

To:	Legal Services Board	Agenda Item No.:	11
Date of Meeting:	23 March 2017	Item:	Paper (17) 17

Title:	Cost of Regulation
Workstream(s):	Breaking down regulatory barriers
Author / Introduced by:	Callum Armstrong, Regulatory Associate Callum.Armstrong@legalservicesboard.org.uk / 020 7271 0082
Status:	Official

Summary:

Building on the results of the LSB's previous cost of regulation project, we have worked with the frontline regulators on a collaborative basis to develop and agree voluntary action designed to increase transparency of their costs. Despite some reservations, all of the regulators have made commitments to improving cost transparency and two have already published statements online.

Given the improvements seen this year and the commitment given by the regulators, we think it is reasonable to continue with a voluntary approach for the forthcoming year and put in place monitoring activity. This will give the regulators the opportunity to demonstrate that commitment in practice.

We propose the LSB also publishes an annual cost statement to lead by example.

Recommendation(s):

The Board is invited to:

- (1) Agree to monitoring and reporting on progress made by the regulators on costs transparency during 2017/18.
- (2) Agree to publish an annual cost statement on the LSB website and make a commitment to continuous improvement in our own transparency.

Risks and mitigations

Financial: N/A

Legal: N/A

Reputational: Failure to make satisfactory progress on cost transparency, given the limited nature of what we are asking for relative to identified good practice, could have reputational risks for the LSB and the regulators. This includes loss of moral authority when seeking to mandate greater transparency by practitioners, in keeping with the CMA recommendations in its final market study report.

Resource:	Resource has been allocated for the ongoing monitoring option in 2017/18 (Option 1). There will be additional resource implications if we pursue statutory guidance (Option 2).
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Consultation	Yes	No	Who / why?
Board Members:	X		As the nominated Board member, progress on and proposed next steps for this project have been periodically discussed with Marina Gibbs
Consumer Panel:		X	
Others:	N/A		

Freedom of Information Act 2000 (Fol)		
Para ref	Fol exemption and summary	Expires
14 – 24	Section 36(2)(b)(i) – information likely to inhibit the free and frank provision of advice	N/A
Annex 3	Section 36(2)(b)(ii) – information likely to inhibit the exchange of views for the purposes of deliberation	N/A

LEGAL SERVICES BOARD

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Cost of Regulation

RECOMMENDATION

1. The Board is invited to:
 - (i) Agree to monitoring and reporting on progress made by the regulators on costs transparency during 2017/18; and
 - (ii) Agree to publish an annual cost statement on the LSB website and make a commitment to continuous improvement in our own transparency.

Background

2. In 2014/15 the LSB initiated a project looking into the costs of regulation in the legal sector. The output from this project was a series of research and other reports published between March 2015 and May 2016, as follows:
 - i. A quantitative survey of the regulated communities' views on the cost of regulation;¹
 - ii. A small scale qualitative follow up study to establish the incremental cost of regulation in the legal sector;²
 - iii. Individual reports on transparency for each regulator;³ and
 - iv. An overarching report which brought together the findings from the three strands above and outlined next steps.⁴
3. These reports identified that:
 - i. Barristers and solicitors regard both the PCF and compliance costs as being poor value for money;
 - ii. Lawyers have a lack of understanding around what is funded by practising certificate fees, and what constitutes regulatory costs.

¹ <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf>

² Incremental costs of regulation are costs that are incurred solely to comply with legal services regulation and that do not serve any other business or wider regulatory purpose. The report can be read here: <https://research.legalservicesboard.org.uk/wp-content/media/In-depth-study-into-the-cost-of-regulation-version-2-for-publication.pdf>

³ http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/index.htm

⁴

http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/PDF/20160523_Cost_Of_Regulation_Overview_Report_FINAL.pdf

- iii. Improved levels of financial transparency by the regulators could help address low awareness amongst legal services providers about the cost of regulation; and
 - iv. Overall levels of transparency are mixed. Some regulators publish comprehensive financial data, others do not.
4. Our Business Plan for 2016/17 included a project to build upon this first phase of work and seek to improve the regulators' costs transparency ideally through collaborative working with them.

