
In-depth investigation into the costs of regulation in the market for legal services

Report for the Legal Services Board

15 September 2015



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Report for the Legal Services Board

A report submitted by [ICF Consulting Services](#)

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Foreword from LSB Chief Executive



The Legal Service Board's (LSB) mandate is to ensure that regulation in the legal services sector is carried out in the public interest and that the interests of consumers are placed at the heart of the system. As the oversight regulator of the legal services regulators in England and Wales, the LSB seeks to ensure that regulation is proportionate and targeted to areas of greatest risk.

During the LSB's triennial review in 2012 and the Legal Services Red Tape Challenge Review in 2013, legal sector businesses raised concerns about the cost of regulation in the legal sector. However, there has been limited evidence available against which to assess these concerns. Our business plan for 2015/16 includes the [cost of regulation](#) project which aims to remedy the lack of evidence in this area. Investigating the costs of regulation in this sector is important because these costs are borne by business and ultimately by consumers.

In March this year we published the findings of a major research study summarising the views of regulated legal services professionals on the cost of regulation. This new study seeks to put some hard numbers on those costs based on financial information provided by 64 practitioners working across the market – 47 authorised as individuals and 17 lawyers working as part of an authorised entity. This small sample means that the results cannot be claimed to be representative of the cost of

regulation experienced by practitioners overall, nor would comparisons between types of practitioner or practice be valid. Even so, these findings represent the first time that the 'real world' cost of regulation experienced by any practitioners in the legal sector has been quantified. This evidence should be read alongside other pieces of evidence emerging from the LSB's cost of regulation project and elsewhere.

The study focuses on the **incremental costs** of regulation – costs that are incurred solely to comply with legal services regulation and that do not serve any other business or wider regulatory purpose. Based on the sample of practitioners who took part in this study our findings indicate that professionals **regulated as entities** see legal regulatory costs primarily as a burden and would only undertake a small proportion of those activities for other regulatory or commercial reasons. By contrast, those **regulated as individuals** are more likely to say that they would continue to undertake aspects of legal services regulatory activity even if the specific regulatory requirement to do so were removed. They told us that this was because complying with the regulation met wider legislative requirements of doing business in England or Wales or was commercially advantageous to them.

The report also provides insight into specific categories of regulatory costs. For both entities and individuals, the highest areas of incremental costs were reported as being professional indemnity insurance, professional development and information requirements from the regulator.

Bearing in mind the limitations of the small sample size in this research, the LSB will not base policy decisions solely on the findings of this study, but it will consider these findings alongside other sources of evidence as we continue to review the cost of regulation in the legal sector in England and Wales.

Richard Moriarty – Chief Executive

Contents

Foreword from Chief Executive	ii
Executive summary	5
1 Introduction	8
1.1 Objectives of the study	8
2 Participants in the study	9
2.1 Individuals and entities	9
2.2 Professions	10
2.3 Size of practices	11
2.4 Types of practices	11
3 Methodology	13
3.1 Gathering evidence	13
3.2 Observations from non-participation	13
3.3 Information on the costs of legal services regulation	13
3.4 Incremental costs of legal services regulation	15
3.5 Review and validation of responses	17
3.6 Reporting results of the study	17
4 Costs of legal services regulation for entities	19
4.1 Introduction	19
4.2 Total costs of legal services regulation	19
4.3 Incremental costs of regulation	20
4.4 Analysis of cost types	22
4.5 Comments on the reliability of the findings	28
5 Costs of legal services regulation for individuals	29
5.1 Introduction	29
5.2 Total costs of regulation	30
5.3 Incremental costs of regulation	31
5.4 Analysis of types of incremental cost	33
5.5 Comments on the reliability of the findings	41
Annex 1 Regulation of legal services in England and Wales	44
Annex 2 Evidence-gathering approach	46
Annex 3 Data review, validation and standardisation	53
Annex 4 Lessons for future research into the costs of legal services regulation	56
Annex 5 Questionnaire and questionnaire guidance	58

Executive summary

Legal service businesses have raised concerns about the costs of regulation in the sector. The Legal Services Board (LSB) has identified a lack of evidence on the costs of regulation as a barrier to addressing these concerns and launched a review to begin to fill this knowledge gap.¹ This study was commissioned as part of this review and is built on a major survey of practitioners published in March 2015.²

Study objectives

This study aimed to estimate broadly representative costs of legal services regulation across the market, based on information supplied by a wide range of practitioners. The study examined *total* legal regulatory costs and *incremental* costs, with separate results presented for individuals and entities.³ Incremental costs represent the ‘burden’ of regulation. **In this study incremental costs are those costs incurred that serve only compliance with legal services regulation and no other business or wider regulatory purpose.** This means that were legal services regulations to be removed for one type of regulatory cost included in the study, legal practices would save the amount equal to the incremental cost of that regulatory cost.

Our analysis was based on detailed information provided by 64 practitioners. This means that the findings are qualitative and cannot be claimed to be representative of the cost of regulation felt by practitioners. The sample size meant the results were treated with caution and comparisons between types of practitioners and types of practices were not possible.⁴ While a number of steps were taken to seek to increase participation, and adjustments were made to account for the anticipated challenges of collecting information on costs, participation in the study was lower than originally planned. Even so, this was the first study of its type attempted in the legal sector and therefore represents a material step forward in the evidence base. Indeed, few studies have attempted to do the same in any sector, the most notable being a study by the Financial Services Authority.⁵

Study findings

Regulatory costs for legal professionals regulated as entities

The entity sample consisted of 16 practices regulated by the Solicitors Regulation Authority (SRA) and one regulated by the Council for Licensed Conveyancers (CLC).⁶ Regulatory costs for this sample were presented as a proportion of their total practice costs (rather than for reserved work only as in the individuals sample).⁷

¹ As set out in the LSB’s business plan for 2014/15 and business plan for 2015/16. Further information on the LSB’s review of the costs of regulation can be found at:

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

² http://www.legalservicesboard.org.uk/news_publications/LSB_news/PDF/2015/LSB_Cost_of_Regulation_Survey_Report.pdf

³ Legal services practitioners can be regulated as individuals or as entities, depending on their profession. Practitioners regulated as individuals carry any risk related to the legal services they provide. Legal professionals regulated as part of an entity have, as part of that entity, dedicated compliance officers ensuring that the whole firm complies with relevant legislation. Individual authorised persons within these firms will often have the cost of their individual practising certificates covered by the entity. Other legal professionals who are not authorised persons but who work for an entity are regulated as staff of that entity.

⁴ In addition there are some limitations on the data which is presented. The Methodology section of this report and Annexes 2, 3 and 4 discuss these issues in detail.

⁵ Financial Services Authority. (2006). *The cost of regulation study*. Available online at: http://www.fsa.gov.uk/pubs/other/deloitte_cost_of_regulation_report.pdf. The FSA study was based on 68 participants.

⁶ Including self-employed practitioners and participants acting as representatives of their firm.

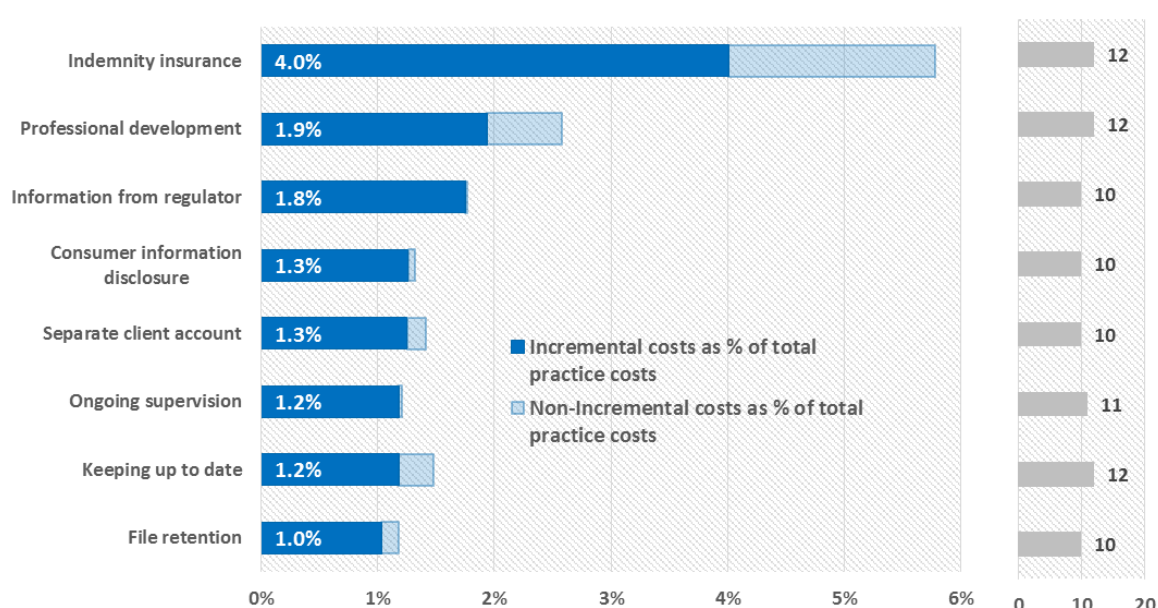
⁷ Solicitors and licensed conveyancers are regulated across all the activities they provide to their customers. Therefore the concept of reserved activities are not an appropriate measure of regulatory cost for entities.

Analysis of reported incremental costs revealed the following:

- on average, entities reported that the **total cost of regulation** as a proportion of total practice costs was between 15% and 23%;
- the areas of regulation (cost categories) where incremental costs of regulation (or regulatory burden) were highest were **professional indemnity insurance**, **professional development**, and **information from the regulator**;
- the incremental cost of **professional indemnity insurance** regulations was reported as being nearly double that of the next highest incremental cost, however legal professionals recognised that a significant proportion of total regulatory cost in that category would be incurred even absent this regulation, for other commercial reasons; and
- professionals regulated as entities reported that they saw legal regulatory costs primarily as a burden and would only undertake a small proportion of those activities for other regulatory or commercial reasons.

The findings are illustrated in Figure ES1.1. The dark blue bars represent the incremental cost of legal services regulation as a proportion of total practice cost while the light blue bars represent the non-incremental costs. Incremental costs should not be aggregated. This is because practices were asked to estimate the proportion of regulatory costs that are discretionary in each category alone, assuming that other regulations do not change. Any such savings may not be mutually exclusive were regulatory requirements to be relaxed or removed in more than one category simultaneously. The figures on the right show the number of responses in each category.

Figure ES1.1 Incremental (and non-incremental) costs of legal services regulation by category for professionals regulated as entities (as a proportion of total practice costs)



Source: ICF questionnaire and analysis

Regulatory costs for legal professionals regulated as individuals

The individuals sample contained practitioners authorised on an individual basis by their regulator (see Table 2.1 for a full list). Their regulatory costs were presented as a proportion of their costs associated

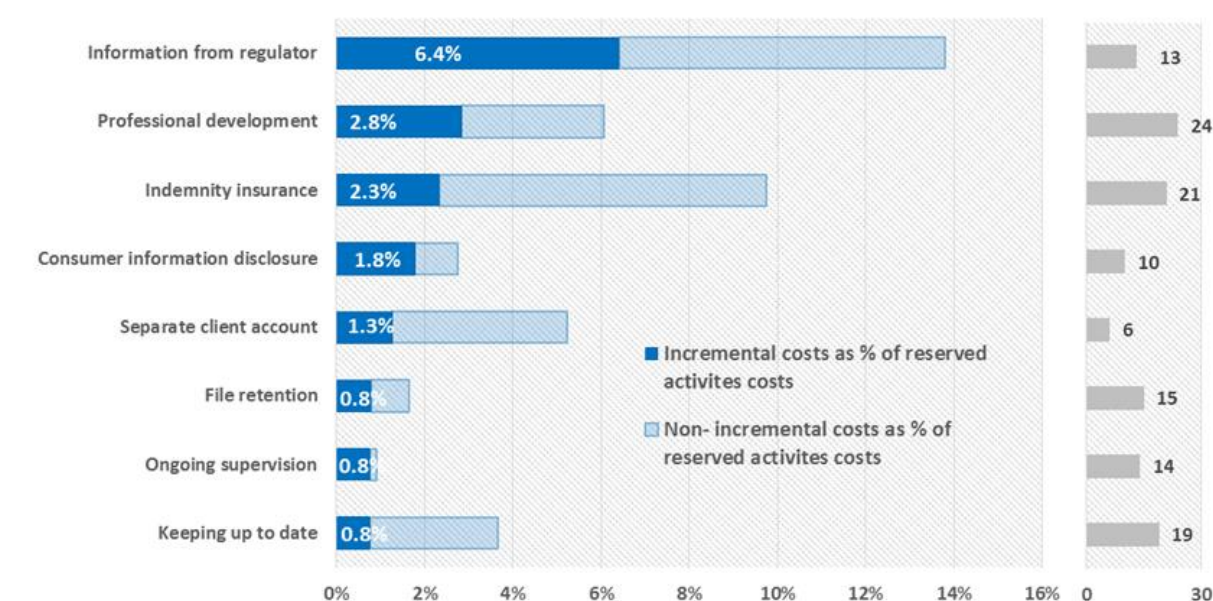
with reserved work only (rather than total practice costs, as in the entities sample), so that responses could be compared with each other.⁸ Analysis of reported incremental costs revealed the following:

- on average, individuals reported the **total cost of regulation** as a proportion of total practice costs associated with reserved activities was between 8% and 17%;
- reported incremental costs were highest for **information requirements from the regulator**, **professional development requirements**, and **professional indemnity insurance**;
- nearly all costs associated with **ongoing supervision by the regulator** were reported as incremental costs – this is consistent with the study finding few examples of regulatory or commercial overlap associated with those regulatory costs;
- a significant portion of the total regulatory cost incurred through **compliance with information requirements** from the regulator and **professional development** were incremental, suggesting a small degree of regulatory and commercial overlap; and
- participants reported low incremental costs for the remaining categories of regulatory costs; **professional indemnity insurance requirements**, **consumer information disclosure**, **separate client account requirements**, **keeping up to date with regulations** and **file retention requirements**. This finding suggests that the regulatory burden associated with these types of costs was low.

Furthermore, for each of these categories, this study found a large degree of regulatory or commercial overlap (the light blue bar in Figure ES1.1) – indicating that although professionals regulated as individuals incurred some significant costs in these areas, a high proportion of these costs would be incurred anyway if legal services regulation were removed in each area. This observation applied to the greatest degree to separate client account requirements, albeit less reliably, being based on only six responses.

The findings are illustrated in Figure ES1.2. The dark blue bars represent the incremental costs of regulation as a proportion of costs of providing reserved work, while the light blue bars represent the non-incremental costs. The figures on the right show the number of responses in each category.

Figure ES1.2 Incremental (and non-incremental) costs of regulation by cost category for professionals regulated as individuals (as a proportion of costs of providing reserved work)



Source: ICF questionnaire and analysis

⁸ Results are presented as a proportion of costs associated with regulated work.

1 Introduction

This report describes the findings and methods used in a study into the costs of regulation in legal services. This study was carried out in two parts. The first part investigated costs of regulation faced by entities regulated by the Solicitors Regulation Authority (SRA) and the Council for Licensed Conveyancers (CLC). The second part investigated costs of regulation faced by individuals.⁹ The findings for each part are described separately in two sections (sections 4 and 5). The study method applied was broadly consistent across the two parts of this study, so the methodology section of this report applies to both parts.

1.1 Objectives of the study

The study was undertaken as part of the LSB's project examining the costs of regulation and its impact on the regulated community.¹⁰ The project aimed to gather data on the cost of legal sector regulation, to contribute to the evidence base for any future recommendations for reducing the overall costs of regulation.

The primary aim of this research was to carry out a detailed and thorough assessment of the totality of regulatory costs that legal services providers face to be able to practise. It was intended to build an evidence base for regulators and policy makers in the legal services sector, on which to base future work.

This type of study has never previously been conducted in the legal services sector. It therefore represents the first information about the incremental cost of legal services regulation in England and Wales. The study built on earlier research conducted by the LSB in 2014 into legal services professionals' general views about the costs of regulation in their sector.¹¹

This in-depth research aimed to complement the first study by estimating the total costs of legal services regulation and the incremental costs of legal services regulation in a number of different areas. In short, incremental costs are those that serve only to make practices compliant with legal services regulation, including both one-off and ongoing costs.¹² Incremental costs exclude regulatory costs that practitioners would bear even if legal services regulation was not present. For example, actions that are beneficial for commercial reasons or because other regulatory regimes require the activity. This meant that were legal services regulations in those categories to be removed, practices would save the amount equal to the incremental cost in each category. The study did not aim to assess these costs against the benefits of the regulations that generate those costs, but to inform any such future work.

⁹ Individuals regulated by the Solicitors Regulation Authority, the Bar Standards Board, the Council for Licensed Conveyancers, CILEx Regulation, the Intellectual Property Regulation Board, the Costs Lawyers Standards Board and the Master of the Faculties. As a new regulator the Institute of Chartered Accountants of England and Wales was not included in this study.

¹⁰ For more information

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

¹¹ See: <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf>

¹² Paragraph 3.4 explains the concept of incremental costs further.

2 Participants in the study

This study originally aimed to estimate broadly representative costs for all legal services professions, based on information from all types of legal practitioners. It targeted all types of regulation (regulated as individuals or entities), size, and type of activities (reserved and non-reserved). For additional information on the different distinctions see Annex 1.

64 participants took part in this study. Despite extensive efforts to recruit including extending the data collection period and opening the study up to all regulated legal services professionals (see Annex A2.3), the number of participants was lower than aimed for. Accordingly, certain considerations regarding the data have been highlighted alongside the results. The number and composition of responses were insufficient to make comparisons across professions or between practices of different sizes.

To supplement the cost information collected, those that participated incorporated qualitative insights into their response to the questionnaire. Numerous exchanges with legal services professionals by telephone and email throughout the study also generated further insight. Some legal services professionals who withdrew their participation also provided information as to why. This valuable information has been incorporated into the study findings.

2.1 Individuals and entities

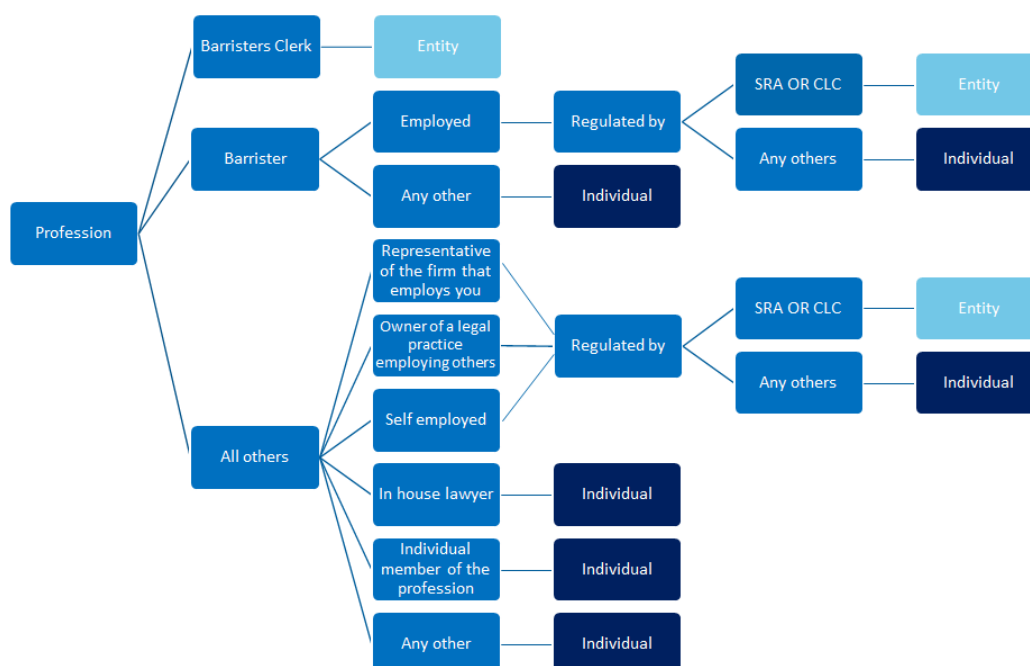
This study distinguished between respondents regulated as individuals and those regulated as entities (traditional firms or licensed alternative business structures (ABS)).¹³ The chosen approach follows the LSB's 2015 study on legal professionals' general views on regulation, summarised in Figure 2.1.

