survey launch date of 29th September and an end date of 14th November, it is recommended that this is done through the following LSB activity:</p> <ul style="list-style-type: none"> - September stakeholder meeting – seek commitment to getting the survey promoted by AR and representatives email updates and on their website. - September stakeholder meeting – provide draft text to be sent via email addresses to regulatory leads in firms, and individuals where appropriate. Seek commitment to getting the survey email out by ARS or to sharing of email addresses. - 20th September – reference in Chairman’s interview with Counsel magazine, and provide survey web link - 19th September – reference in Chairman’s speech to Notaries - 22nd September – seek to place articles in The Lawyer, The Gazette, Legal Futures, and others promoting the survey and looking at the cost of regulation – for example LSB costs compared to PCF. - 22nd September – seek to place the link on high profile blogs - 22nd September – Tweet launch of survey - 24th September – reference in CK exit interview with Modern Law Magazine - Early October Reference and survey web link in LSB newsletter - Early October – if response rates sufficient do an initial analysis and seek press coverage as a way of encouraging responses - 24th October – Reference in Chairman’s article for TLS legal compliance bulletin

<p>Timing</p>	<p>Outline of approach at stakeholder meeting – September Launch survey - September Series of press articles, speech references etc to encourage providers to respond (see above) Run survey September – November Share details of respondents who opt to be involved in the third stage - November Conduct in house analysis – November – January Present finding to stakeholder group special meeting - February Publish findings – March</p>
<p>Key assumptions</p>	<p>We achieve sufficient response rate across each regulated group to generate the required sample – this will require significant public activity. To increase likely response rates the survey will be flexible in allowing providers to provide time estimates and not asked for costs estimates. The LSB will map common regulatory areas using ARs handbooks We will be able to use the existing LSB Survey Monkey accounts. ARs provide access to address details of regulated individuals and entities. The main regulatory areas are sufficiently similar across regulators to allow for comparison.</p>

<p>Research project 3: In depth cost data collection</p>	<p>B. A snapshot of full compliance costs of regulation faced by businesses; C. A snapshot of incremental cost of regulation faced by businesses – what they do in addition to good practice.</p>
<p>Specific areas to consider (Source: Preliminary note on Ideal Methodology – Prof. Chris Decker)</p>	<p>As in project 2 but in addition:</p> <ul style="list-style-type: none"> • Test the early findings from project 2 to support more accurate interpretation of results. • The relative materiality of the level of regulatory costs. This can potentially be done by comparing the estimated level of regulatory costs across a number of dimensions, including by benchmarking: <ul style="list-style-type: none"> ○ costs across the different activities comprising the legal services sector (solicitors, barristers, trade mark attorneys etc); ○ other (non-regulatory) types of costs incurred by the entities (e.g.: employment costs, training and competence costs, overheads, rent etc); • How the level of costs and burden of compliance varies by size of firm – specifically whether smaller/larger firms appear to face a disproportionately higher level of costs. Further: <ul style="list-style-type: none"> ○ Whether there appears to be any association between the level of costs, and choices that firms make about compliance and risk (e.g.: see FSA costs of regulation study – because of reputational concerns, this study found that larger firms tend to do more to comply and avoid risk, meaning the incremental impact of regulation is less marked). • Whether the level of costs, and burden of compliance, varies according to the customer groups served. Specifically, do entities engaged in activities which are end-consumer/individual focused face a disproportionately higher level of costs than say, entities engaged in activities serving large customers, more sophisticated corporations etc. • Whether there are any ‘threshold incentive effects’ (i.e. the effects that boundaries/categories defined by regulation can have on business incentives). • Whether the regulated individual or entity has experienced a one off event (e.g. a LEO service complaint investigation, or regulator conduct investigation) that has impacted on their experience of regulation in the survey year.
<p>Proposed approach</p>	<p>Externally commissioned research to gather in-depth understanding of costs through a series of in-depth activity with regulated entities and individuals to build a quantitative picture of the cost of regulation. The</p>

	<p>research will result in an anonymous data set, a full and detailed analysis in relation to the questions above, and a report presenting findings, and estimates of difference cost areas.</p> <p>Research questions developed via a pilot exercise run by the research company. The approach could be similar to the FCA (attendance at a costs briefing workshop, data collection sheets, and telephone assistance), but will be tested at the tender stage. The nature of the entities may necessitate collecting time spent information and converting this to a cost.</p> <p>Analysis of each regulated area produced by key parameters of:</p> <ul style="list-style-type: none"> - Regulator - Size (by no of employees to avoid sensitivity in turnover) - Business structure - Consumer type - Market segments <p>To ensure there is sufficient depth of information capture, it is proposed we focus on regulated entities in the following market segments (Regulator and percentage estimates of regulated community in that segment):</p> <ul style="list-style-type: none"> - Business affairs (SRA – 34%; BSB – 15%) - Conveyancing (SRA- 54%; CLC – 100%; IPS - 28%; MoF – 5%) - Intellectual Property (SRA – 6%; BSB – 1%; IPREG – 100%) - Crime (SRA - 24%; BSB – 31%; IPS - 5 %) - Family (SRA – 47%; BSB – 17%; IPS - 11%) - Costs Lawyers (CLSB – 100%) - Notaries and Scriveners (MoF – 100%) <p>This covers all regulators, a significant part of the SRA and BSB regulated sectors, the most frequent consumer legal problems, and allows for some comparison of the impacts of third parties actions on costs (e.g. court procedure, Land Registry requirements etc).</p>
Estimated costs	<p>£80k (inc VAT)</p> <p>Assumptions: This is designed to be sufficient funding for approx. 300-400 in-depth interviews, follow up work, analysis and report writing, but will need to be tested on tender.</p>
Minimising complexity	Tailor question framing to each different regulated community, and focus on key segments.
Addressing data availability	<p>Allowing for recruitment through project 2 – respondents asked to indicate if they want to participate in project 2 and then followed up in project 3.</p> <p>In depth process to gather data in an interactive process.</p>
Engaging approved regulators	<p>Outline of approach at stakeholder meeting.</p> <p>Updates on progress.</p> <p>Presentation of findings to special stakeholder meeting.</p>
Engaging regulated firms and individuals	<p>Allowing for recruitment through project 2 – respondents asked to indicate if they want to participate in product 2 and then followed up in project 3.</p>
Timing	<p>Outline of approach at stakeholder meeting – August</p> <p>Launch tender process - September</p>

	<p>Appoint research company – October Share details of respondents who opt to be involved in the third stage - November Conduct field work – January – March Update to stakeholder group meeting – February Analyse results – March – April Complete report – April – May Publish report – June</p>
<p>Key assumptions</p>	<p>We achieve sufficient response rate across each regulated group to generate the required sample. The conversion of time information to costs presents no significant difficulties.</p>