Project objectives

5. The scoping for the project identified the following objectives:
- i. Obtaining agreement across all regulators on principles of transparency concerning their costs, to include (as a minimum):
 - a) Informed research on approaches to publishing regulatory costs in other sectors;
 - b) A commitment to annual disclosure of costs in an agreed format;
 - c) A commitment to a minimum number of agreed metrics for all regulators to include in their annual disclosure, with larger approved regulators (ARs) potentially asked to supplement these.
 - ii. Appropriate action is considered for ARs that do not participate in improved transparency; and
 - iii. Creating solid foundations for further development of transparency in future phases of work.

Developing the Principles

6. To inform our proposals for minimum costs transparency, across legal services regulators, we undertook and published a desk review⁵ which identified common good practice by other regulators across the private and public sectors.
7. Based on the findings of our desk review we developed draft principles on costs transparency which we then discussed with the regulators at the CEO's forum in September 2016. At that meeting, although the findings of the desk review were not disputed, the CEOs were resistant to the draft principles and indicated that they could not sign up to them as they currently stood.
8. The main concern raised by the regulators was that they thought our initial principles were too prescriptive and there were too many core metrics. They were worried that it would lead to a template-like output and that regulators with different profiles might be compared in a manner that is misleading. The regulators urged us to take a more outcomes focused approach, to allow them the flexibility to increase cost transparency in a way that made sense for each of

⁵http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/PDF/20161020_Cost_Of_Regulation_Desk_Review_Sept2016.pdf

their regulated communities and would provide more scope to provide context to explain their specific circumstances.

9. We worked with all of the regulators after this meeting (both on a one-to-one basis and via a working group) to refine the principles to address their concerns whilst still meeting the good practice we had identified. In particular, we amended our principles to be more outcomes focused, and also reduced the number of core metrics that each regulator would be required to report on.
10. A revised proposal was discussed at the January 2017 CEO's forum. It was received much more positively than in September 2016, although some regulators still had concerns. It included an overarching principle to increase the transparency of the cost of legal services regulators, to embed continuous improvement and to produce and promote a concise standalone document annually to achieve these principles. It also specified six core metrics that each regulator would commit to publishing and which would be valuable for the LSB to be able to collate and report on across the market in aggregate terms (see **Annex 1**).
11. Following the CEO's forum we wrote to each CEO asking them to "*please respond to this letter by 10 February confirming that you are content to sign up to the attached principles*" (see **Annex 2**).

Current position

12. We received responses to our letter from all eight regulators. There is a degree of ambiguity in some of the responses we received, which may reflect the difficult nature of our discussions with some of the regulators on this topic. However, we have interpreted their responses as all committing to at least producing annual statements which include the core metrics.
13. The full responses are attached as **Annex 3**, and summarised below:
 - i. The Intellectual Property Regulation Board and The Institute of Chartered Accountants in England and Wales have both already published statements for their previous financial years on their websites that we consider are consistent with our proposal. ICAEW's statement is provided at **Annex 4** as an example of the sort of visually appealing document we are seeking;
 - ii. The Costs Lawyer Standards Board, CILEx Regulation, Bar Standards Board and Master of Faculties agreed to the principles and to publish annual statements;
 - iii. The Solicitors Regulation Authority agreed to publish an annual statement and agreed with cost transparency "in principle"; and
 - iv. The Council of Licenced Conveyancers did not explicitly agree to the principles, however they did commit to publishing a one page key facts document.

14. [REDACTED]

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Monitoring under Option 1

25. Our monitoring activity would include:

- i. assessing the cost statements each regulator publishes against the principles we have developed and the best practice outlined;⁷

⁷ Including what information is published, the time between the end of the financial year and the information being published; whether the statement is concise and accessible, whether it is easy to find on their website for somebody looking for that information.

- ii. monitoring press releases and other promotion of the costs statement and other costs information;
 - iii. asking each regulator how they will monitor the impact and effectiveness of their cost transparency measures and their plans to continuously improve the effectiveness of transparency.
26. In the medium-term, we plan to consider governance, including various aspects of transparency, within our revised regulatory performance framework on which we are due to consult later in 2017. Therefore, we could integrate monitoring of cost transparency within this framework.

LSB's own transparency

27. To promote transparency it is important that the Board leads by example. We already publish cost information – including all the core metrics and other information our desk review identified as good practice – in one place (the annual reports). However, we consider there is an opportunity for us to highlight this information to stakeholders in a more concise and accessible way.
28. As an illustration, we have prepared a concise and accessible statement for the LSB's last financial year in line with our principles of cost transparency – **see Annex 5**. We will update and publish a revised version alongside our next annual report and accounts.
29. The third key outcome in our Principles document is 'Monitoring and continuous improvement is embedded into cost transparency measures'. Therefore, we will continue to review best practice and make improvements as necessary.
30. The Board may wish to note this statement shows a positive position in relation to reducing absolute and unit costs.