- **Entities** were identified authorised legal professionals regulated as part of an entity by either the Solicitors Regulation Authority (SRA) or the Council of Licensed Conveyancers (CLC). In practice 16 of the 17 respondents were solicitors.
- **Individuals** were classified as practitioners authorised on an individual basis by their regulator¹⁴ (see Table 2.1 for a full list).

Legal professionals regulated as individuals carry any risk related to the legal services they provide. Legal professionals regulated as part of an entity have, as part of that entity, dedicated compliance officers ensuring that the whole firm complies with relevant legislation. Individually authorised persons within these firms will often have the cost of their individual practising certificates covered by the entity. Other legal professionals who are not authorised persons but who work for an entity are regulated as staff of that entity.

¹³ Some also make the distinction between professionals providing services in-house and those providing services to the public.

¹⁴ This involves three solicitors regulated as individuals rather than as part of an entity.

Figure 2.1 Classifying participants as individuals or entities

Source: ICF based on the LSB survey design

2.2 Professions

Participants were also asked to indicate their main profession (Table 2.1). The study sample for entities almost entirely comprised solicitors, so those findings can be interpreted as relating specifically to solicitors.

Table 2.1 Study participants per profession

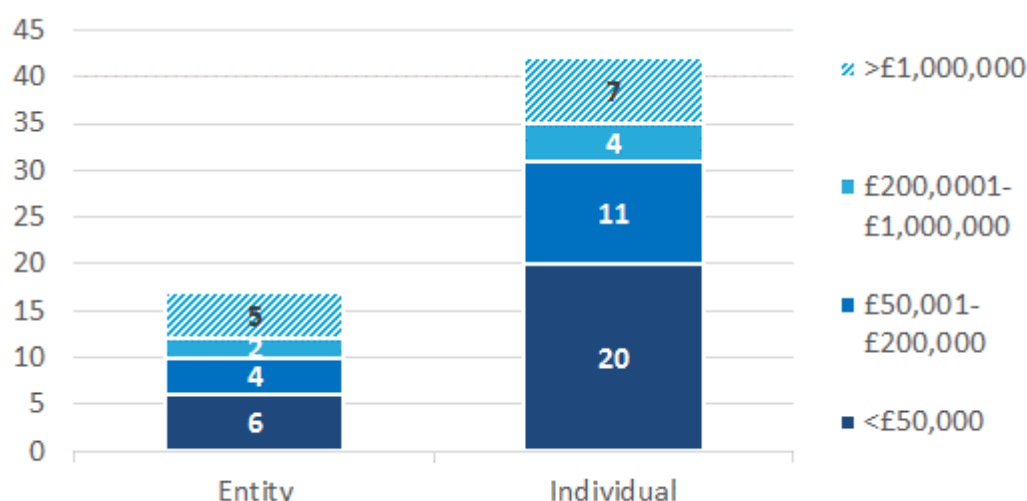
Profession	All study participants	Entities	Individuals
A solicitor	19	16	3
A patent attorney	13	n/a	13
A notary or scrivener	9	n/a	9
A barrister	7	n/a	7
A costs lawyer	2	n/a	2
A licensed conveyancer	2	1	1
A chartered legal executive	10	n/a	10
A trademark attorney	2	n/a	2
Total	64	17	47

Source: ICF questionnaire and analysis

2.3 Size of practices

Although the majority of practices were classified as ‘micro’¹⁵, the annual revenue generated was distributed more evenly across the categories set out in Figure 2.2 below.¹⁶ In the individuals sample four respondents answered as a representative of a firm that employs them, which explains why some participants responding as ‘regulated individuals’ have high revenue figures. Detailed interrogation of these submissions confirmed that costs were correctly reported relating only to legal activities.

Figure 2.2 Practice size based on the annual revenue in £, for professionals regulated as an entity or as individuals



Source: ICF questionnaire and analysis, n=17 and n=42¹⁷

2.4 Types of practices

The sample of study participants also included a wide range of different types of legal practice. Recognising this diversity, this study requested that participants report the proportion of their revenue from legal services that is derived from reserved activities, as opposed to non-reserved activities.¹⁸

Participants’ responses suggest that the majority of practice revenue for entities was generated by providing reserved activities (Figure 2.3). However, this result should be interpreted with caution. The sample almost entirely comprised solicitors, whose protected titles mean that all (reserved and non-reserved) activities are regulated. The reported proportion of revenue generated from reserved activities, may reflect misreporting of ‘regulated’ revenue as reserved-activity revenue.¹⁹

¹⁵ Micro practices are defined as practices with less than 10 employees, small practices are practices with 10 to 49 employees, medium practices have between 50 and 249 employees and large practices have over 250 employees.

¹⁶ The classification of the legal practices based on their revenue has been established by the ICF research team. Following the European standard, all the practices would fall into one category (micro) European Commission. (2014). What is an SME? Available at: http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm. Therefore, the categories were defined based on the analysis of the results as to evenly distribute the participants among them.

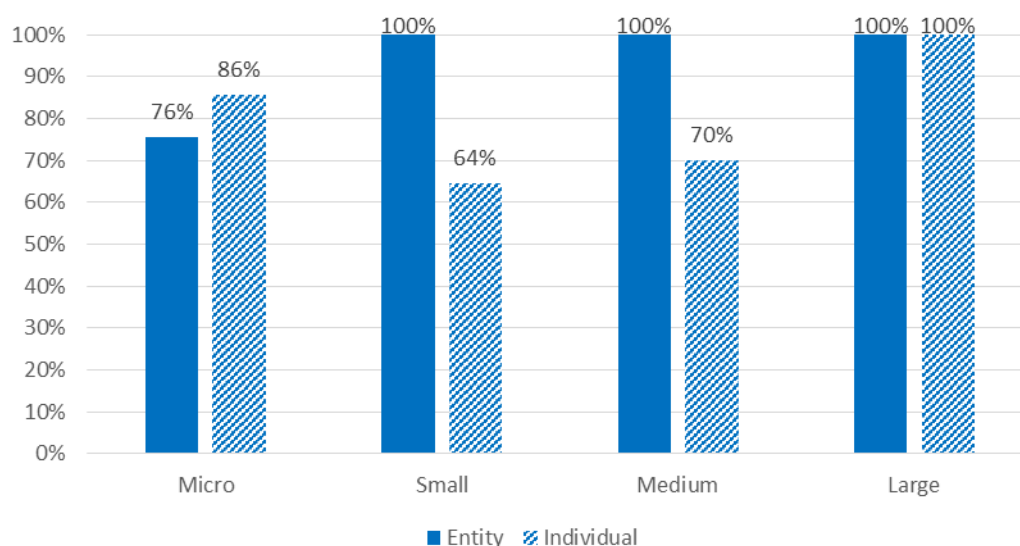
¹⁷ In the individual responses, 5 participants did not provide data on their annual revenue.

¹⁸ Or in the case of in-house practices, the proportion of work completed that was derived from reserved activities.

¹⁹ Participants were asked: “what proportion of your practice’s billed revenue (or recorded hours for in-house practices) is related to the provision of reserved legal activities?” Reserved legal activities include the exercise of

Among the sample of individuals in small or medium practices, the proportion of revenue derived from reserved activities was considerably lower.²⁰ These practices generated income from non-reserved activities. Reasons for this include legal professionals working in house, legal practices within larger non-legal firms (carrying out other non-legal activities), or practices providing some other non-reserved legal work.

Figure 2.3 Share of practices' revenue derived from reserved legal activities



Source: ICF questionnaire and analysis, Micro: n=9 and n=29, Small: n=4 and n=8, Medium: n=3 and n=3, Large: n=1 and n=7

rights of audience (i.e. appearing as an advocate before a court); the conduct of litigation (i.e. issuing proceedings before a court and commencing, prosecuting or defending those proceedings); reserved instrument activities (i.e. the preparation of the instrument for transfer or charge of property specific legal provisions); probate activities (i.e. preparation of the application for grant of probate or letters of administration); and notarial activities (i.e. work governed by the Public Notaries Act 1801) and the administration of oaths (i.e. taking oaths, swearing affidavits etc.).

²⁰ Legal professionals who operate under one of the protected titles are regulated in relation to all the legal services they provide, even if they do not practise in any of the reserved legal areas. For example, a solicitor who only practices will writing (an unreserved activity) is still regulated to the same extent as a solicitor engaged in five areas of reserved activities. This may influence how an authorised person perceives the regulatory cost imposed on him or her. See: <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report-Annexes.pdf>

3 Methodology

This section provides an overview of the methodology, which has been designed to be repeated in future, such that any further evidence-gathering in future could supplement the data and evidence gathered during this study.

Collecting data on the costs of regulation is a challenging exercise in any sector. The information needed is not always available for individuals or entities and candidates for participation in the study face competing demands on their time. The method employed in this study anticipated this problem, and tried to take account of these difficulties by providing extensive support to participating entities and individuals.

This section first outlines the standard approach utilised to recruit and assist participants in completing the survey. Second, it defines the method used to calculate the regulatory costs. Third, it provides the steps undertaken to ensure the data received was accurately interpreted, and to analyse and report the results.

3.1 Gathering evidence

The evidence for this study was gathered between February and March 2015. The approach utilised to gather evidence in this study used standard elements of good practice to encourage participation. This included providing information on the purpose of the study, making it easier for participants to understand and find the information requested and providing support to participants where needed. An extensive and varied range of measures were taken to encourage participation, including the following:

- multiple attempts to contact participants, by email and by telephone;
- extensive testing of study materials prior to distribution (including workshops with participants to improve materials), comprehensive guidance on how to complete the questionnaire, including reactive guidance based on participants' questions; and
- multiple types of support provided and offered to participants by email and by telephone.

A comprehensive description of measures taken is included in Annex 2.

3.2 Observations from non-participation

This study also analysed responses from those who offered their participation and then withdrew from the study, to establish reasons for their withdrawal. This information was incorporated into the findings of the study and also into the lessons learned, outlined in Annex 2, section A2.4.

3.3 Information on the costs of legal services regulation

The results of this study were based on individuals' and entities' reported cost information, their judgement on the drivers of those costs and their qualitative views on the cost of legal services regulation. Information was requested on the last complete financial year where possible (for which 22 participants were able to provide information). Where this was not available, the most recent available information was requested. All cost information has been anonymised to maintain the confidentiality of participants.

A key part of the first stage of the methodology was to define the categories of cost that were to be included as regulatory cost. A longlist was identified through desk research, including reviewing the LSB's online survey of general views on the costs of regulation.

Further research then narrowed this longlist down to those categories specifically identified as regulatory costs; those directly resulting from legal services regulation. This was a crucial step taken to minimise over-reporting of costs not directly attributable to legal services regulation. This shortlist was refined in consultation with stakeholders during cognitive testing of the study

questionnaire, as well as with the LSB and the costs of regulation project's independent advisors.²¹ Table 3.1 describes the cost categories that were included in the study where legal regulation was identified as the cost driver.

Table 3.1 Cost categories included in the study questionnaire

Category	Included/ excluded	Rationale
Requirements to have separate client accounts	Included	All categories are based on legal requirements of the Legal Services Act 2007 to comply with regulations imposed by professional regulators.
Information requests from your regulator. This includes the time-cost associated with applying for practising certificates.		
Consumer information disclosure		
Ongoing supervision activity by your regulator		
File retention		
Keeping up to date with changes to regulations		
Professional development training course fees (e.g. CPD)		
Professional indemnity insurance		

Some participants considered some other types of cost to be regulatory.²² However, these cost were out of scope for this study because:

- they are not regulations derived from the Legal Services Act 2007;
- they arose from commercial decisions rather than regulatory requirements;
- they were regulatory costs that have already been documented elsewhere; or
- they were one-off regulatory costs that would not give a true picture of the typical cost of regulation.

An overview of the types of cost excluded are outlined in Table 3.2 below.

Table 3.2 Cost categories excluded from this study

Category	Excluded	Rationale
Practising certificate fees	Financial cost excluded	All regulated legal professionals must pay for a practising certificate. As the financial cost is already known it has been excluded from this study. However, the time cost of renewing a practising certificate has been captured under information requests.
Contributions to the compensation fund	Excluded	This is compulsory legal services regulation for solicitors and CLC licensed entities and paid for over the PCF fee. As the cost for this is already known it has been excluded from the survey.
Contributions towards maintaining and raising professional standards (including training)	Excluded	All these areas are not a direct regulatory cost but rather permitted purposes, which are paid for as part of the practising certificate fee.
Making a contribution towards supporting and advising authorised persons (plus prospective authorised persons) about practice management	Excluded	

²¹ Doctor Christopher Decker, University of Oxford and Professor Stephen Mayson, independent advisor and professor of legal services regulation at The University of Law, and Honorary Professor of Law in the Faculty of Laws at University College London.

²² For more details on the participants' views, see the [LSB online report](#), p. 19

Category	Excluded	Rationale
Making a contribution towards the professions participation in law reform and the legislative process	Excluded	
Making a contribution towards the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions	Excluded	
Making a contribution towards the provision of pro-bono work to the public	Excluded	
Supporting the promotion and protection by law of human rights and fundamental freedoms	Excluded	
Accreditation scheme fees (e.g. Family Law Accreditation Scheme run by the Law Society)	Excluded	Not a requirement of legal services regulation.
Membership of a professional association (e.g. Association of Personal Injury Lawyers)	Excluded	
Membership of your representative body	Excluded	
Enforcement mechanism such as handling of conduct complaint	Excluded	This has been excluded from this study because costs arising from complaints are unlikely to be typical of on-going costs of regulation for participants in this study. ²³
Money Laundering regulatory compliance	Excluded	This regulation is not legal services regulation. This is central government regulation which applies to any business in the UK.
Know your customer requirements from HMRC	Excluded	
Legal Aid contracting documentation ²⁴	Excluded	Requirements imposed by the Legal Aid Agency, but these apply only to practices providing services funded by legal aid. This is not a regulatory requirement, but provided at the discretion of individual practices.

3.4 Incremental costs of legal services regulation

Practices' actions to comply with legal services regulation can also contribute to compliance with other regulation, or deliver commercial benefits. Identifying the total cost of legal services regulation overlaps with the costs of such activities, a common challenge in identifying costs of regulation. In order to isolate the actual burden of regulation, the incremental cost of legal services regulation is calculated. This comprises the compliance costs that do not serve any other commercial or regulatory purpose.

This study assessed incremental costs separately for each category of legal services regulatory cost included in the study. In this context, incremental costs are those that serve only to comply with legal services regulation, including both one-off and ongoing costs. This means that were legal services regulations in those categories to be hypothetically removed,

²³ In cases where legal providers loses a complaint's claim they will incur a fine which will significantly increase their regulatory costs for the relevant accounting period.

²⁴ Documentation required by the Legal Aid Agency associated with the application process for legal aid.

practices would save the amount equal to the incremental cost in each category. For instance, while legal services regulation requires practices to have a minimum level of professional indemnity insurance, for commercial reasons many would take some level of insurance even without that requirement. The difference between the mandatory amount and this new amount is equal to the incremental cost.

Incremental costs were assessed by category to enable comparison of total and incremental regulatory cost between categories. To estimate incremental cost, practices were asked to assume that if requirements in one category were removed, all other requirements of legal services regulation remain. However, this approach required caution to be applied to any aggregation of incremental costs, so this study did not attempt to estimate total incremental regulatory cost.

3.4.1 Regulatory overlap

Many legal professions must also comply with other statutory regulation that does not originate from the legal sector regulators. Regulatory overlap occurs where actions taken to comply with legal services regulation also contribute to compliance with other forms of regulation.

Examples of regulatory overlap²⁵

Actions to meet the **requirements of company law regulation**, such as audit requirements.

Actions to comply with legislative requirements flowing from the UK's transparency agenda, such as **money-laundering regulations**. Activities that practices undertake to meet such regulations, such as keeping documents that relate to financial transactions, identifying customers, assessing risks associated with money laundering or implementing appropriate management procedures may also contribute to practices' compliance with certain regulations imposed by legal services regulators.

Actions taken to comply with **client confidentiality** rules, which may also contribute to practices' ability to meet statutory requirements to safeguard client privacy (falling within the remit of the Information Commissioner's Office).

3.4.2 Commercial overlap

Commercial overlap occurs where actions taken to comply with legal services regulation also deliver commercial benefits and would be carried out for commercial reasons even in the absence of legal services regulation.

Examples of commercial overlap

Actions undertaken to comply with regulatory requirements to **disclose certain information to consumers** may in any case be completed as good practice and for the benefit of consumers. For example, failing to do so may increase the risks of complaints from consumers.

Actions undertaken to meet regulatory requirements for **professional development** may have other commercial drivers, such as improving the experience, skillset and capabilities of practice staff, or reputational reasons such as attracting potential employees to work with the practice.

Regulatory requirements for **professional indemnity insurance** may overlap with commercial reasons to take up a certain level of professional indemnity insurance cover, to mitigate business risks arising from standard commercial practice.

²⁵ The examples of regulatory and commercial overlap were specific examples provided by legal professionals during the cognitive testing workshops.

3.4.3 Ongoing and one-off costs

Participants were asked for an estimate of annual costs to include both 'one-off' and 'ongoing' costs. Guidance to participants indicated that one-off costs were to be allocated by including only the share of an annualised 'one-off' cost for the period relevant to that cost.

To capture all ongoing costs, participants were requested to consider annual costs over a 5-year time period, such that all ongoing costs could be incorporated. Requesting an annual figure was intended to prevent double-counting of costs incurred over multiple years.

3.5 Review and validation of responses

Once received, responses to the study questionnaire were reviewed to establish consistency with the method outlined above. A range of steps were applied consistently throughout the dataset, to establish the validity of responses and correct errors in the data where these could be identified. These steps are outlined below and explained in more detail in Annex A2.4:

- an initial review of responses to identify errors;
- standardising the time period to which responses applied;
- further work to replace blank values;
- constructing intermediate outputs to sense-check data entries
- comparing questionnaires with peer practices;
- further discussions with practices;
- estimating proxies to replace missing values; and
- standardising results.

3.6 Reporting results of the study

Data reported by practices participating in this study includes the following information, reflecting the methodological steps outlined above:

- practice size in terms of total revenue and number of legal services professionals employed;
- total costs (or overheads);
- the proportion of revenue earned from reserved legal activities;
- financial and non-financial costs of legal services regulation, in total and for each cost category specified in the questionnaire; and
- the proportion of costs in each cost category that are incremental.

3.6.1 Aggregating costs within practices

Two methods were used to estimate total regulatory cost; a 'bottom-up' approach and a 'top-down' estimate that practices reported directly. The bottom-up approach aggregated total regulatory costs across the categories included in this study.

As noted, incremental costs should not be aggregated. This is because practices were asked to estimate the proportion of regulatory costs that are discretionary in each category alone, assuming that other regulations do not change. Any such savings may not be mutually exclusive were regulatory requirements to be relaxed or removed in more than one category simultaneously.

Aggregation within professions was not possible due to the low participation rate in this study.

3.6.2 Estimating representative values for the costs of legal services regulation

After standardisation of the data, it was necessary to estimate representative values for each sample of regulatory costs. Analysis of responses revealed a wide distribution of reported costs within each category. Median and average reported costs therefore differ considerably.

Comparisons between cost categories were completed for both mean and median values. Median reported costs were chosen as the most appropriate representative value to be reported in this study, to prevent a small number of outliers biasing cost estimates upwards.

4 Costs of legal services regulation for entities

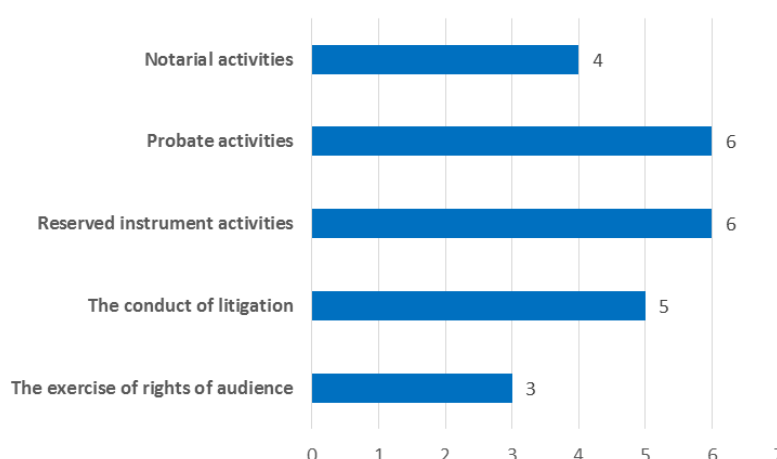
This section of the report summarises study findings on the costs of regulation relating to total and incremental costs of legal services regulation, as reported by entities. As set out above costs were estimated using a ‘bottom-up’ approach and a ‘top-down’ estimate that practices reported directly. The bottom-up approach aggregated total regulatory costs across the categories included in this study

4.1 Introduction

Of participating entities, all but one were solicitors (16 were solicitors and one was a licensed conveyancer). Participants regulated as entities and reporting their position were split roughly evenly between representatives of the firm that employed them, owners of their business employing others and self-employed lawyers.²⁶

Participants regulated as entities were asked to report reserved activities²⁷ undertaken by their practice. A wide range of practice types were reported (Figure 4.1), including those providing mainly notarial activities, probate activities, reserved instrument activities, the conduct of litigation and the exercise of rights of audience.

Figure 4.1 Reserved activities undertaken within the sample, number of responses



Source: ICF questionnaire and analysis, $n=8$ ²⁸

4.2 Total costs of legal services regulation

The main objective of this study was to assess incremental costs of regulation. It also revealed information on total costs of regulation. Representative values for total costs of legal services regulation are reported as median values for the sample, following the analysis of the distribution of costs outlined above (section 3.6.2).

- Within the study sample, there is no clear relationship between the size of a practice in terms of revenue and their total costs of regulation.
- Practices’ own reported estimates of top-down regulatory costs indicated that regulatory costs are higher as a share of revenue for those with higher revenues. This result is counter-intuitive, given that some elements of regulatory cost could be expected to be

²⁶ Not all respondents reported their position.

²⁷ The reserved legal activities are: the exercise of a right of audience; the conduct of litigation; reserved instrument activities; probate activities; notarial activities, and the administration of oaths.

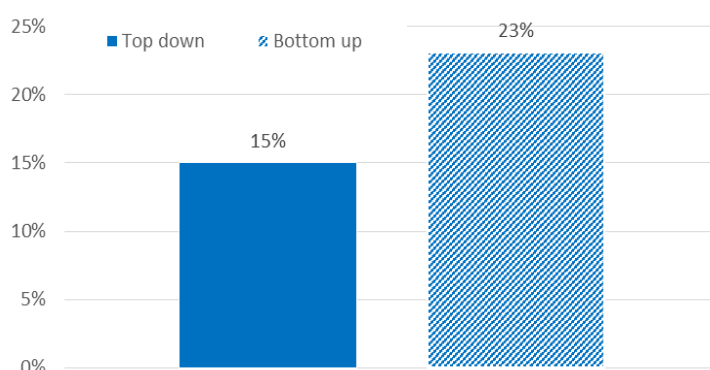
²⁸ 9 participants did not respond to the question on the reserved activities they undertake.

fixed costs (such as completing forms or submitting information). Such a characteristic would generally lead to economies of scale that drive average costs down as practice size increases. This could potentially be explained by larger entities being subject to more regulation or greater regulatory scrutiny than smaller practices regulated in the same way. It may also be explained if participants included entity licences as a regulatory cost, because these increase with the size of the firm.

- Entities generally reported higher costs across individual cost categories than their own top-down estimate of total regulatory cost. This may indicate some double counting of costs across categories in participants' estimates for individual categories.
- Micro practices reported a particularly large discrepancy, reporting the total cost of legal services regulation as 14% of the total practice costs, but an implied 49% when using the bottom-up method. This illustrates the difficulty that practices may have allocating their overheads to specific categories of regulatory cost.

Figure 4.2 illustrates the total cost of legal services regulation as a proportion of the total costs of providing reserved activities based on top-down and bottom-up approaches. Top-down estimates are as reported directly by participants. Bottom-up estimates aggregate cost estimates for each regulatory cost category.

Figure 4.2 Total costs of regulation as a proportion of total practice costs (median across practices)



Source: ICF questionnaire and analysis, $n=13$ ²⁹

Reported high regulatory costs among study participants were consistent with qualitative responses expressing the view that costs are high and with the findings of the LSB's online survey on general views on regulation across legal services.³⁰ However, this finding should be interpreted with caution given the small sample size in this study. Further, participants reported difficulty making these estimates or finding the relevant information.

4.3 Incremental costs of regulation

As noted, the entity sample principally comprises solicitors. The SRA states in its Handbook that all activities carried out in connection with the practice of an authorised body³¹ are regulated activities. In other words, all solicitors' activities are subject to regulation, not only their reserved activities.³² The share of those activities that are reserved therefore does not

²⁹ 4 participants did not provide quantitative information.

³⁰ <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf>

³¹ An authorised body is a legal practice that has gained authorisation by the SRA to practice, subject to Rule 6 of the SRA's authorisation rules (http://www.sra.org.uk/solicitors/handbook/glossary/content.page#SRA_Authorisation_Rules accessed 3 June 2015).

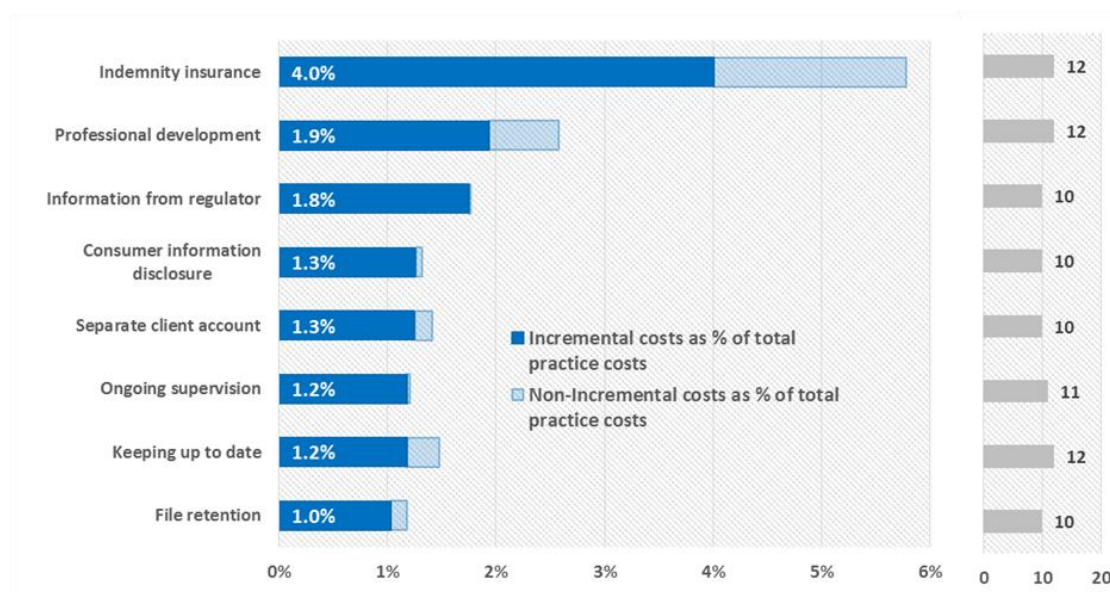
³² Reserved activities as described by the SRA handbook are "the exercise of a right of audience, the conduct of litigation, reserved instrument activities, probate activities, notarial activities and the administration of oaths, as

represent the entire regulatory burden, so it is relevant to consider *total* practice overheads, rather than the proportion that derives from reserved activities.³³ In light of the difference methods of calculation, the results for the entity and individuals sample should not be compared directly against each other.

Analysis of incremental costs for entities found the following observations set out below. In Figure 4.3 the dark blue bars represent the incremental costs of regulation, the light blue bars represent the non-incremental costs, each as a proportion of total practice cost. Grey bars show the number of reported responses in each cost category.

- Incremental costs were highest for **professional indemnity insurance, professional development, information from the regulator** and **ongoing supervision from the regulator**.
- In particular, reported incremental costs of **professional indemnity insurance** regulation is double that of the next-highest. Non-incremental professional indemnity insurance costs are also higher than for any other category, both as a proportion of total regulatory costs and comparing proportions of total practice costs. This indicates that practices recognise that about a third of professional indemnity insurance costs would be incurred even absent the relevant legal services regulation.
- Entities reported that incremental costs accounted for most regulatory costs in all other categories, indicating a high regulatory burden and little overlap with other regulatory or commercial reasons to carry out those activities. This is intuitive for cost categories relating specifically to interaction with their practice regulator (dealing with information from the regulator and ongoing supervision by the regulator).

Figure 4.3 Incremental (and non-incremental) costs of regulation by cost category for professionals regulated as entities (as a proportion of total practice costs)



Source: ICF questionnaire and analysis

defined in Schedule 2 to the Legal Services Act 2007

(http://www.sra.org.uk/solicitors/handbook/glossary/content.page#reserved_legal_activity accessed 3 June 2015).

³³ Solicitors firms reported wide-ranging proportions of revenue generated from reserved legal activities, with several reporting 100% of revenue from reserved activities (Figure 2.3). While solicitors were requested to include only reserved activities, the varied response may reflect some confusion about whether all 'regulated' activities (i.e. all legal services provided by solicitors under their protected title, reserved or otherwise) should be included.

Commentary

Participants were given the opportunity to name additional types of regulatory costs not covered by the cost categories outlined in this study, but none were identified.

However, one participant reported “opportunity costs of what fee earners could be doing in the time they currently spend on regulatory matters”. In addition, one participant acknowledged the increasing burden of regulation, which make things “more difficult and time consuming”. The study method accounted for these costs by requesting participants estimate the time costs associated with complying with regulation in each cost area and applying the billable rate of the relevant member of staff to that time cost. This method assumes that all time lost would otherwise be billable, conservatively leading to an upper-bound estimate for the value of the time cost associated with complying with regulation.

Furthermore, two entities reported an important effect of regulation that is not captured within the study results above. One reported not holding a client account because of the costs of regulation, while another indicated that the overall costs of regulation was “a significant influence on strategic decisions”. These comments indicate that the costs of regulation in some cases may lead entities to choose not to provide certain services. The magnitude of this effect is challenging to estimate and doing so is beyond the scope of this study.

4.4 Analysis of cost types

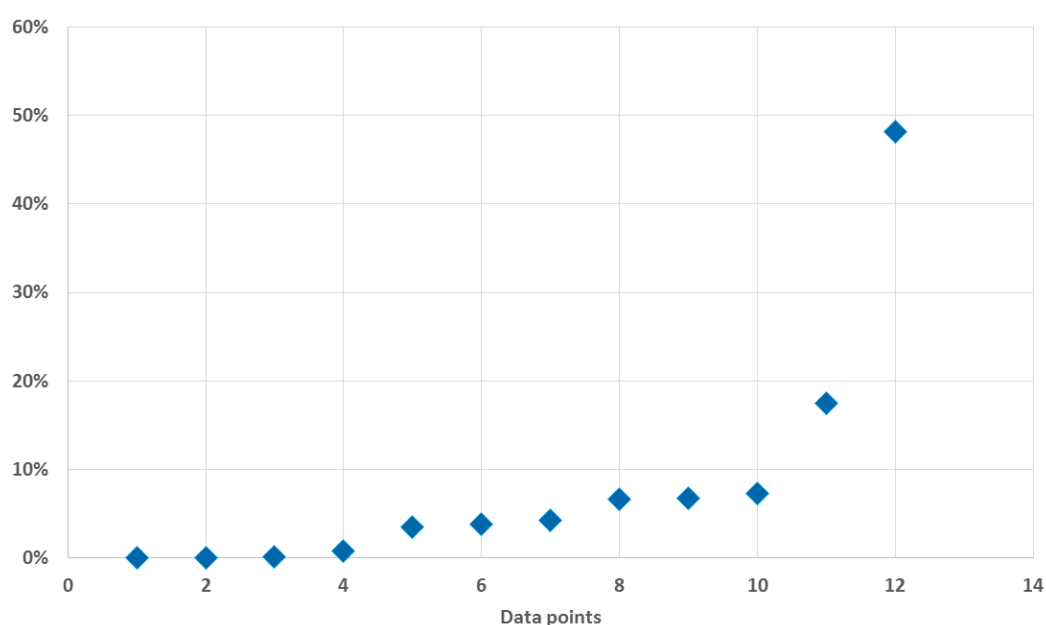
This section examines participants’ reporting of median incremental costs for those categories where incremental costs are highest. It explores the distribution of costs to illustrate how representative these costs are of the sample within this study. In doing so, it describes the validity of those reported median values, which is particularly important given the small sample size of this study.

4.4.1 Professional Indemnity Insurance

Respondents reported professional indemnity insurance as having the highest incremental cost of the cost categories included in the study - at 3.8% as a proportion of total practice overheads. The range of reported incremental cost varies from 0% to 48% of total practice overheads (Figure 4.4). The median value appears to be representative of the remaining sample.

The figures presented in this section illustrate the spread of responses given within each cost category.

Figure 4.4 Distribution of incremental costs of professional indemnity insurance regulations for professionals regulated as entities, as a % of total practice operating costs



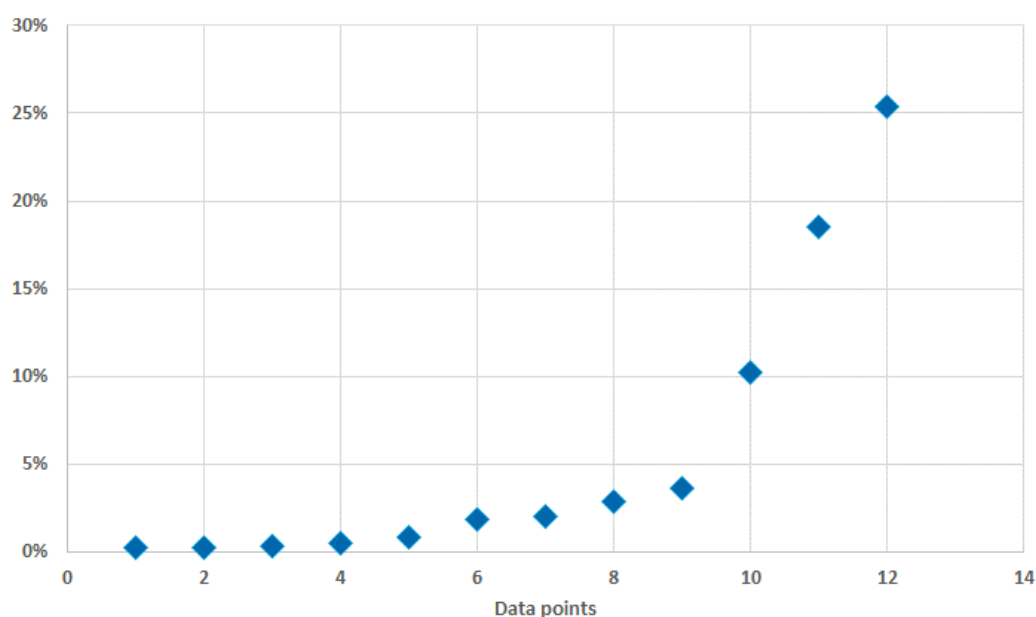
Source: ICF questionnaire and analysis, $n=12$ ³⁴

4.4.2 Professional development

Professional development was the second-highest category. The median incremental cost here was 1.9%, with a range of reported incremental costs from 0.2% to 25.4%. Three participants reported significantly higher costs than the remainder of the sample, but scrutiny of the data did not reveal obvious reasons to remove these data. The median therefore appears to be representative of the incremental costs reported by the majority of the sample (Figure 4.5).

³⁴ 5 participants did not provide information on professional indemnity insurance costs.

Figure 4.5 Distribution of incremental costs of professional development regulations for professionals regulated as entities, as a % of total practice operating costs



Source: ICF questionnaire and analysis, $n=12$ ³⁵

4.4.3 Information requests from the regulator

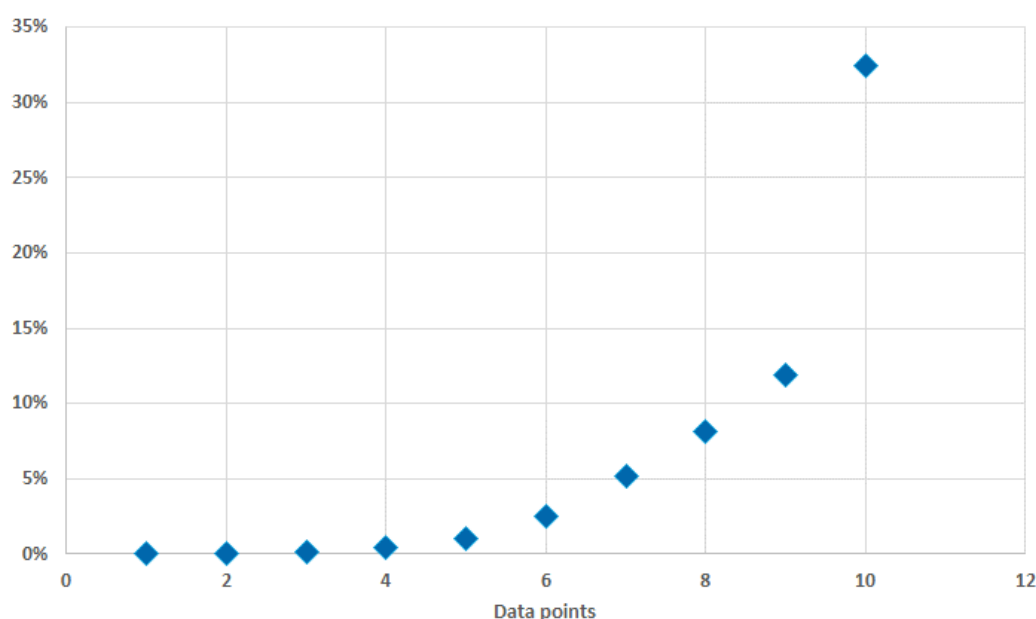
Regulatory costs associated with dealing with information requests from the regulator exhibited a wide range of incremental costs. While median incremental costs here were 1.8% of the total practice operating costs, reported values ranged from 0% to 32.5% of total practice overheads, with a considerable number of responses well above the median (Figure 4.6).

Participants reporting high incremental costs for keeping up to date with information from the regulator generally reported costs in this category to be the highest or among the highest of any of the categories included in this study. This suggests that those participants interpreted the costs to be included in this category widely.

This analysis indicates that the median value may under-estimate the burden associated with keeping up to date with regulations for some professionals regulated as entities.

³⁵ 5 participants did not provide information on professional development costs.

Figure 4.6 Distribution of incremental costs of dealing with information from the regulator for professionals regulated as entities, as a % of total practice operating costs



Source: ICF questionnaire and analysis, $n=10$ ³⁶

4.4.4 Other cost categories

The distribution of reported incremental costs has also been examined for other cost categories. Medians have been confirmed as the most representative estimate for incremental costs in each category (ongoing supervision from the regulator, consumer information disclosure, separate client account requirements, keeping up to date with information from the regulator and file retention requirements).³⁷ However this analysis revealed the following considerations for comparing incremental costs:

- while the median incremental cost of **ongoing supervision from the regulator** was 1.5%, responses indicated that these costs can be significantly higher for some practices; and
- generally, diversity in the practice sample led to a small number of practices reporting significantly higher incremental costs than other practices. This may illustrate the difficulty that some practices have estimating incremental costs, or indicate that a small number of firms experience a significantly greater regulatory burden than others, relative to their size.

Case Study 1 Solicitor firm

Note that ranges have been used in all case studies to preserve anonymity of responses.