Recommendation

31. We recommend that the Board agrees to monitoring and reporting on progress made by the regulators on costs transparency during 2017/18. We will advise the Board in quarter 3 of 2017/18 should this activity identify the need for further action.
32. We recommend the Board agrees to publish an annual cost statement on the LSB website and make a commitment to continuous improvement in our own transparency.

23.03.17

Annex 1

Principles of cost transparency

Principles of cost transparency

The regulators agree to pursue the following cost transparency outcomes and outputs:

Outcomes

1. Transparency of the cost of legal services regulators in England and Wales is increased.
2. Information about the costs of legal services regulators is accessible to practitioners, firms and the public.
3. Monitoring and continuous improvement is embedded into cost transparency measures.

Outputs

4. To produce and promote a concise standalone document and/or webpage annually delivering the above outcomes.
5. To include in the above, certain core metrics (see below) in a manner that will allow the LSB to calculate overall figures across all legal services regulators.
6. The document and/or webpage has regard to good practice (see overleaf).

Core metrics for overall picture of legal regulator costs

Regulators agree to undertake a consistent approach to recording the following metrics to allow an overall picture of legal regulator costs to be presented:

1. Number of authorised persons
2. Number of authorised entities
3. Total income (and income generated from practising certificate fees if different)
4. Total regulatory expenditure
5. Proportion of practising certificate fees that are retained by regulator
6. Staff head count (full-time equivalent)

For all core metrics actual figures for the preceding financial year will be provided.

Good practice

As part of the cost of regulation project the LSB reviewed best practice in other sectors in making costs information available and accessible. The points below highlight the key findings from this review and a list of additional metrics that are commonly used in other sectors to achieve cost transparency (as well as the core metrics on the first page).

The regulators agree to have regard to the good practice findings when pursuing the transparency outcomes set out above.

Good practice key findings

- Transparency is a basic expectation of government and of the public for companies, the public sector and regulators, in many cases it is a duty.
- Transparency plays a role in trust (which is relevant to the promotion of the regulatory objectives in the Legal Services Act).⁸
- Key is not just what information is supplied, but the way in which this is done.
- To make sure it is relevant the information should be published shortly after the end of each regulator's financial year.
- For all metrics a comparison with the position from the previous financial year should be provided (where possible).

Additional common costs transparency metrics (which won't all be relevant or proportionate for every regulator)

- Size of reserves
- Chair of Board remuneration⁹
- CEO pay¹⁰
- Salary bands showing the number of senior employees (£5,000 increments)¹¹
- Ratio of pay between CEO and median salary
- Overall staff costs¹²
- Total Board costs¹³

Good practice would be for actual figures from the preceding financial year to be presented.

⁸ In particular, trust is relevant to promoting the interests of consumers, access to justice and promoting competition.

⁹ Full remuneration package e.g. salary, bonus and pension

¹⁰ Full remuneration package e.g. salary, bonus and pension

¹¹ Guidance in para 5.3.21 of [The Financial Reporting Manual 2016-17](#)

¹² Includes pension contributions, NI contributions, other benefits, recruitment, temp staff and learning and development

¹³ Includes recruitment, remuneration, expenses, pension and events

Annex 2

Letter sent from Neil to CEOs

Dear XXX

Principles of cost transparency

It was good to see you all on Wednesday at the CEOs meeting. As discussed at that meeting, I am writing to ask you confirm in writing that you agree the attached principles of cost transparency and will produce annually a document that reflects these principles. I know that you have all taken steps to increase transparency; that is very welcome. We hope that the principles that we are asking you all to agree and the document that will accompany them will confirm the commitment that I know you all have to increase awareness of the costs of regulation among providers and a wider stakeholder community.

Our proposal is consistent with established good practice in other sectors. It was informed by an analysis of the costs information that legal and other regulators commonly publish. For some regulators, therefore, the challenge is limited to making existing information which they already publish more accessible in a standalone document.

The principles we have set out are based on collaborative working with you and your teams. We are very grateful for the input you have provided to this project. To reflect feedback received we have made our proposals more outcomes focused and addressed concerns about over-standardisation of costs information. Beyond a small number of essential core metrics and the need to produce and promote a concise standalone document and/or webpage annually, each regulator has the flexibility to have regard to good practice by presenting the information that they believe is most relevant to their regulated community and stakeholders, in the manner that they believe will have the greatest impact.