This solicitor answered the questionnaire as a representative of the firm that employs him. He is part of a firm that has between 80-100 employees and therefore categorised as medium-sized in this analysis. The firm only offers one reserved activity, the conduct of litigation. As previously noted, all the activities of a firm of solicitors are subject to regulation by the SRA.

Business activity

Revenue: Between £8-10m/yr

³⁶ 7 participants did not provide information on costs related to information requirements from the regulator.

³⁷ While legal aid is the final category, no professionals regulated as entities reported providing legal aid.

Overhead: Between £6-10m/yr

Total cost of regulation

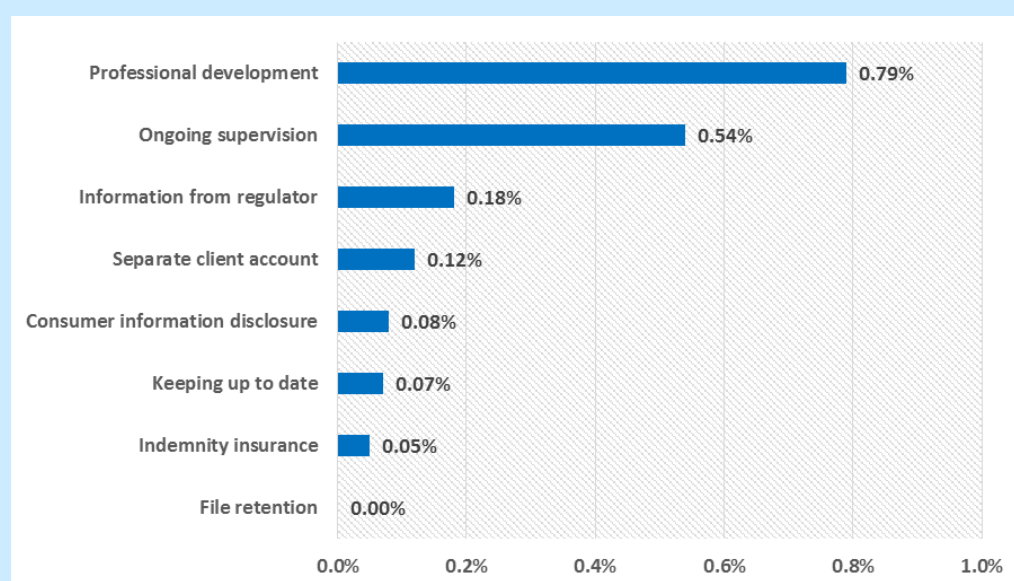
Top down approach: 5% of the total overhead

Bottom up approach: 3.8% of the total overhead

The practice reported lower costs of regulation than the median (15% compared to 23%). It is also a rare case where the top-down estimate is higher than the bottom up calculation. However, this is due to the fact that the respondent did not consider any time cost in the different cost categories but instead only provided a financial cost that was taken as the total cost. This illustrates the difficulty that some participants had in breaking down regulatory costs into specific categories, as reflected in the qualitative comments below.

Incremental cost

Figure 4.7 Incremental costs associated with each category of regulatory cost, as a proportion of total practice costs³⁸



Source: ICF questionnaire and analysis

Professional development, ongoing supervision and information from regulator are the highest incremental costs for this firm. The figures are all lower than the median found for entities. The biggest difference relates to professional indemnity insurance, which is considered the highest cost in the analysis but one of the lowest incremental costs here. This illustrates the need to consider diversity within the study sample.

Qualitative comment

The respondent mentioned that “there are a great number of regulatory burdens that are difficult to know the true cost of”. Therefore, some costs might have been underestimated in particular due to the difficulty of estimating the time cost: “it is also very difficult to estimate the FTE for most of the regulatory relevant work as it is often ad hoc and piecemeal”.

The respondent also emphasised the importance of the costs on strategic decisions: “In terms of the overall costs of regulation, this is a significant influence on strategic decisions. Branching out into new work streams may incur additional regulatory requirements and therefore costs”.

³⁸ Where indicated 0.0%, the participant reported an incremental cost of 0, Where indicated n/a, the participant did not provide any data to the cost category.

Case Study 2 Solicitor firm

Note that ranges have been used in all case studies to preserve anonymity of responses.

This solicitor is part of a smaller practice with 30-40 employees.

Business activity

Revenue: £1-2m/yr

Overheads: £<1m/yr

Total cost of regulation

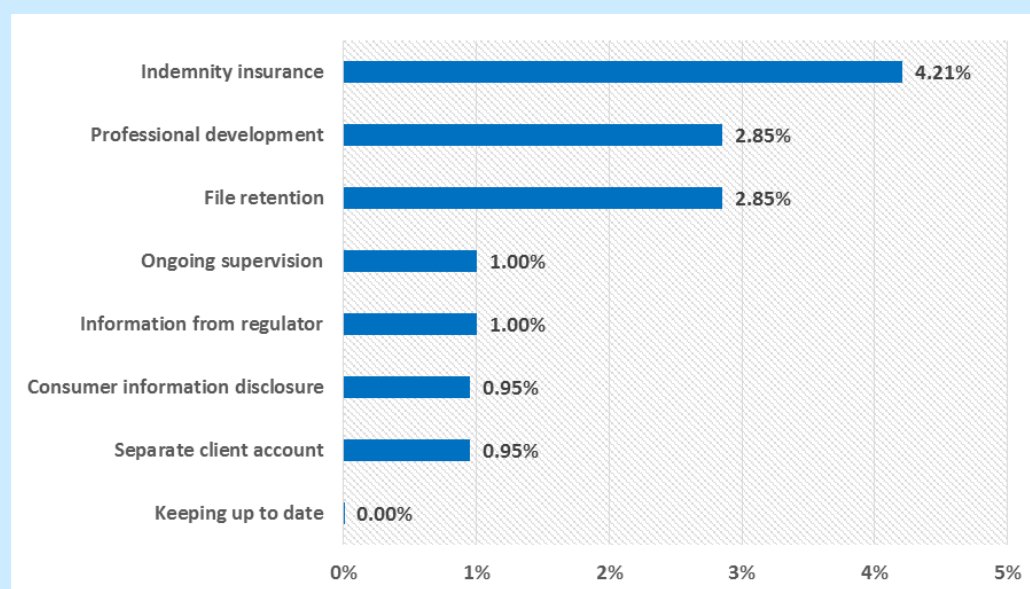
Top down approach: 10% of the total overhead

Bottom up approach: 17% of the total overhead

Estimates of its total costs of regulation are similar to the median values for all entities (15% and 23% for top-down and bottom-up estimates respectively).

Incremental cost

Figure 4.8 Incremental costs associated with each category of regulatory cost, as a proportion of total practice costs



Source: ICF questionnaire and analysis

Professional indemnity insurance, professional development and file retention are the highest incremental costs for this firm. These costs are higher than the average incremental cost for entities. The biggest difference was file retention, which here is the third highest incremental cost to this firm while across the sample it was the lowest one. For other categories, this solicitor reported lower incremental costs than the median for other entities.

Qualitative comments

As in Case Study 1, this respondent emphasised the importance of the regulatory regime on its commercial strategy as a practice. It stated that: “clearly one always has to bear in mind the regulatory regime when considering any matters which may affect the way in which we seek to conduct our business. This can include almost every aspect of our work.”

4.5 Comments on the reliability of the findings

These findings should be considered in the context of the following points regarding data from the study questionnaire.

- Reported costs using a 'top-down' approach were significantly lower than reported costs using a 'bottom-up' approach. Possible reasons are described below.
 - For their top-down and their bottom-up estimates, participants were asked to include all types of business costs, including financial cost *and* costs associated with time spent on compliance and financial costs such as fees or outsourcing.³⁹ However, some participants may not have fully considered all types of cost when estimating a high-level (top-down) total regulatory cost. This possibility was confirmed when the ICF research team contacted participants to verify their information, one participant mentioned that he did not include the time cost in the total overhead as working as self-employed, that time is not billed.
 - When asked to consider individual categories of legal regulatory costs, it is possible that legal practices were prompted to consider legal regulatory costs in more detail and included costs that they had not considered in their top-down estimate. This may account for some of the discrepancy between the top-down and bottom-up estimate.
 - Practices may have over-reported costs where they were unable to allocate regulatory costs specifically to one category of regulatory costs, or where regulatory costs overlap between the cost categories identified and practices have been unable to account for this overlap in their responses to the study questionnaire.
- Reported *total* regulatory costs are presented as the proportion of total practice costs associated with regulated legal activities. However, the majority (16 of 17 practices) in this sample are solicitors; whose entire practices' activities are regulated by the SRA, even those areas that are not reserved legal activities.⁴⁰
- Some participants indicated that they encountered difficulties providing information for the study, despite steps taken to support them. They noted the difficulty in quantifying the true costs of regulation, in particular the time costs. Often activities undertaken to comply with regulations are undertaken ad hoc (and for smaller practices, are not part of a standard or repeatable process). Further, two solicitors specified that they do not use billing hours to report quantitative information, so found it difficult to provide meaningful answers in their responses to the study questionnaire. They were therefore asked to provide their estimates based on their own opinions where more accurate answers were not feasible.
- Not all entities incur regulatory costs in all categories. Accordingly, the number of responses on which incremental cost estimates are based for each category is lower than the total number of study participants regulated as entities.
- As this study was voluntary, the sample was subject to a self-selection bias, whereby only those most motivated to communicate their experiences of the costs of legal services regulation are likely to have participated.

³⁹ A full list of types of costs that participants were asked to include is described in the guidance that accompanied the study questionnaire, see Annex 5.

⁴⁰ See section Annex 1 for more information on protected titles and reserved activities.

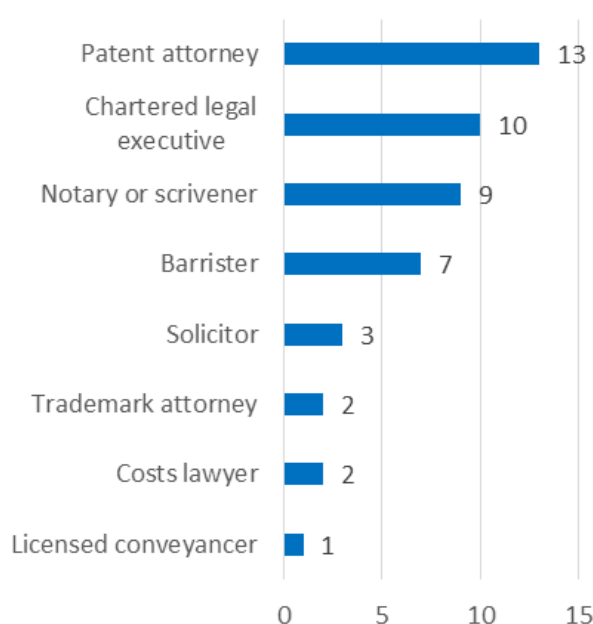
5 Costs of legal services regulation for individuals

This section of the report summarises study findings on the costs of regulation relating to total and incremental costs of legal services regulation, as reported by individuals. The separation of entities and individuals reflects differences in regulation. This sample includes all legal professionals not regulated by the SRA or CLC. For clarity, ‘individuals’ in this sample refers to the way that parties are regulated, not to the status of the practice. The sample included those answering in various capacities, such as representatives of their firm, owners of a legal business employing others, self-employed individual lawyers or in-house lawyers.

5.1 Introduction

This sample included legal professionals indicating each of the eight professions as their main profession (some individuals have more than one ‘profession’). 20 respondents reported their position within the practice they represented. Half were acting as a self-employed individual lawyer. The remainder were split between those acting as a representative of the firm that employed them, an in-house lawyer, a self-employed individual lawyer or an individual member of the legal profession.⁴¹ The low sample size has limited the extent to which comparisons can be made between professions (Figure 5.1).

Figure 5.1 Reported ‘main’ professions of individuals sample

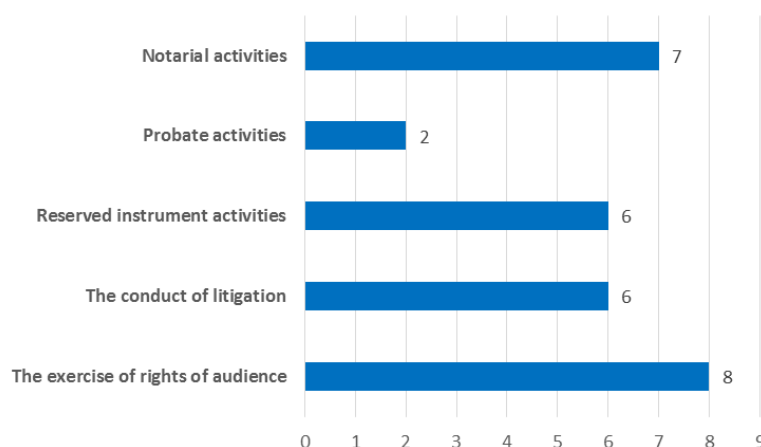


Source: ICF questionnaire and analysis, n=47

Individuals were asked to report reserved activities undertaken by their practice (Figure 5.2). Respondents reported carrying out notarial activities, probate activities, reserved instrument activities, the conduct of litigation and the exercise of rights of audience.

⁴¹ For more information on the regulatory structure to determine if a respondent is an individual or entity see Figure A2.1

Figure 5.2 Reserved activities undertaken within the sample, number of responses



Source: ICF questionnaire and analysis, $n=18$ ⁴²

5.2 Total costs of regulation

The main objective of this study was to assess incremental costs of regulation. It also revealed information on total costs of regulation. Representative values for total costs of legal services regulation are reported as median values for the sample, following the analysis of the distribution of costs outlined above (section 3.6.2).

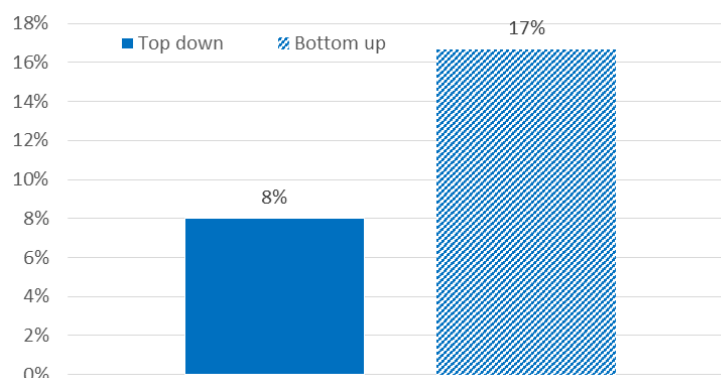
- **Total costs of regulation are higher for individuals working for ‘micro’ practices than larger practices.**⁴³ This may reflect ‘fixed-cost’ regulatory tasks that must be done by a practice of any size, but in a micro practice have a larger relative impact. Both top-down and bottom-up methodologies support this finding.
- Generally ‘micro’ practices’ own estimates of *total* regulatory costs are lower than the sum of costs reported against all regulatory cost categories included in this study. The reverse is true for medium-sized practices.

Figure 5.3 below illustrates the total cost of legal services regulation as a proportion of the total costs of providing reserved activities based on top-down and bottom-up approaches. Top-down estimates are as reported directly by participants. Bottom-up estimates aggregate cost estimates for each regulatory cost category.

⁴² 29 participants did not provide information on the reserved activities they undertake.

⁴³ ‘Micro’ practices include self-employed individual lawyers. Micro practices are practices that employ less than ten employees on the basis of the European classification. See http://ec.europa.eu/enterprise/policies/sme/facts-figures-analysis/sme-definition/index_en.htm.

Figure 5.3 Median total costs of legal services regulation as a proportion of total practice costs associated with reserved activities (comparing top-down and bottom-up estimation method)



Source: ICF questionnaire and analysis, n=32⁴⁴

Reported high regulatory costs among study participants were consistent with qualitative responses expressing the view that costs are high and with the findings of the LSB's online survey on general views on regulation across legal services.⁴⁵ However, this finding should be interpreted with caution given the small sample size in this study. Further, participants reported difficulty making these estimates or finding the relevant information.

Generally, reported total costs of legal services regulation in this sample appear lower than for the entities sample, except for 'micro' practices. Care should be taken when applying this apparent finding, given differences in the samples.

5.3 Incremental costs of regulation

For 22 of lawyers regulated as individuals, legal services regulation applies only to the provision of reserved legal activities. This being the case for the just below half of the study sample, the costs of legal services regulation are presented as a proportion of overheads associated with the provision of reserved legal activities. This contrasts with the approach taken for the entities sample, which comprises mostly solicitors, for whom incremental costs are presented as a proportion of total practice overheads.

Analysis of incremental costs for professionals regulated as individuals finds the following conclusions (based on Figure 5.4).

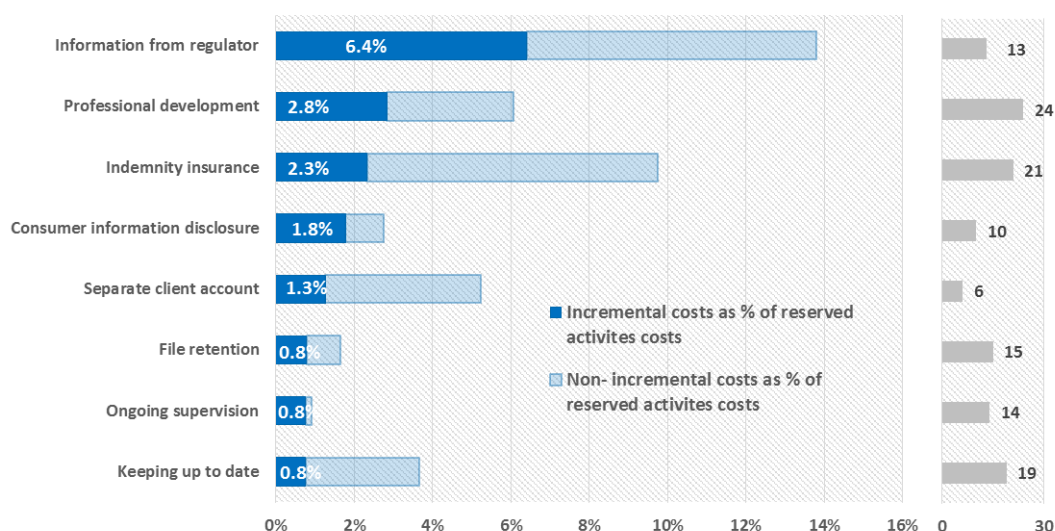
- Incremental costs of regulation are highest for **information requirements from the regulator, professional development requirements, and professional indemnity insurance.**
- Participants reported low incremental costs across remaining categories of regulatory costs: **consumer information disclosure, separate client account requirements, file retention requirements, ongoing supervision, and keeping up to date with regulation.**
- With the intuitive exception of ongoing supervision from the regulator, reported incremental costs were low as a proportion of total regulatory cost, indicating significant regulatory or commercial overlap. Although individuals incur some significant regulatory costs, many of these costs would remain if regulations were relaxed or removed.

⁴⁴ 15 participants did not provide quantitative information.

⁴⁵ <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report.pdf>

In Figure 5.4 the dark blue bars represent the incremental costs of regulation, the light blue bars represent the non-incremental costs, each as a proportion of total practice cost. Grey bars show the number of reported responses in each cost category.

Figure 5.4 Incremental (and non-incremental) costs of regulation by cost category for professionals regulated as individuals (as a proportion of practice costs attributable to reserved activities)



Source: ICF questionnaire and analysis

Response rates varied across each category of regulatory cost. This may reflect a lack of available information, but also may reflect the different nature of practices and regulation of those practices. To minimise the burden of participation, respondents were requested to answer only those questions in relevant cost categories. The number of responses can therefore be seen as indicative of how universally these costs fall for this sample.

Commentary

Some participants suggested that additional types of cost should be included as regulatory costs. Four participants (a notary or scrivener, a barrister, and two patent attorneys) stated that the financial cost of practising certificate fees should be included.⁴⁶ One reported that “the main concern has been the increase in practising certificate fees since the introduction of the Legal Services Board”, reflecting a significant increase since 2007.