We have made two additional amendments to reflect points made during discussions on Wednesday. Firstly, we have amended the wording of the fifth core metric that previously referred to “non-regulatory permitted purposes”. We have also removed the reference on page two, within the list of common cost transparency metrics, to an average cost per authorised person or entity.

We are currently engaged in very positive joint working to improve transparency in the sector following the CMA’s market study. By agreeing these principles we can all demonstrate our own commitment to transparency.

As discussed, we will be reporting to our Board in March on progress on costs transparency. I very much hope that I will be able to report to the Board that we have agreement from you all to these principles.

I would be grateful if you could please respond to this letter by 10 February confirming that you are content to sign up to the attached principles.

Annex 3

[REDACTED]

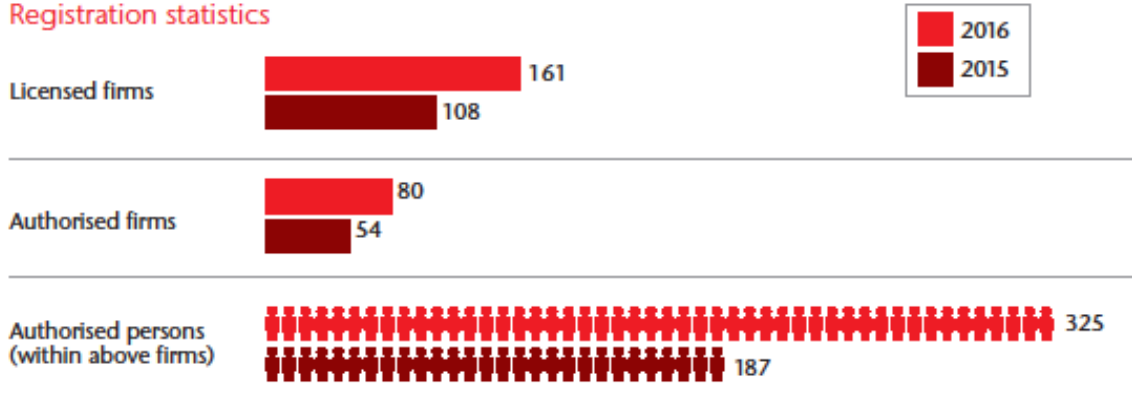
Annex 4

ICAEW cost statement published in February 2017

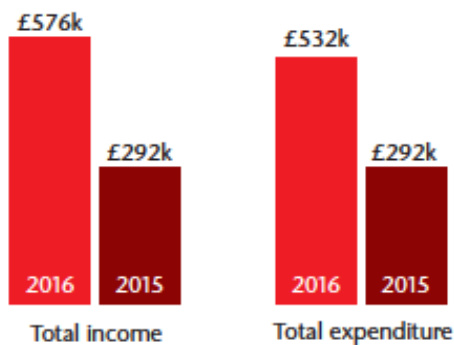
Probate 2016 financial report

Targets	2016
Probate function is self-financing	✓
Meet/beat target funding for the compensation scheme	✓
Financial surplus funds initial investment	✓
ICAEW reserves meet authorising / licensing body requirement	✓

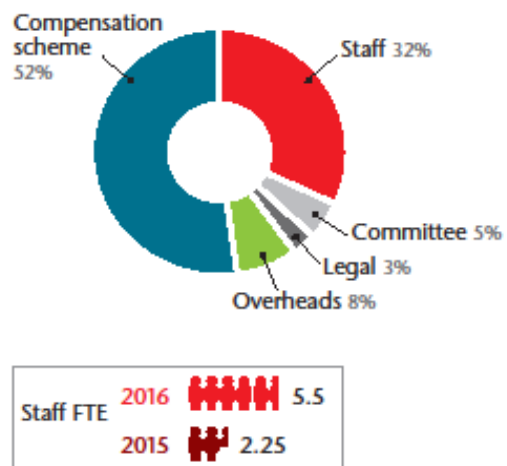
Registration statistics



Financial analysis



Expenditure analysis 2016



Financial notes
 - Total income includes levies for the compensation scheme. - Total expenditure includes transfers to the compensation scheme. - 2015 was the first full financial year, still in start-up phase, and is considered exceptional. - Committee members who are non-chartered accountants receive a meeting allowance of £350/meeting. - The chair of the committee receives an allowance of £700/meeting. Total allowance paid to the chair in 2016 was £3,500. - FTE: Full time equivalent. - Further financial information is available as part of the ICAEW financial statements and annual report.