Four respondents indicated that regulatory costs (and other non-regulatory costs) influence their decisions about what sort of legal services to offer to consumers:

- a notary or scrivener, who also works as a solicitor, reported that the “cost of taking out a solicitor's practising certificate is prohibitive for the little use that I would make of it”;
- a patent attorney, who also works as a solicitor, mentioned that he does not provide financial advice as “the cost of complying with those regulations would be totally out of my ability to practise - almost double what I now pay to practise as a solicitor”;
- a barrister indicated that insurance costs inhibit barristers “entering new markets”; and
- a chartered legal executive stated that the “massive burden of professional indemnity insurance may lead to a requirement to shift the mix of services substantially - particularly away from conveyancing”.

In addition, three participants reported being selective with their clients. For instance, a patent attorney reported not taking individual clients because of the risk of complaints to the Legal Ombudsman. A notary/scrivener reported being “constantly worried that I will pick up a consumer complaint and / or allegation of professional negligence that will in effect cost me my job”. Another notary or scrivener avoided taking clients that are politicians or people from countries on the current Financial Action Task Force list, as they require greater scrutiny under HMRC rules.

A patent attorney reported his/her belief that the UK regulatory regime harms the competitiveness of legal services provision in the UK, compared with other international regulatory regimes, particularly Germany, where legal services regulation operates differently.

Participants regulated as individuals also recognised the benefits that legal services regulation brought them. One patent attorney reported that “the only reason why I am regulated is that I value the title “Chartered Patent Attorney”. Were that to be prejudiced I would come off the lists and continue to practise but as a European Patent Attorney”.

A solicitor noted that “the liberalisation of the legal services market has been very helpful in delivering improvements in how law firms deliver services and become more responsive, competitive and less complacent in demanding that their clients interact with them in particular ways. Progressive service providers have identified what clients need and have moved to become more flexible.”

5.4 Analysis of types of incremental cost

This section examines participants' reporting of median incremental costs for those categories where incremental costs are highest. It explores the distribution of costs to illustrate how representative these costs are of the sample within this study. In doing so, it describes the

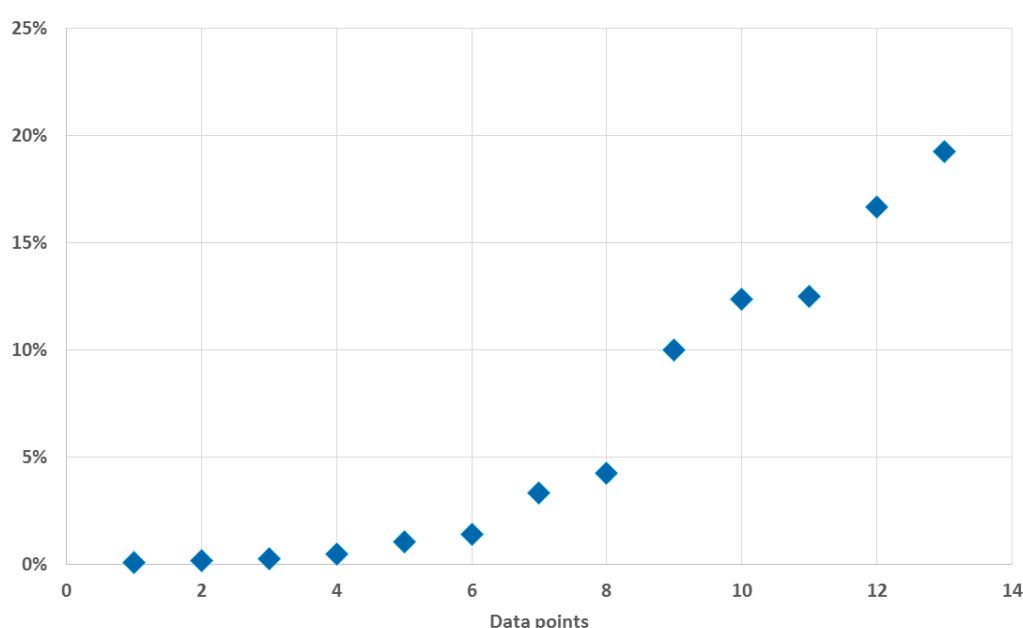
⁴⁶ The financial cost of practicing certificate fees is already known and so was not included in the scope of this study. This time-cost associated with applications has been included within the category ‘information from the regulator’.

validity of those reported median values, which is particularly important given the small sample size of this study.

5.4.1 Ongoing supervision by the regulator

Respondents reporting the incremental costs of ongoing supervision by the regulator generally exhibited a wide range of responses. The median reported value was 3.3% and responses ranged from 0% to 19.2% (Figure 5.5). Inspection of the distribution of responses revealed two outliers, they were found to be likely data errors and therefore removed from the sample. The reported median value is reasonably representative of the sample, although the variation behind the reported median value should also be considered.

Figure 5.5 Distribution of incremental costs of ongoing supervision from the regulator for professionals regulated as individuals, as a % of costs associated with reserved activities



Source: ICF questionnaire and analysis, $n=13$ ⁴⁷

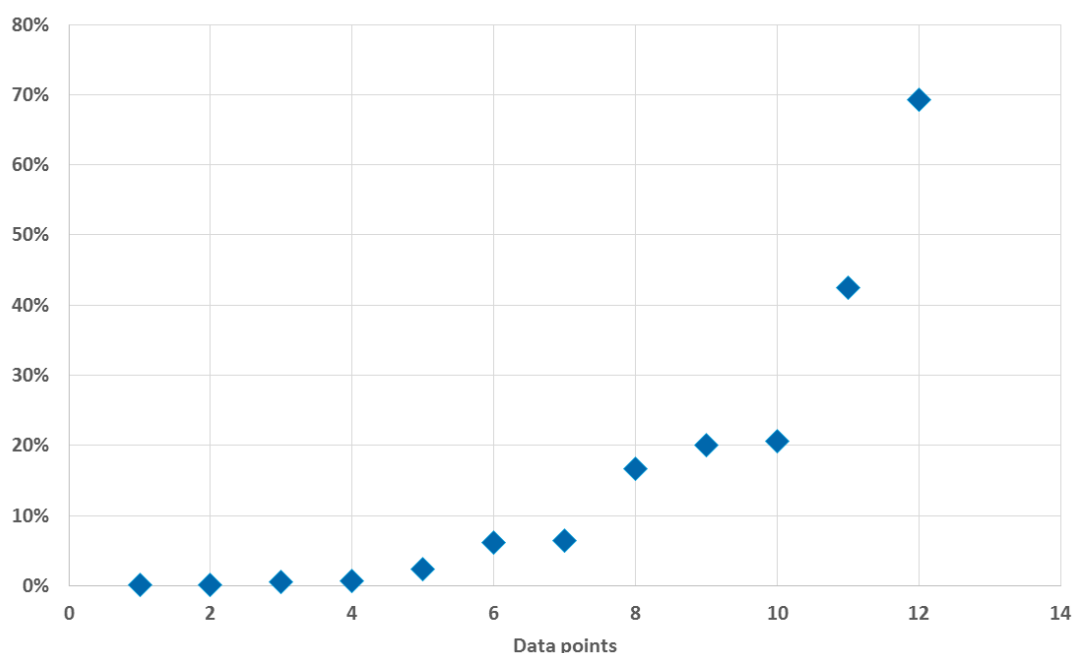
5.4.2 Information from the regulator

Respondents reporting incremental regulatory costs associated with dealing with information from the regulator exhibited a wide range of incremental costs, from 0% to 69.4% (Figure 5.6). Median reported incremental costs were 6.4%. The wide range may reflect a number operating under protected titles (three solicitors, seven barristers, 13 patent attorneys and two trademark attorneys). In that case, all activities are regulated, so presenting costs as a proportion of reserved activities only biases reported costs upwards.

Reported results were not adjusted for this, because of the small representation within the sample, but the median may therefore over-estimate the incremental costs of the need to deal with and keep up with information produced by the regulator. Nonetheless, the range of responses indicated significant variation in practices' approach to dealing with information from the regulator.

⁴⁷ 32 participants did not provide information on ongoing supervision costs and 2 responses were removed (data entry error).

Figure 5.6 Distribution of incremental costs of dealing with information from the regulator for professionals regulated as individuals, as a % of costs associated with reserved activities



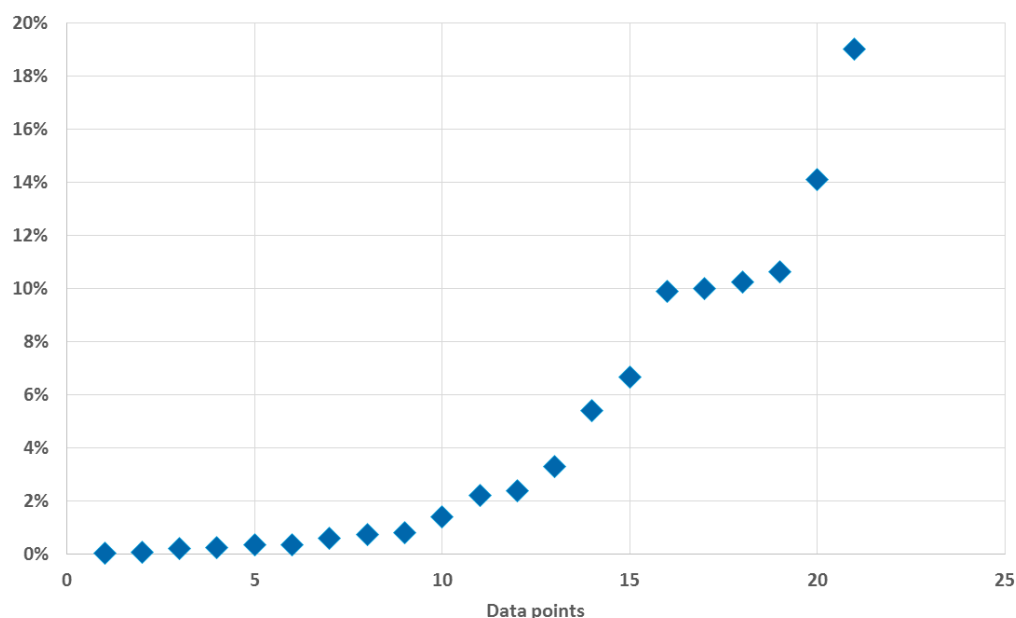
Source: ICF questionnaire and analysis, $n=12^{48}$

5.4.3 Professional development regulation

Respondents reported a wide range of incremental costs associated with regulatory requirements for professional development. Median incremental cost for professionals regulated as individuals was 2.8%. However, reported incremental costs ranged from 0.1% of reserved activities costs to 19% and this appears indicative of genuine variation across the sample in the incremental costs of professional development regulation.

⁴⁸ 34 participants did not provide information on ongoing supervision costs and 1 response was removed (data entry error).

Figure 5.7 Distribution of incremental costs of complying with professional development regulation for professionals regulated as individuals, as a % of costs associated with reserved activities



Source: ICF questionnaire and analysis, n=21⁴⁹

5.4.4 Other cost categories

The distribution of costs under other cost categories has also been considered (professional indemnity insurance, consumer information disclosure, separate client account requirements, keeping up to date with the regulator and file retention requirements).

In each case the median has been judged to be representative of the sample, with most categories similarly presenting a small number of outliers in the data, although it is notable that, even excepting clear outliers, maximum reported incremental costs were for many categories up to two or three times the median value.

Case Study 3 Notary or scrivener

Note that ranges have been used in all case studies to preserve anonymity of responses

This individual is a notary or scrivener and reported to have two employees.

Business activity

Revenue: £30-50,000/yr

Overhead: £20-30,000/yr

Total cost of regulation

Top down approach: 60% of the total overhead

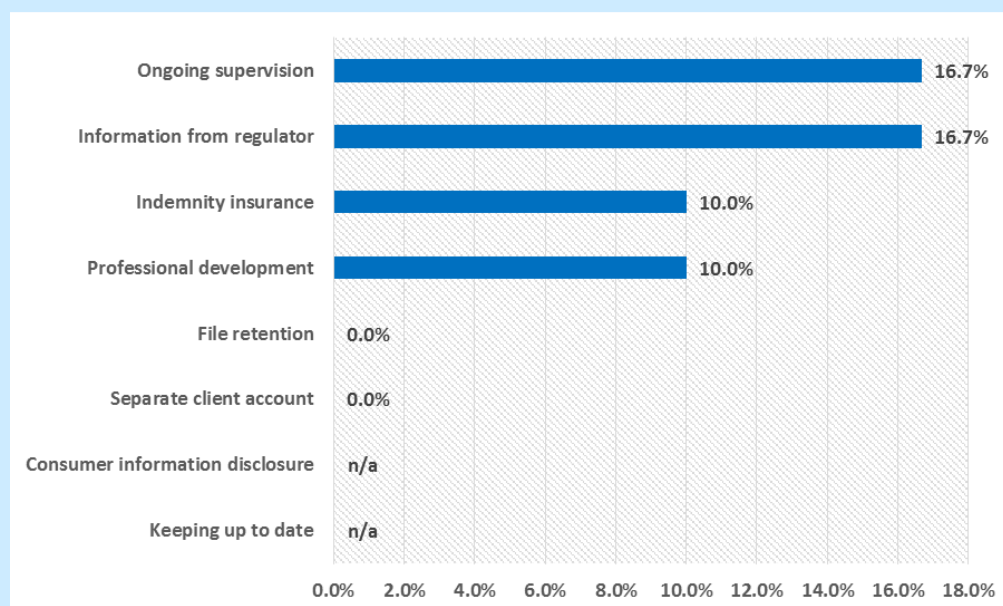
Bottom up approach: 65% of the total overhead

⁴⁹ 24 participants did not provide information on ongoing supervision costs and 2 responses were removed (data entry error).

While both approaches provide similar estimates, the figures are much higher than the median (8% and 17% respectively).

Incremental cost

Figure 5.8 Incremental costs associated with each category of regulatory cost, as a % of costs associated with reserved activities⁵⁰



Source: ICF questionnaire and analysis

The respondent did not provide costs for all the categories. When assessing the incremental cost of the practice, the respondent reported no costs for file retention and separate client account and that the incremental costs of ongoing supervision, information requests from the regulator, indemnity insurance and professional development are equal to the total cost of the practice. The order is representative of the study sample. However, the figures are relatively high compared to the median. This suggests that the respondent did not consider any potential savings were the regulatory requirement to be removed for these categories.

This response indicates some of the difficulty that individual participants had in estimating the extent to which regulatory costs were incremental.

Qualitative comments

Insurance appeared to be of great concern for this notary or scrivener. The respondent mentioned that “Insurance costs limit us” and that it represented “barriers to entering new markets”.

Case Study 4 Patent Attorney

Note that ranges have been used in all case studies to preserve anonymity of responses

This individual is a patent attorney working as a self-employed individual lawyer, with three employees.

⁵⁰ Where indicated 0.0%, the participant reported an incremental cost of 0, Where indicated n/a, the participant did not provide any data to the cost category.

Business activity

Revenue: £70-110,000/yr

Overhead: £20-40,000/yr

Total cost of regulation

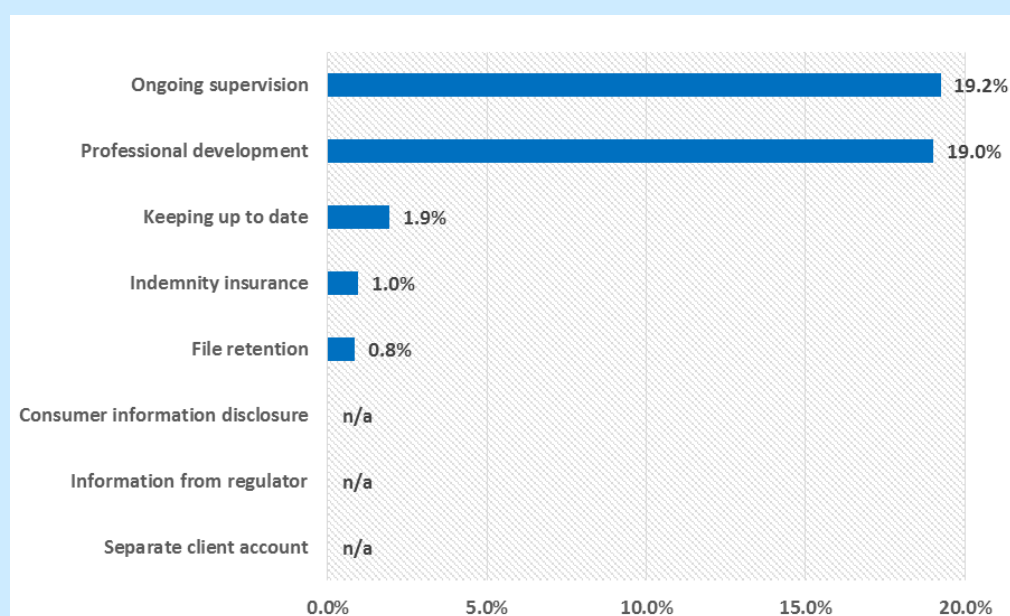
Top down approach: 10% of the total overhead

Bottom up approach: 22% of the total overhead

There is quite a large discrepancy between the two approaches although the difference is similar to the one reported for all individuals (8% and 17%, respectively).

Incremental cost

Figure 5.9 Incremental costs associated with each category of regulatory cost, as a % of costs associated with reserved activities



Source: ICF questionnaire and analysis

The respondent did not provide costs for all the categories. High incremental costs were reported for professional development and ongoing supervision. Both are relatively higher than the median. However, professional indemnity insurance is lower than the median.

Qualitative comments

The respondent considered regulatory costs “not high in absolute terms”. However, the participant mentioned that, “it is not clear to me that there is any added-value in having my small patent attorney profession overseen by what is effectively two regulators, i.e. LSB and IPReg”.

Case Study 5 Trademark attorney

Note that ranges have been used in all case studies to preserve anonymity of responses

This individual is a trademark attorney working as a self-employed individual lawyer, with two employees.

Business activity

Revenue: £210-230,000/yr

Overhead: £170-180,000/yr

Total cost of regulation

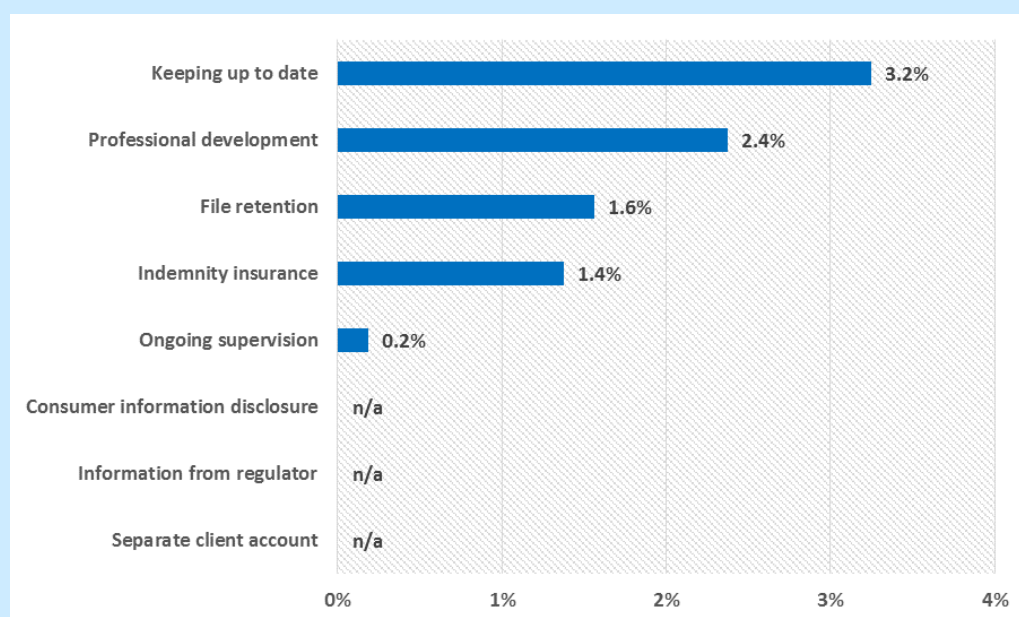
Top down approach: 5% of the total overhead

Bottom up approach: 12% of the total overhead

There is a discrepancy between the two approaches although the difference is lower than the one reported for individuals (8% and 17%, respectively). This suggests that the respondent might have underestimated the costs of regulation when providing the proportion of cost attributable to regulation.

Incremental cost

Figure 5.10 Incremental costs associated with each category of regulatory cost, as a % of costs associated with reserved activities



Source: ICF questionnaire and analysis

The reported incremental costs for all reported categories are below the median value of our sample except for keeping up to date with regulation, which was reported as the highest incremental cost here while in our analysis it is the lowest with 0.8%.

Qualitative comments

The respondent reported that anti-money laundering obligations and avoidance of conflicts of interest obligations affect their choice of clients and areas of practice. However, so far, they have never had to refuse a client on the basis that they failed to satisfy these obligations.

Case Study 6 Chartered Legal Executive

Note that ranges have been used in all case studies to preserve anonymity of responses

This individual is a chartered legal executive working as an individual lawyer, with no employees.

Business activity

Revenue: £85-100,000/yr

Overhead: £30-40,000/yr

Total cost of regulation

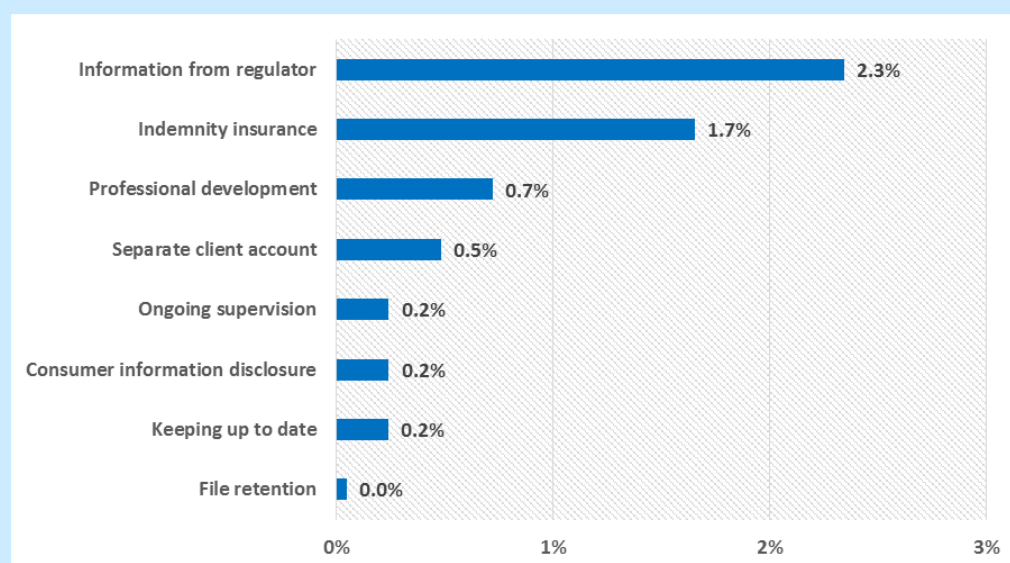
Top down approach: 15% of the total overhead

Bottom up approach: 38% of the total overhead

These figures are higher to the median values of our sample (8% and 17% respectively). As suggested by the analysis, sole practitioners might not take into account the time cost in their overhead figure resulting in an important discrepancy between the two approaches.

Incremental cost

Figure 5.11 Incremental costs associated with each category of regulatory cost, as a % of costs associated with reserved activities



Source: ICF questionnaire and analysis

Similarly to the findings of the analysis, information from regulator was reported as the highest incremental cost. However, the median here is less than half the median reported for individuals. The other incremental costs are also relatively lower than the median for individuals.

Qualitative comments

The respondent did not report any qualitative information.

Case Study 7 Barrister

Note that ranges have been used in all case studies to preserve anonymity of responses

This individual is a barrister reported to work with 22 employees⁵¹.

Business activity

Revenue: £290-310,000/yr

Overhead: £55-65,000/yr

Total cost of regulation

⁵¹ When asked about the number of Full Time Equivalent (FTE) within the practice, this respondent answered 22. This means that this barrister is either an in house barrister at a firm or an individual barrister at chambers in which case those 22 individuals are not employees.

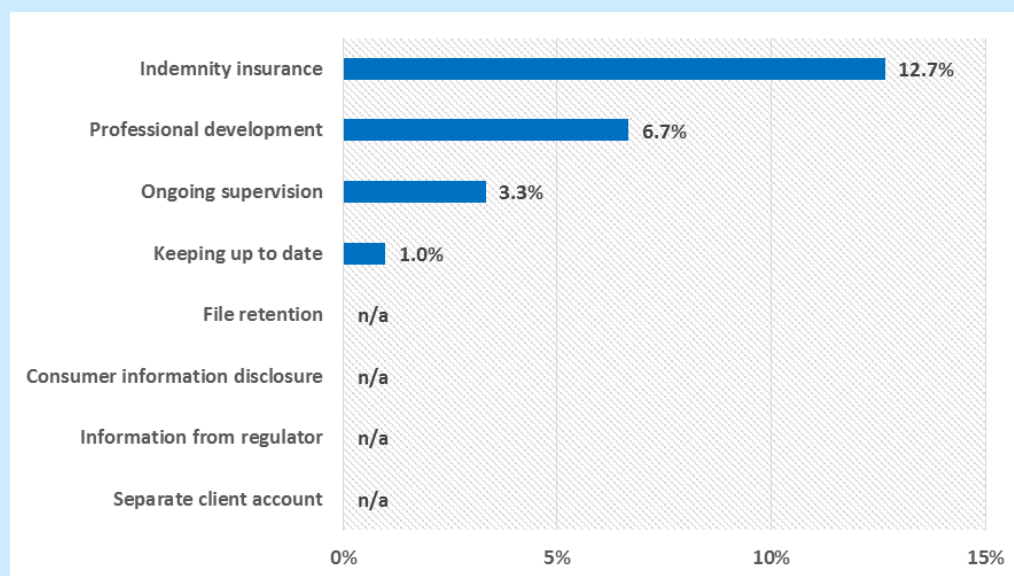
Top down approach: 8% of the total overhead

Bottom up approach: 24% of the total overhead

There is a large discrepancy between the two figures which is higher than the median value (8% and 17% respectively). The top down approach is the same as the median while the bottom up approach is relatively higher. This suggests that the respondent might have calculated or reported the cost differently in the two approaches.

Incremental cost

Figure 5.12 Incremental costs associated with each category of regulatory cost, as a % of costs associated with reserved activities



Source: ICF questionnaire and analysis

The respondent did not provide costs for all the categories. High incremental costs were reported for professional indemnity insurance and professional development. All the reported costs are higher than the median for individuals.

Qualitative comments

This barrister mentioned practice fees as an additional cost category. On that matter, the respondent also reported that “the annual fees payable to the regulator are substantial, and it is sometimes difficult to see what value is really derived from them”. Further, the respondent suggested that “they should be minimised and the regulator should only carry out activities that are essential”.

The respondent also reported his view that continuing professional development requirements should be abolished. He indicated that the costs related to such requirements are too high and that “have no good reason to improve public confidence”. He suggested instead that “they could be replaced with a statement that at least a certain number of hours have been spent keeping up to date, something that will be a feature of any practice and does not require compulsory external assignment”.

5.5 Comments on the reliability of the findings

These findings should be considered in the context of the following points regarding data from the study questionnaire.

- Reported costs using a ‘top-down’ approach were significantly lower than reported costs using a ‘bottom-up’ approach. Possible reasons are described below.

- For their top-down and their bottom-up estimates, participants were asked to include all types of business costs, including financial cost and costs associated with time spent on compliance and financial costs such as fees or outsourcing.⁵² Contact with participants to verify responses confirmed that some were not able to specifically identify all types of cost.
- When asked to consider individual categories of legal regulatory costs, individuals may have been prompted to consider legal regulatory costs in more detail than for their top-down estimates, and therefore included costs that they had not considered in their top-down estimate.
- Practices may have over-reported costs where they were unable to allocate regulatory costs specifically to one category of regulatory costs, or where regulatory costs overlap between the cost categories identified and practices have been unable to account for this overlap in their responses to the study questionnaire.
- Some participants indicated that they encountered difficulties providing information for the study, despite steps taken to support them. They noted the difficulty in quantifying the true costs of regulation, in particular the time costs. Often activities undertaken to comply with regulations are undertaken ad hoc (and for smaller practices, are not part of a standard or repeatable process).
 - Three participants mentioned difficulties in completing the questionnaire because of lack of information either because they do not keep track of such figures or because they do not have direct access to them.
 - Another indicated that he does not keep a time record and uses fixed fees as other practices do: “this was also the case of nine of the ten practices I inspected in 2014”. He added that “fixed fees are based on a time cost of about £30 per hour”. This was confirmed by two barristers.
- Regulatory costs can vary from year to year, as recognised by one study participant and as noted during one of the cognitive testing workshops that were used to refine the study questionnaire. The method implemented did not account for this variation, as it was judged that attempting to do so would add additional burden on study participants such that it risked lowering study participation.

As this study was voluntary, the sample was subject to a self-selection bias, whereby only those most motivated to communicate their experiences of the costs of legal services regulation are likely to have participated.

⁵² A full list of types of costs that participants were asked to include is described in the guidance that accompanied the study questionnaire, see Annex 5.

ANNEXES

Annex 1 Regulation of legal services in England and Wales

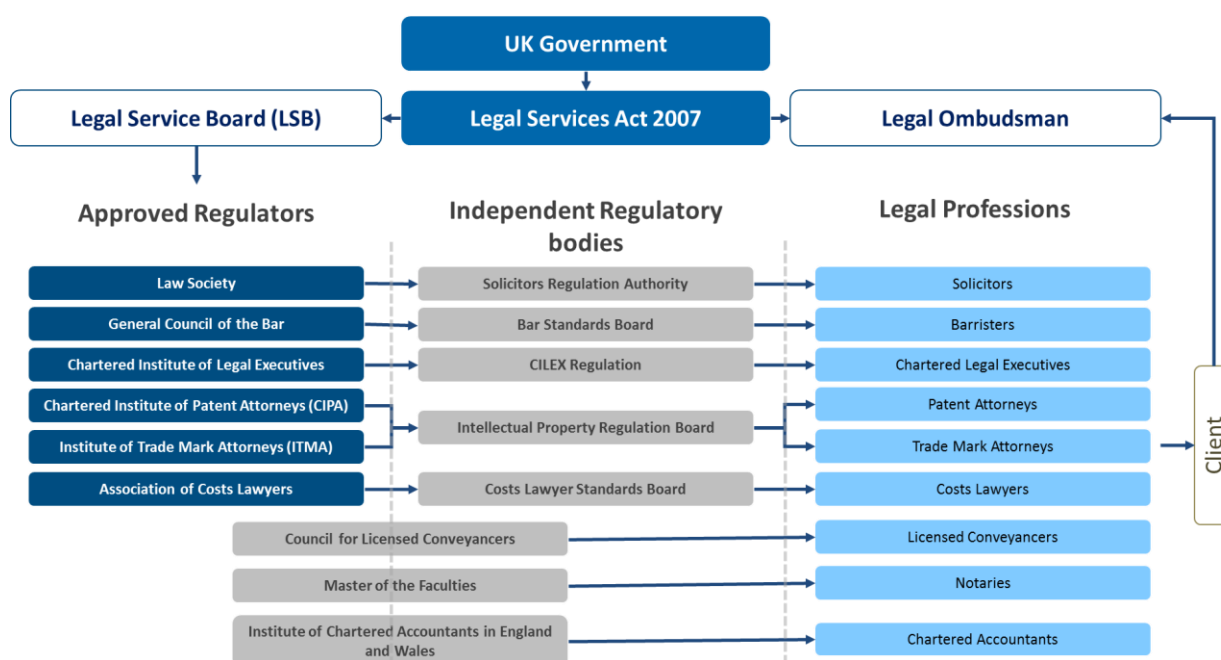
The Legal Services Act 2007 places a statutory duty on the LSB and the approved regulators to ensure that all regulation in the legal services market follows good regulatory principles, namely proportionate, accountable, consistent, transparent and targeted regulation.⁵³ Effective, well-designed regulation plays a vital role in protecting consumers, businesses and employees.

The LSB is the oversight regulator for the front line legal regulators in England and Wales. These approved regulators have independent regulatory bodies that directly regulate the different types of legal professions in their daily activities. The Legal Services Act 2007 requires separation of regulation from representation. In practice the independent regulatory bodies are in charge of the regulation, which includes setting requirements and standards, monitoring services, and taking enforcement action when necessary.

Each representative body plays a role in providing support services such as practice advice, training, and voluntary accreditation. They also represent the interests of and promote the profession. For instance, the Law Society is the representative body for solicitors, and the SRA is its independent regulatory arm, created to regulate solicitors in England and Wales. The former offers the following services: negotiating with lobbies and government, training, accreditation schemes, helpline services, etc. The latter deals with all regulatory and disciplinary matters, and makes and enforces rules for solicitors.⁵⁴

Figure A1.1 gives an overview of legal services regulation in the United Kingdom.

Figure A1.1 Overview of legal services regulation



Source: ICF research

Within the legal professions there are further distinctions that can be made. **Authorised persons** are individuals or entities that offer services that are categorised as **reserved legal activities** regulated under the Legal Services Act. Table A1.2 presents the six reserved legal activities and the legal professions authorised to carry them. All other legal services are categorised as unreserved.

⁵³ Malcolm, K. (2013). The proportionality of legal services regulation. A report for the Legal Services Board.

⁵⁴ The Law Society. (2014). Who we are. Available online at: <https://www.lawsociety.org.uk/about-us/who-we-are/>

Table A1.2 Reserved legal activities

Reserved activities by profession	Solicitor	Barrister	Chartered legal executive	Licensed conveyancer	Trademark attorney	Patent attorney	Costs lawyer	Notary or scrivener
Rights of audience in the courts	✓	✓	✓		✓	✓	✓	
Right to conduct litigation	✓	✓	✓		✓	✓	✓	
Reserved instrument activities	✓	✓		✓	✓	✓		✓
Probate services	✓	✓		✓				✓
Notarial services								✓
Administration of oaths	✓	✓	✓	✓	✓	✓	✓	✓

This table does not include accountants regulated to undertake reserved legal activities. They were excluded from the scope of this study because the necessary regulatory changes have only recently come into effect.

Further, there are some **protected titles**, namely solicitor, barrister, registered trade mark attorney, and patent attorney. Legal professionals who operate under a protected title are regulated in relation to all the legal services they provide, even if they do not practise in any of the reserved legal areas. Therefore, even though solicitors might only offer unreserved services, because they hold a protected title, all their activities are under regulatory scrutiny by the SRA.

Authorised persons can be further differentiated as regulated as **individuals** or **entities** (traditional firms or licensed alternative business structures (ABS)). Individuals are individually regulated and are accountable for any risk related to the legal services they provide. Entities are regulated as a firm, so the responsibility for complying with relevant regulation lies with the firm. Individual authorised persons within these firms will often have the cost of their individual practising certificates covered by the entity. Other legal professionals who are not authorised persons but who work for an entity are regulated as staff of that entity.⁵⁵

⁵⁵ LSB (2015). The regulated communities' views on the cost of regulation – Annexes. Available online at: <https://research.legalservicesboard.org.uk/wp-content/media/Cost-of-Regulation-Survey-Report-Annexes.pdf>

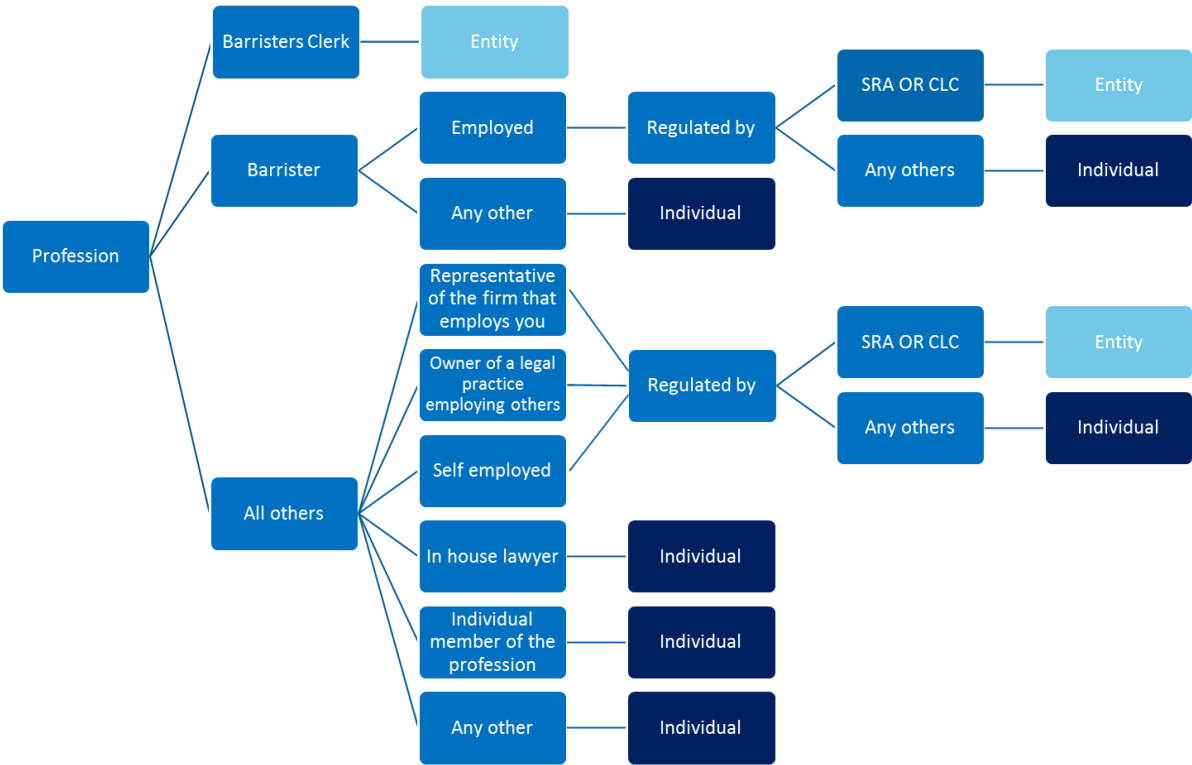
Annex 2 Evidence-gathering approach

Annex 2 describes the evidence-gathering approach used in this study. This includes the numerous actions to support participation as well as observations on why more legal services professionals did not engage in the study.

A2.1 Classifying participants as individuals or entities

As noted in Annex 1, this study was divided into two parts: one relating to costs of regulation faced by entities and another relating to costs of regulation faced by individuals. For this study, individuals and entities were defined following the method used by the LSB in its 2014 online questionnaire. Entities were identified as employed barristers or barristers’ clerks (rather than self-employed or those operating in dual or multiple capacities); or practices regulated by the SRA or CLC (including self-employed individual lawyers and participants answering the questionnaire as a representative of the firm employing them). However, in practice 15 of the 16 respondents were solicitors. All others were classified as individuals for the purposes of this study and the LSB’s 2014 study. Figure A2.1 illustrates how participants were classified according to the questions included in the questionnaire.

Figure A2.1 Classifying participants as individuals or entities



Source: ICF based on the LSB survey design

A2.2 Overview of evidence-gathering approach

A standard approach to evidence-gathering was adopted and tailored to this study, consisting of six steps. Figure A2.2 presents a summary of the stage of the evidence-gathering approach and the methodology used to develop and test the questionnaire as well as to recruit and follow-up participants.

This approach was designed with the intention of maximising the support available to study participants completing the questionnaire, to encourage responses and to maximise the quality and consistency of data received.

Figure A2.2 Evidence-gathering process

Source: ICF

The six stages of the evidence-gathering process are described below:

Stage 1 - Contact was made with potential participants based on the list participants in the LSB's online survey who agreed to participate in further research. Potential participants were invited by email to take part in the ICF questionnaire and asked if they would be willing to participate in a cognitive testing workshop.

Recognising the need to minimise the burden of participation, extensive measures were taken to provide candidate study participants with information and advice. Each individual measure followed standard practice for research involving voluntary members of the public as study participants.