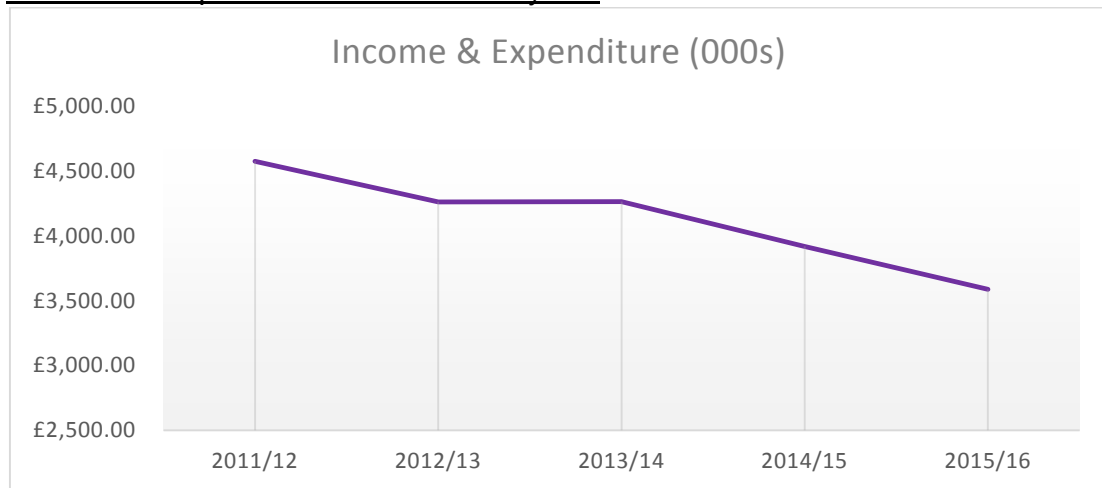
Legal Services Board Costs Statement

This statement details our costs for the financial year from April 2015 to March 2016 and the position at the start of the 2016/17 financial year.

Regulated community

- At 1 April 2016 the LSB provided oversight for **9** approved regulators, who regulate **172,876** authorised persons (1.35% more than 1 April 2015).

Income and expenditure for the last five years



- In line with the Legal Services Act 2007 and the associated levy rules the LSB's income will always match its expenditure. For 2015/16 this was **£3,587k**.
- This is **8.5%** lower than for 2014/15.

Reserves

- As at 1 April 2016 our reserves (monies advanced by the Ministry of Justice) were **£6,367k** (the same as in April 2015)

Staff costs for 2015/16

- Our average staff head count was **30.4** full time equivalent members of staff (3.4% more than 2015/16)
- Overall staff costs were **£2,112k** (5.2% more than 2014/15)
- As at 1 April 2016 our CEO's annual salary rate was **£140k** (1.8% less than the rate for as at 1 April 2015).
- The CEO's salary for 2015/16 was **2.59** times the median salary of the workforce, which was £55,065 (down from 3.03 times in 2014/15).

- Senior Leadership Team salary bands as at 1 April for 2015 and 2016 were:

Salary band	April 2016	April 2015
£60k-70k	2	2
£70-80k	1	1
£80-90k	2	2
£90-100k	1	1
£100-110k	1	1

Board costs

- Total Board costs (including reimbursement of travel and training) for 2015/16 were **£177k** (5.8% less than 2014/15)
- As at 1 April 2016 our Chair's salary was **£63k** (the same as in April 2015)

Fees for 2015/16

- The LSB is funded by a levy on the frontline regulators and ultimately the profession. For 2015/16 we levied the following costs on the approved regulators:

Approved Regulator	Fee (£)	Proportion
The Law Society	3,063,445	
General Council of the Bar	327,431	
Chartered Institute of Legal Executives	168,517	
Chartered Institute of Patent Attorneys	41,154	
Council for Licensed Conveyancers	27,218	
Institute of Trademark Attorneys	15,756	
Faculty Office	17,072	
Costs Lawyers Standards Board	12,936	
The Institute of Chartered Accountants in England and Wales	2,186	

- This represents a cost of **£21.55** per authorised person (a decrease of 12.8% compared to 2015/16 fees).