Stage 2 - Participants were gathered to test the questionnaire using two cognitive testing workshops. The first workshop involved solicitors, while the second was addressed to all other professions. The questionnaire was later updated to reflect the feedback from the two workshops, aiming to maximise the relevance of questions and minimise the burden of time completing the questionnaire.

Stage 3 - Once the questionnaire was approved by the LSB, the questionnaire was launched online alongside guidance.

Stage 4 - Over the next two weeks email and telephone queries from participants were collated. These were used to generate a FAQ document, which was then distributed alongside email reminders. Additional reminder emails were sent offering help and support to complete the questionnaire.

Stages 5 and 6 - The deadline for the questionnaire was set at 20 February 2015. However, due to the low response rate, ICF left the questionnaire open until 30 March 2015 and started to follow-up with participants that did not complete the questionnaire. Meanwhile, the research team conducted a first review of the responses.

Given the objectives of this in-depth study on the costs of legal services regulation, participation involved some time commitment to gather information. Therefore, considerable efforts were made to aid study participants and minimise the burden of answering the study questionnaire. These follow standard good

practice⁵⁶ for such studies, but as with study recruitment, the extent of measures taken and support given was considerably greater than is often required in studies of this type. Measures taken to support study participants are outlined in the next section.

A2.3 Steps taken to support legal professionals' participation in the study

This section provides a detailed description of the actions undertaken to recruit participants and to support their participation. Figure A2.3 presents the main phases in a chronological order.

Figure A2.3 Participants recruitment and support



Source: ICF

A2.3.2 Recruiting study participants

Participants were first recruited from the sample that indicated interest in further research, in LSB's online survey. They were contacted by email and telephone and introduced to the study and cognitive testing workshops. Despite multiple attempts many of that sample declined to participate, despite LSB requesting the help of legal regulatory bodies to publicise the study.

Recognising the need to make participation as simple as possible, extensive measures were taken to provide candidate study participants with information and advice to minimise the burden on them from participating in the study. Each individual measure followed standard practice for research involving voluntary members of the public as study participants. These measures included:

- emails to identified candidate study participants, targeting those that had specifically agreed to participate in further research into the costs of legal services regulation during the LSB's own online survey in late 2014;
- guarantees that information would not be kept by ICF International once the study was complete and that all information would be anonymised in any public presentation of the results of the study;
- follow-up emails to those candidate participants, including information on the purpose of the study, its value to the LSB and the value of comprehensive participation across the legal professions;
- multiple further follow-up emails reminding candidate participants of the opportunity to participate and noting their previous intention to do so;
- telephone calls to candidate study participants attempting to recruit further volunteers;
- a request to the Association of Costs Lawyers to publicise the study and questionnaire to their members;
- further expansion of the original list of candidate participants to circa 4,000 legal professionals known to the LSB, who were contacted by email and requested to participate in the study;
- including the request to participate in the study in the press release for the LSB's publication of the results of the online survey into the costs of regulation;
- an offer to participants of a factsheet 'comparative summary report' comparing their costs of regulation with anonymised others in the study;

⁵⁶ See for instance: <http://www.oracle.com/us/products/applications/best-practices-improve-survey-1583708.pdf>

- a letter from the LSB Chief Executive sent directly to study participants who had not yet completed the questionnaire expressing the importance of the study and requesting that legal services professionals participate in the study;
- the inclusion of this letter in a secondary reminder email sent to the long-list of 4,000 legal professionals included in the expanded list of potential study candidates; and
- keeping the study open to receiving responses for an extended period of eight weeks, beyond initial submission timescales outlined above.

Further, particular attention was placed on the questionnaire design. This included the following measures:

- the study questionnaire was designed to minimise the time burden associated with completion by asking participants to only complete questions that were relevant to them. Questions established as not relevant to individual participants were hidden from view for those particular participants;
- cognitive testing was completed to ensure i) that the questionnaire could be tested by legal professionals and ii) the research team would recruit a sufficient number of participants to conduct an analysis that is representative of the population and capture the view of different professions, status and practice size. The study questionnaire and guidance underwent cognitive testing at a series of workshops held with legal services professionals (seven solicitors, two notaries, two patent attorneys, and one chartered legal executive), to test their ability to answer the questions included in the questionnaire. A number of adaptations were made to the questionnaire following these workshops; and
- the study questionnaire underwent a process of review with the LSB's own independent advisors⁵⁷, again following which a number of adaptations were made to the questionnaires.

A2.3.3 Actions taken to support participation

Once the questionnaire was launched, several actions were taken to support participants in completing the questionnaire and to increase the number of responses. The following sections group the actions by category and describe the rationale behind each group of actions.

A2.3.3.1 Providing written support

Written support was provided to all participants under different forms. The aim was to provide all the necessary tools and support to i) encourage participants to complete the questionnaire and ii) to maximise responses and help participants to understand what was required and how to submit accurate and relevant information. This included:

- providing comprehensive guidelines to accompany the questionnaires, describing the intention of the questions, the information that was being requested and how to respond should participants be unable to provide the exact information requested;
- providing the questionnaire in an online format to maximise the ease with which study participants could complete the questionnaire, including by allowing participants to save their partially-completed questionnaires and return to them later, should they need more time to find or verify additional information. Participants were also offered a complete version of the questionnaire in PDF or Word to complete in those formats, as an alternative to the online format;
- providing contact details of the ICF study team to all study participants, alongside an offer to answer questions on questionnaire completion via email or by telephone at any time during the study period; and

⁵⁷ Doctor Christopher Decker, economist, University of Oxford and Professor Stephen Mayson, independent advisor and professor of legal services regulation at The University of Law, and Honorary Professor of Law in the Faculty of Laws at University College London.

- mid-way through the period for which the questionnaire was open, a 'frequently-asked questions' document was created, with clarifications of all participants' questions that had been received to that point and addressing specific points of concern that participants had raised.

A2.3.3.2 Providing phone support

The study team proactively attempted multiple times to contact all participants by telephone to ask whether they needed any additional support to complete the questionnaire. This included offering to arrange a specific time for a telephone call to guide participants through the questionnaire question by question. However, only four participants took up this offer.

Once the original deadline had passed, a senior member of the ICF study team personally called potential participants (those who had at least started to complete the questionnaire) to encourage them to complete and submit the questionnaire. To do so, the senior member emphasised the importance of the participation for this research and for the LSB future research on the costs of regulation.

A2.4 Observations on reasons for low engagement in the study

As noted, the target number of participants in this study was not reached. The low number of responses overall also limited the study from achieving some of its original objectives, including comparisons between the costs experienced by different professions across the cost categories included in the study.

This section explores some of the possible reasons for the low response rate, based on information collected during the study:

- disengagement from the study;
- inability to complete the questionnaire, either because of a lack of time or a lack of access to appropriate information; or
- some legal professionals believing that the questionnaire was not appropriate to their practice or profession.

A2.4.1 Disengagement from the study

As noted, participants were originally recruited from a sample of legal services professionals that volunteered to be contacted to participate in this further work.

However, of 153 originally contacted among that sample, 48 or 31% did not make any attempt to engage with the questionnaire at all, as they did not click through to the online study questionnaire. This suggests that those professionals were not sufficiently interested in participating in the study to examine what information was being requested or how much time they or colleagues would need to spend on the questionnaire in order to complete it.

Further, a second recruitment phase of the study expanded the sample requested to respond to over 4,000 additional legal services professionals. Of these, only a small number responded (13). Although the reasons for no contact being received from these legal services professionals are unknown, the low rate illustrates a lack of engagement with research on the costs of legal services regulation. In research projects of this nature the study team would typically expect a response rate of at least 5%. The final rate achieved in this study fell well short of that at less than 1% across the whole sample.

A2.4.2 Inability to complete the questionnaire

Many legal professionals did not submit a response to the questionnaire, despite having clicked through to the online questionnaire and some having partially completed it. Around 21% of the original sample clicked on the questionnaire but did not click past the first page of questions, while a further 16% did complete some questions but did not submit a response to the questionnaire.

Legal professionals not completing the questionnaire were surveyed for their rationale as to why they did not complete the questionnaire (Figure A2.4). This survey revealed three principal reasons for not responding, each described in more detail below:

- parties were not prepared to commit sufficient time to collecting information for the questionnaire and for completing and submitting their responses;
- parties did not have access to the information being requested in the questionnaire; and
- some legal professionals believing that the questionnaire was not appropriate to their practice or profession.

Figure A2.4 Reasons for not completing the questionnaire (count)



Source: ICF participants follow-up

A2.4.2.2 Insufficient time to complete the questionnaire

Many legal professionals refused to participate or submit a response because they did not have enough time to complete the questionnaire.

Four practices indicated that the questionnaire was too time consuming to complete. One made an attempt to complete the questionnaire but gave up because it would be too time-consuming to find the information, saying that it did “not keep or generate information in the format that would allow us to readily answer the outstanding questions and try to pull the relevant information from the management information that we do generate internally would, we assess, take the finance partner and cashier about a day, if not longer”. Another participant also gave up after finding out about the information requested “I did log in to the questionnaire, but there were requests for so much detailed information I decided not to take any further”.

Nine legal services professionals indicated they did not have the time to answer the questionnaire for personal reasons or workload.

Lastly, eight participants responded to ICF indicating that they had changed their minds in participating in the questionnaire, without stating any reason for doing so.

A2.4.2.3 A lack of access to appropriate information

Despite requests for participants to pass responsibility for completing the questionnaire to a relevant colleague within their practice, another reason for professionals refusing to participate in the study was a lack of access to the information.

The main reasons were that the questionnaire requires having access to financial information that not all the participants had. For instance a participant stated “I cannot answer your questions because I am not privy to the financial information you require and I am not in a position whereby the information would

be released to me as I am not a Director of the business". Similarly, another participant mentioned "I am an employee and not privy to costs of running the firm".

Four participants indicated that their position within the firm did not allow them to complete the questionnaire. This was the case for legal professionals working as employee "I am not in a position within my firm to answer these questions".

A2.4.3 Perception that the questionnaire was not appropriate to practices / professions

Another reason that legal professionals gave for not participating in the study was that the questionnaire was not appropriate to the individual's practice or profession. This particularly applied to questions that requested information on revenue or billed hours (although guidance did indicate that alternatives were available to these measures).

This was either because they are self-employed or work in-house and therefore do not provide billed hours. For instance a barrister mentioned "I really don't think it's appropriate for my practice. The first two questions bear no relevance to me as a self-employed barrister. I employ no one, I have no idea how many hours I billed as I don't bill by the hour, and I don't therefore have an hourly rate." Further, some participants felt the questionnaire was not relevant, their practice being too small "I would not be completing the survey because it is clearly geared towards 'firms' of a certain size/with employees/considerable turnover".

Annex 3 Data review, validation and standardisation

This section describes further the steps undertaken to establish the validity of responses and correct errors in the data where these could be identified as mentioned in section 3.5.

A3.1 An initial review of questionnaires to identify data entry errors

Questionnaire responses were reviewed for any obvious errors in data entry, such as order-of-magnitude errors resulting from decimal place errors. This was undertaken to maximise the integrity and reliability of the dataset.

To do so, the study team examined each individual response to identify errors. This included obvious errors with the unit or format of the information provided, or potential miscalculations of cost where values did not appear to be plausible. Where it was possible to establish the nature of the error with a strong degree of confidence, these errors were corrected manually by the study team.

A3.2 Standardising time period to which responses applied

Data were standardised according to the time period that costs applied to. Participants were required to provide information on the last complete financial year and to specify the year to which the information applied. Two participants reported information relating to a partial year only. Where this could be identified according to the notes provided by participants, these were scaled accordingly to estimate the implied value for a full-year.

Standardising the time period was important to create a common base and allow comparison. This step was taken to maximise use of data collected and create as large a sample as possible.

A3.3 Work to replace blank values

Where blank responses were given, steps were taken to establish whether these could be filled. For example, some participants returned a blank response for their main profession. The research team was able to fill in most of the gaps on the profession and status. Therefore, respondents could be attributed to a category (profession, status) for the analysis.

A3.4 Constructing intermediate outputs to sense-check data entries

Intermediate outputs were constructed in order to sense-check responses. For example, where respondents reported regulatory costs associated with each cost category, these were summed and compared with the implied total regulatory cost reported by the practice. This was an important step, allowing the accuracy of responses to be checked through the identification of large discrepancies. This stage of data-checking helped to identify further inaccuracies in the dataset for correction or further investigation.

A3.5 Comparing questionnaires with peer practices

The research team also compared results between participants' entries. This helped to identify any potential errors in data submissions or potential misallocations of costs.

Responses were reviewed to identify outliers. Implausible data points were then either manually corrected if this could be done with a high degree of confidence. Those implausible responses that could not be corrected were excluded from the analysis, according to the judgement of the study team. All corrections and rules used to make those corrections were logged.

A3.6 Further discussions with practices

Where the information did not seem accurate and no alternative was available, the study team followed up with participants by email to validate or correct reported values. Most (21) validation requests related to respondents' estimates of the total practice cost of regulation, where a large discrepancy appeared between the top-down and bottom-up estimates of the total costs of legal services regulation.

Each relevant participant was contacted by email with bespoke information about the specific data they had submitted, alongside an illustration of the implausibility of their response. Where no response was received, or participants had further questions, the study team telephoned participants to follow up. Where possible and where necessary, the study team updated data used in the study analysis to reflect additional or corrected information gathered during this process of validation.

A3.7 Estimating proxies to replace blank values

Where values were missing but other information was available, calculations were made using the available figures. For instance, where the number of hours billed and the average amount billed were available, it was possible to calculate an estimate of the total revenue. This allowed an increase in the number of data points that could be used in the final dataset by approximately 60.

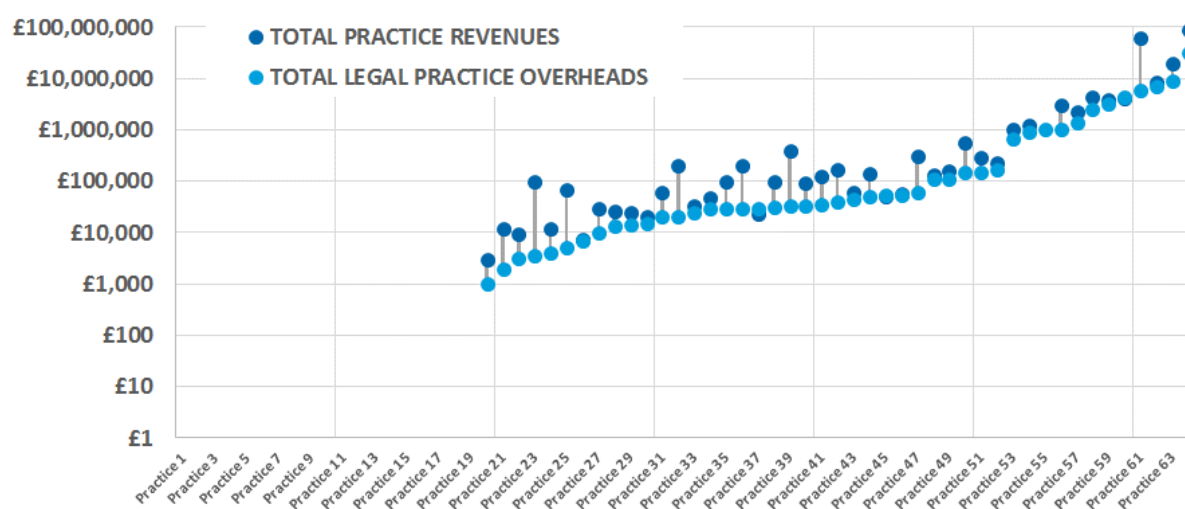
A3.8 Standardising data to allow the comparability of results

Practices that took part in this study varied widely in terms of their main profession, their size in terms of revenue and number of employees, the nature of their practice (whether in-house, single-profession practices or multi-disciplinary practices). In particular, larger practices would be expected to incur higher (absolute) costs in complying with legal services regulation.

Therefore, to allow direct comparison between practices of different sizes, reporting regulatory costs must be standardised using a measure that can be applied to firms of different sizes.

Practice costs, rather than practice revenue, was chosen as the basis of an appropriate standard unit for comparing regulatory costs between practices. Many practices reported significant differences between practice revenues and practice overheads (Figure A3.1), despite practices being given a comprehensive list of cost-types to be included in their estimate of total overheads.

Figure A3.1 Comparing reported revenues with reported costs⁵⁸



Source: ICF questionnaire and analysis

This could be for the following reasons:

- profits arise from genuine differences between overheads and revenues; or
- practices may have reported revenue and overheads corresponding to different parts of the business. This may particularly be the case for in-house practice, where any practice 'revenue' is likely to be notional only. In such a case we expect that participants have reported revenue from a larger business unit or total revenue of their firm.

⁵⁸ Some participants in the study did not report revenue figures or overheads. For those, no data is reported in this chart.

The standardisation process aimed to control for the size of the legal practice, so total legal practice overheads were chosen as the appropriate way to standardise comparisons of the costs of legal services regulation.

Another possible measure was the number of employed legal professionals in the practice. However, this measure was not chosen because significant diversity across legal professionals reduces its appropriateness for standardising results in this particular study. The value of legal services can vary significantly across practices, according to the level of experience required and the type of legal service being provided. This variation reduces the scope for standardising regulatory costs using this measure of practice size.

Annex 4 Lessons for future research into the costs of legal services regulation

This study aimed to recruit a greater number of legal services professionals than were willing to participate. This annex reflects key lessons learned that could be applied in future research into the costs of regulation, including:

- targeting the right individuals within each practice;
- adapting the questionnaire for the different needs of legal professionals;
- improving information on the value of participating in the study;
- consolidating research; and
- improving questionnaire design.

A4.1 Targeting the individual within each practice

Some individuals contacted during this study noted that they were not the right person within their practice to access, gather or report the information that the study requested. While they were instructed to pass on responsibility for participating to the relevant individual, this likely reduced the overall number of participants in the study.

In future research, the LSB could expand the scope of the identification phase of such work, involving extensive telephone engagement from the outset of the study. The objective of expanding this phase of future work would be to identify relevant individual and obtain verbal agreement to participate, prior to distributing the questionnaire. Addressing the questionnaire to specific individuals and obtaining their verbal agreement to participate could also improve participation and potentially completeness of submitted responses.

Such an exercise would add a considerable amount of time and resource to the recruitment process and would therefore significantly increase the scale of the task. This was not feasible within the scope and budget of this study, but should be considered for future studies.

A4.2 Adapting the questionnaire for the different needs of legal professionals

As noted, some legal professionals expressed their view that the questionnaire was not specifically adapted to the nature of their profession or their practice.

During this study, the decision was taken to develop one questionnaire that could be completed by all participants. Developing separate questionnaires for each profession and type of practice was not possible within the scope of this study.

One potential method to make the questionnaire more relevant to a wider range of legal professionals would be to create separate questionnaires for each legal profession and for each type of practice. This would allow further adaptation of the language that could improve response rates by helping legal professionals to feel that they were receiving a questionnaire specifically directed towards them and their practice.

A4.3 Improving information on the value of participating in the study

However, participation rates were low even among those who had previously agreed to be contacted regarding further research into the costs of legal services regulation. The importance of this study to the LSB was highlighted to candidate participants on multiple occasions. Nonetheless, one of the reasons for this may be a lack of comprehension of, or confidence in, the value of completing the questionnaire and of the study as a whole.

In future, this potential problem may be mitigated by providing more information to participants about specific actions that will follow from the results of the survey and how that may lead to reductions in the burden of legal services regulation.

A4.4 However, it has to be noted that it is unlikely that any survey of this type might be associated with an automatic reduction in the burden of legal services regulation. Combining studies

In future, further or follow-up work on the costs of legal services regulation could be combined into one study, potentially avoiding any lowering of response rate that may have arisen through participation fatigue.

The LSB carried out more qualitative research into the costs of legal services regulation prior to this study being completed. On the one hand, that previous work provided this study with a cohort of potential candidates that had indicated willingness to participate in further research.

On the other hand, those participants may have experienced participation fatigue, having been asked to contribute to two research projects for the LSB within two quarters. Of 967 participating in the first study, only circa 150 volunteered to participate in further research, while only 53 of these submitted responses to the in-depth questionnaire.

A4.5 Improving questionnaire design

As part of the analysis phase of this study, the data review and analysis has allowed the ICF research team to identify some minor improvements to questionnaire design that could mitigate the resource-intensive nature of data review and validation. These include the following:

- adding more specific instructions on the format of the answer required, for instance by specifying the format of time periods or percentages; and
- being more specific and clear in certain questions. For instance, when requesting how many full-time equivalent individuals practices employ, some respondents specified 0, without counting themselves (as sole practitioners);
- this could also include making some key questions mandatory to improve the completeness of the data, however this does risk discouraging submission of questionnaire responses.

These improvements could potentially save some time and cost associated with assessing, correcting and validating the study data.

Annex 5 Questionnaire and questionnaire guidance

A5.1 Study on costs of regulation in legal services

This document outlines the questionnaire and guidance for participants in this ICF study on the costs of regulation in legal services.

This version of the document is intended for review by LSB's external advisors, reflecting feedback received during workshops run by ICF to test the questionnaire and guidance.

ICF will distribute the questionnaire via online survey software. Guidance will be displayed online alongside each question. Participants will also be sent a full copy of the questionnaire, allowing them to refer to its full text while sourcing information to be provided in the online questionnaire.

A5.2 Guidance on completing the questionnaire

This general guidance applies throughout the questionnaire.

A5.3 What time period should I refer to in my answers?

We request that you provide information based on the most recent complete financial year according to your own accounts and indicate the time period to which your answer applies. Accordingly, please give your answers in annual amounts, for example, £/yr or FTE/yr.

If you do not have information that represents the full period (for example, if your headcount numbers are snapshots only) please refer to the time closest to the end of your financial year and indicate the point in time to which your response refers.

A5.4 What if my practice provides more than one type of legal service?

You will be asked which legal services regulator your practice is regulated by. In your answers to subsequent questions please refer to the costs of regulation that relate to legal services regulation in respect of that regulator.

A5.5 What should I include in my estimates of overheads?

For this questionnaire, ICF is defining 'regulatory' activities as those that you as an individual or a practice carry out that contribute to your compliance with legal services regulation. All overheads associated with such activities should be included in your estimates.

This questionnaire uses the term 'overheads' to refer to practice costs, because we seek to capture all types of costs associated with running your practice, even those that may not technically be classified as costs (such as remuneration or dividends).

Below we outline further guidance on how to make your estimates.

A5.5.1 Definition of overheads

When asked to estimate total overheads, please include overheads associated with all the following categories in your answers and any others that are relevant to your practice.

- Remuneration (including for equity partners in a sole (unincorporated) practice, partnership or LLP), these should include dividends
- Any other employment costs (including authorised professionals and all other staff in your practice)
- IT costs
- Premises
- Printing and advertising costs
- Legal costs

- Audit costs
- Insurance costs
- External consultancy costs
- Regulatory fees
- Network fees
- Outsourcing costs
- Compensation payments to customers

A5.6 What should I include in my estimates of 'regulatory' overheads for legal services regulation?

In your estimates of 'regulatory' overheads, please include only those practice overheads that are specifically associated with compliance with legal services regulation.

Please note that overheads associated with complying with other forms of regulation or statutory duties that do not contribute to compliance with legal services regulation, should be excluded from your estimates of 'regulatory' overheads for legal services regulation.

A5.7 What should I include when asked about my practice's revenue?

When asked to estimate revenue generated through the provision of legal services by authorised professionals, please use the following guidance.

Box 1 Practice revenue

This box describes what to include in your answers on revenue generated by your practice.

1. Revenue means your practice's total gross fees arising from work undertaken from offices in England and Wales.
2. Gross fees include: all professional fees of the practice including remuneration, retained commission and income of any sort whatsoever of the practice (including notarial fees). Work in Progress should be included.
 - Gross fees does not include: interest, reimbursement of disbursements, VAT, remuneration from a non-private practice source, dividends, rents, and investment profit.
3. Where possible, based your figures on closed accounts, defined, in order of preference, as:
 - an audited set of financial statements;
 - an unaudited set of financial statements signed off by an accountant;
 - a submitted tax return for the year.
4. The revenue figure should be for a 12-month period

A5.8 How do I estimate 'discretionary spend' on activities that contribute towards regulatory compliance?

An important part of this questionnaire asks you to estimate what proportion of activities relating to a number of regulatory cost categories they would continue to carry out, if you had the choice (i.e. it were not required by legal services regulation).

There are two main reasons that you might choose to continue with such activities if you had the choice:

- **Other (non-legal-services) regulation.** We ask you to consider whether there are other regulatory reasons to continue with specific activities, for example complying with other regulation or with general statutory requirements.

- **Other commercial considerations.** We ask you to consider the commercial benefits that you derive from each activity, such as lowering your exposure to commercial risk if you hold professional indemnity insurance.

We ask you to consider this carefully when estimating what proportion of activities you would choose to do if you were not required to do so by legal services regulation and you did have that choice. You will be asked to estimate the proportion of activities in a range of regulatory categories that you would continue with, providing specific reasons for your choices. To help you answer the question, individual examples of reasons to continue with those activities are given alongside each category.

Study on costs of regulation in legal services

Introduction

The LSB has commissioned the economic consultancy and research firm ICF Consulting Services to complete an independent detailed study of the costs of regulation to those providing legal services. The primary objective of this study is to estimate and assess all regulatory costs that individuals and entities regulated as legal services providers incur.

Please note that all responses to this study will be treated as strictly confidential, anonymised and aggregated. The information you provide is being collected for research and statistical purposes only.

You may need to gather certain information about your practice in order to complete the questionnaire, so please pre-read the questionnaire so that you know what information to collect and prepare. You can start, save and return to the survey at a later time at a more convenient time, or if you need to look up further information. A printable copy of the questionnaire can be provided on request should you wish.

Once you have the relevant information to answer the questionnaire, we estimate it may take you approximately 20 to 25 minutes to complete.

The following link will provide you with a questionnaire guidance to support you in completing the questionnaire: [Guidance](#)

Also, throughout the questionnaire definitions and further instructions can be found directly below the question.

Should you have any questions or comments, please do not hesitate to contact Melanie Dubuis (+44 (0) 20 3096 4912, LSB-study@icfi.com).

We thank you in advance for your contribution.

Section 1: Your legal practice

1. ICF currently has only anonymised access to the information that you submitted to the Legal Services Board (LSB) as part of its 2014 online survey. Do you give your permission or ICF to identify your response?

☐ Yes ☐ No

Guidance for question 1: Giving ICF permission to identify your response will reduce the number of additional questions that you will be asked in this questionnaire, by allowing ICF to match the information you previously gave to your response to this questionnaire. This will minimise the amount of time needed for you to complete this questionnaire.

2. [if Q1=No] What is your main profession?

☐ Barristers clerk
☐ Barrister
☐ All others

[If Q2=Barrister] Are you?

☐ Employed
☐ Any other (self-employed, dual capacity, multiple capacities)

[if Employed] Is the organisation you work for regulated by:

☐ Solicitors Regulation Authority (SRA)
☐ Council for Licensed Conveyancers (CLC)
☐ Any others (BSB, Ilex, CLSB, IPREG,...)
☐ None

[If Q2=All others] Which of the following best describes in what capacity you are answering this survey?

☐ As a representative of the firm that employs me
☐ As the owner of a legal business employing others
☐ As a self-employed individual lawyer
☐ As an in house lawyer (providing services solely to my employer and not to the public)
☐ As an individual member of the legal profession
☐ Other, Please specify:

[If you selected option 1, 2 or 3 at the precedent question] Is the organisation you work for regulated by:

☐ Solicitors Regulation Authority (SRA)
☐ Council for Licensed Conveyancers (CLC)
☐ Any others (BSB, Ilex, CLSB, IPREG,...)
☐ None

Section 1: Your legal practice

Questions 3 to 5 aim to establish the size of your business, based on a measure that allows us to compare your business with others. Collecting this information will also allow us to compare your costs of regulation with others' own costs of regulation.

Please give the total number of employees, including authorised professionals, other staff members and non-payroll consultants or freelance staff, in full-time equivalent (FTE) terms.

- 3. How many employees did you employ in your practice on average during the last complete financial year, including all staff (not just authorised professionals)?**

Number of employees: _____

Please indicate the time _____
period to which your answer
applies

- 4. How many of those employees are authorised professionals, i.e. those taking out an annual practicing certificate fee from one of the legal services regulators, in return for being permitted to deliver reserved activities.**

Number of authorised _____
professionals employees:

Please indicate the time _____
period to which your answer
applies

Guidance for question 4:

Authorised professionals to be included in your estimate are:

- Solicitor (SRA)
- Barrister (BSB)
- Registered Trade Mark Attorney and Patent Attorney (IPReg)
- Licenced Conveyancer, Probate practitioner (CLC)
- Cost Lawyers (CLSB)
- Notaries and scriveners (MoF)
- Fellow (CILEX)

We are aware that your regulator may be different to the one indicated above if you work for an ABS or entity.

Which reserved activities does your practice provide to your clients? (Please tick all that apply)

- ☐ the exercise of rights of audience (i.e. appearing as an advocate before a court);
- ☐ the conduct of litigation (i.e. issuing proceedings before a court and commencing, prosecuting or defending those proceedings);
- ☐ reserved instrument activities (i.e. the preparation of the instrument for transfer or charge of property specific legal provisions);
- ☐ probate activities (i.e. preparation of the application for grant of probate or letters of administration)
- ☐ notarial activities (i.e. work governed by the Public Notaries Act 1801); and the administration of oaths (i.e. taking oaths, swearing affidavits etc.).

Section 1: Your legal practice

5. a) What was the total number of hours that your practice billed during the most recent complete financial year?

Number of hours billed: _____

Please indicate the time _____
period to which your answer
applies

b) For the same period, what was the total amount billed to clients?

Total amount billed in £: _____

c) For the same period, what was the average billed rate (charged to clients) for all billable hours identified in question 5a? This should include all billable time.

Average billing rate in £/h : _____

Guidance for questions 5a, 5b and 5c: For in-house practices, where possible, please provide the number of hours spent on in-house client matters. Alternatively, please provide the full-time-equivalent number of employees that would be required to provide all in-house legal advice (excluding time spent on providing in-house advice on specific matters).

Please provide an amount billed for the billable hours identified in Question 5a. For in-house practices, if you do not have an internal billing rate, then please answer the next question.

If for any other reason you are not able to answer question 5b, then please answer Question 5c.

Note that we are requesting billed hours, not recorded hours.

Where possible, please base your amount billed on a 'bills delivered' basis, that is, reported revenue for the relevant financial period based on bills sent to clients in that year.

We note that hours billed in the same period may not reflect the amount billed, if your bills include time that was recorded in earlier financial periods, or if time recorded in that period will not be billed until a later period. For example, practices acting on a conditional basis may experience considerable time between billing time and rendering a bill, leading to time being written off or a success fee or premium being received in a later financial period.

If that is the case, please estimate the adjustment required to your billed hours that would reflect the true billed hours associated with the amount billed in the relevant financial year.

Section 1: Your legal practice

- 6. a) For the same period, what were the total overhead costs of your legal practice?**

Total overhead costs in £: _____

- b) For the same period, what was the average internal rate (cost per hour to your practice) of the billable hours charged to your clients that you identified in question 5a?**

Average internal billing rate in _____
£/hr:

Guidance for questions 6a and 6b: Please refer to general guidance attached to the email on overheads (see section 1.3.1 on page 2).

We are asking for overheads according to a specific definition so that your cost of regulation can be compared against others'. If you cannot provide us with precise information, or if the information is not available, please provide your best estimate.

If you cannot answer the first question, please instead answer question 6b.

Section 2: what proportion of your practice is provision of reserved services?

The aim of section 2 is to identify the proportion of your legal department / practice activities that relates to the provision of legal services that are reserved, compared to the proportion of your business that relates to commercial activities that are not reserved. If you do not earn any revenue apart from providing reserved activities, then 100% of your business relates to reserved legal activities.

If you do earn revenue from other services, it is important that we are able to identify how much of your business relates to providing reserved activities.

7. What proportion of your practice's billed revenue (or recorded hours for in-house practices) is related to the provision of reserved legal activities?

Percentage of billed revenue _____
(provide 10% increments & tick-boxes):

Absolute value (Exact _____
calculation or Estimate):

Guidance for question 7: Please base your answer on information from the same year as that given in question 5. If all your practice activities entail providing reserved services, please answer with 100%.

For in-house practices, please give your best estimate as a proportion of your in-house legal practice.

For all other practices, please base this estimate on billed hours, wherever possible. If you do not have precise information, please give your best estimate based on your knowledge of your practice.

Section 3: Your costs of regulation

The aim of section 3 is to identify the total overhead costs that your practice incurred in meeting the requirements of legal services regulation.

When asked to estimate total overheads, please include overheads associated with all the following categories in your answers and any others that are relevant to your practice.

- *Remuneration (including for equity partners in a sole (unincorporated) practice, partnership or LLP), these should include dividends*
- *Any other employment costs (including authorised professionals and all other staff in your practice)*
- *IT costs*
- *Premises*
- *Printing and advertising costs*
- *Legal costs*
- *Audit costs*
- *Insurance costs*
- *External consultancy costs*
- *Regulatory fees*
- *Network fees*
- *Outsourcing costs*
- *Compensation payments to customers*

Financial and non-financial costs

In this questionnaire we ask about two types of costs, financial costs and time costs.

- *Financial costs should include any fees, fines, taxes or substantive monetary costs associated with complying with regulations.*
- *Time costs should include the amount of time that you or your colleagues/staff spend complying with the requirements of regulation. We will use the time cost to estimate the total value of the time spent on compliance, and also to compare with headcount to estimate the proportion of your time or your business' time spent complying with regulation.*

For the purposes of estimating time costs, ICF will also ask for estimates of the overheads for your business associated with time spent on compliance. This will allow estimates of regulatory cost to take into account the seniority of employees spending time complying with legal services regulation.

One-off and ongoing costs

Please consider both one-off and ongoing costs in your answers.

One-off costs should be included in your estimates of the costs of regulation, but only the proportion that should be allocated to a one year period. For example, if a one-off cost is to be amortised over a five year period, then please include 1/5th of that one-off costs in your response.

Any ongoing costs should be included in your response. Please estimate your 'discretionary costs' in terms of your costs in the long term.

Section 3: Your costs of regulation

8. What proportion of your total overheads (given in question 6a) is directly attributable to legal services regulation?

Percentage of your overhead _____ costs:

Please indicate the time _____ period to which your answer applies

Guidance for question 8: Please give your estimate as a proportion of the total overheads estimate given in question 6a.

Please include all costs that are directly associated with the requirements of providing legal services regulation. This means the overheads associated with all activities that contribute towards complying with legal services regulation (whether also contributing to compliance with other regulatory or statutory requirements or not).

Overheads associated with complying with other regulatory or statutory requirements (that are not legal services regulation) should be excluded from your answer to this question.

Please give your total estimate to include all activities associated with legal services regulation activity, based on the best information available to you.

9. In total across your practice, how much staff time (in hours) was taken up complying with all legal services regulation during the last complete financial year?

Number of hours: _____

Please indicate the time _____ period to which your answer applies

Section 3: Your costs of regulation

In this section, the same questions will be repeated for each regulatory cost category.

10. As an introductory question, can you please reply to the following:

	Yes	No
a. Does your practise provide legal aid?	<input type="checkbox"/>	<input type="checkbox"/>
b. Does your practise handle client money?	<input type="checkbox"/>	<input type="checkbox"/>

Section 3: Your costs of regulation

a) [if Q10a=Yes] Legal aid contracting documentation

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to legal aid contracting documentation.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet legal aid contracting documentation requirements of legal services regulation?

- ☐ Yes
☐ No

Examples: meeting general good practice in contracting documentation; Minimising commercial or brand risks associated with not keeping good documentation.

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

b) [if Q10a=Yes] Requirements to have separate client accounts

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to requirements to have separate clients' accounts.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet separate client accounts requirements of legal services regulation?

- ☐ Yes
☐ No

Example: making calculating interest payments easier.

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

c) Information requests from your regulator

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to information requests from your regulator.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet information requests requirements of legal services regulation?

- ☐ Yes
☐ No

Example: any internal reporting for which you produce the same information as that provided to your regulator External reporting for the same purpose.

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

d) Consumer information disclosure

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to consumer information disclosure.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet consumer information disclosure requirements of legal services regulation?

- ☐ Yes
☐ No

Examples: any Ombudsmen requirements to disclose information to consumers;
Reputational / commercial reasons to disclose information to consumers.

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

e) Ongoing supervision activity by your regulator

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to ongoing supervision activity by your regulator.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet ongoing supervision requirements of legal services regulation?

- ☐ Yes
☐ No

Example: any overlap with other internal / external information reporting requirements (i.e. where the same information is needed for different purposes).

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

f) File retention

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to file retention.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet file retention requirements of legal services regulation?

- ☐ Yes
☐ No

Example: file retention to meet statutory requirements to produce information if customers make a complaint (eg Law of limitations).

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

g) Keeping up to date with changes to regulations

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to keeping up to date with changes to regulations.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to keep up to date with changes to regulation requirements of legal services regulation?

- ☐ Yes
☐ No

Example: any overlap with work to keep up to date with changes to other (non-legal-services) regulations or statutory requirements.

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

h) Professional development requirements

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to professional development requirements.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet professional development requirements of legal services regulation?

- ☐ Yes
☐ No

Examples: *desire to provide learning and development for staff to improve capabilities; contribute towards the practice's reputation; increase staff satisfaction; attracting employees; etc.*

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

i) Professional indemnity insurance

Estimate the total financial cost (overheads) of complying with legal services regulation.

Total financial cost _____
(overheads) in £:

Estimate the total number of FTEs required in your most recent financial year (for which you have answered previous questions) in meeting legal services regulation related to professional indemnity insurance.

Total number of FTEs: _____

Please also estimate the average internal cost (or billing rate) across all levels contributing to complying with these regulations.

Average internal cost (or _____
billing rate) in £:

If legal services regulation did not compel you to do so, would you still choose to carry out any of the activities that you carry out to meet professional indemnity insurance requirements of legal services regulation?

- ☐ Yes
☐ No

Example: any commercial reasons to retain a level of professional indemnity insurance (eg to reduce the risk of large losses).

If yes, what proportion of the total (financial overheads and time overheads) would you still incur as a result of choosing to continue with those activities?

- | | | |
|---------------------------------|---------------------------------|----------------------------------|
| <input type="checkbox"/> 0-10% | <input type="checkbox"/> 41-50% | <input type="checkbox"/> 81-90% |
| <input type="checkbox"/> 11-20% | <input type="checkbox"/> 51-60% | <input type="checkbox"/> 91-100% |
| <input type="checkbox"/> 21-30% | <input type="checkbox"/> 61-70% | <input type="checkbox"/> > 100% |
| <input type="checkbox"/> 31-40% | <input type="checkbox"/> 71-80% | |

Section 3: Your costs of regulation

- 11. Please give details of any additional types of regulatory cost that we have not captured as a result of legal services regulation?**

Section 4: Additional qualitative questions on regulatory costs in legal services

- 12. Are there additional commercial activities that you are not able to carry out as a result of legal services regulation?**

- ☐ Yes
☐ No

Please describe these activities and please indicate which of the regulatory cost categories this refers to:

- 13. Are there additional intangible effects associated with legal services regulation? These might include altering your strategy, areas of practice or employment practices.**

- ☐ Yes
☐ No

Please indicate which of the regulatory cost categories this refers to and explain these intangible costs associated with legal services regulation:

Section 4: Additional qualitative questions on regulatory costs in legal services

- 14. Do any thresholds or rules that qualify you to meet legal services regulatory requirements affect your choice of clients, areas of practice, employment of lawyers or your strategy?**

- ☐ Yes
☐ No

Please give full answers that justify how legal services regulation has the effect that you identify in your answer:

- 15. Please give details of any final comments/remarks?**

Thank you

Thank you very much for taking the time to respond to this survey;
Your response is important to us.

Please send the document to LSB-study@icfi.com.