



Cost of regulation: transparency of reporting

The Bar Council and Bar Standards Board

May 2016

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1. Introduction

Why are we doing work on the cost of regulation?

1. Establishing the cost of regulation in legal services is important because these costs are borne by businesses and ultimately by consumers. Establishing an evidence base about the cost of regulation can help the LSB and the approved regulators review any areas of regulation that appear disproportionately costly relative to any benefits derived from those regulations.
2. These reports do not set out to analyse the income and expenditure of each approved regulator, but simply to understand what information is made publicly available in this area. Alongside these reports the LSB is publishing a paper which summarises the overall findings of its cost of regulation project and sets out next steps.

What's this report about and how does it fit in?

3. Our research¹ has found concern among legal sector businesses about the cost of regulation, but little understanding about what these costs pay for. In particular, a number of respondents did not know what they paid for via their annual practising certificate fee, which makes up a significant element of the total regulatory burden. To help improve transparency around these costs, the LSB has produced a report for each regulator providing a basic analysis of its costs using information which is available in the public domain, but located in different places. We have used publicly available information only at this stage so we can understand what can be done with what is readily available, before discussing with each regulator what more may be required.
4. Specifically, each report aims to:
 - shine a spotlight on the publicly available information about the costs of the regulator concerned (including the LSB), to enhance accountability to the profession for these costs
 - show historic cost trends for each regulator over a five-year period
 - highlight where greater transparency of the regulator's costs is needed
 - help the boards of the regulator hold its executive to account for the level of its spend, and for the level of information about its costs which is publicly available
 - provoke and inform wider discussion of what effective and efficient regulation should look like.
5. What this report does not do is seek to make any assessment of the benefits derived, proportionality of cost, compliance costs within a business or costs/benefits of being in one regulatory regime or another, whether there are quasi regulatory costs, differential costs of insurance or any other cost.

A key finding

6. Considering the approved regulators as a whole, compiling this information proved far more challenging and time-consuming than it should have been. The LSB recognises that it has not previously set requirements in this area, and further that each regulator will have reasons for deciding on the content and format of the financial information that it publishes. Nonetheless, the LSB was disappointed by the level of available information, which has frustrated our efforts to present as full a picture of the cost of the regulators as we would have liked.

Next steps

7. These reports are part of our wider project on the costs of regulation, which has also involved (as mentioned above) research asking providers for their views on the value for money of regulation and in-depth research to collect estimates from providers of their costs of compliance. Alongside the reports on each regulator on transparency of reporting the LSB is publishing its overall findings, drawing together the conclusions from the different strands of our work and setting out what we intend to do in light of these conclusions. It has been challenging to bring together the information on the cost of each regulator from publicly available sources. There is a clear need to improve the level and quality of published information about regulatory costs. Over the coming months, we will be working, together with the approved regulators to ensure more data is available.

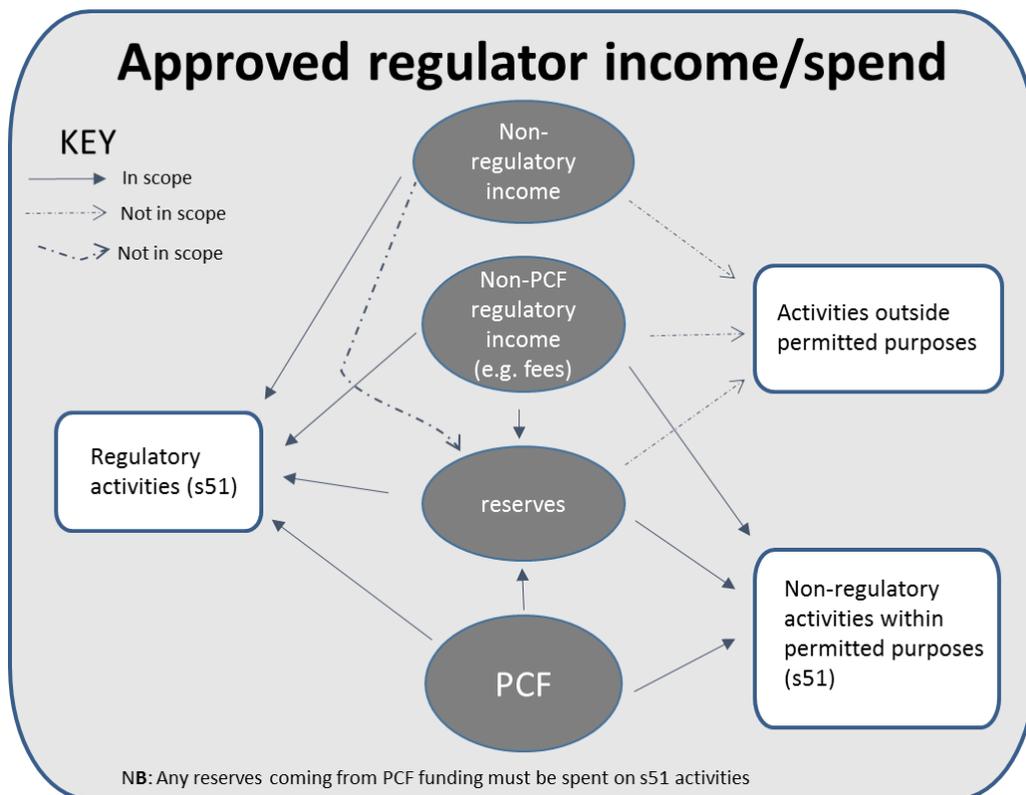
About the figures in this report

8. In this work, the LSB has focused on money raised via the practising certificate fee (PCF), other regulatory income and non-regulatory income which funds regulatory activities. As set out in the graphic overleaf, any non-regulatory income which funds activities outside of the permitted purposes of section 51 of the Legal Services Act 2007 is out of scope of this report.
9. The charts in this report cover the period between 2010 and 2014, as all regulators have published data for this period. The cost profiles of some regulators may have changed since then. The compilation of the charts was undertaken by the LSB and the regulators were given an opportunity to check the charts for accuracy and provide relevant additional contextual information prior to publication.
10. The structures of the regulators vary, their regulated communities are different and these bodies' activities differ in scope and complexity. Regulators' fee charging mechanisms also vary although all are scrutinised and approved by the LSB. This may change between years and may also affect year on year comparisons between regulators and within the regulatory regime. All this

means that it would be misleading to use the charts to compare one regulator directly against another.

11. A list of charts in the report is set out overleaf. References to the source material are highlighted in the data tables and can be found at the back of the document.

Diagram setting out scope of transparency of reporting analysis



List of charts used in this report

Ref	Name of Chart	Purpose of Chart
A1	Number of practising barristers	This chart indicates the size of the regulator for contextual purposes based on the number of individuals it authorises. Barristers must have a current practising certificate to be authorised to carry out reserved legal activities.
B1	Core PCF for barristers	This chart indicates the direct cost to the profession of the regulator based on the annual PCF for individuals.
C1	Total cost of BSB relative to PCF income and other sources of income	This chart indicates operating cost relative to fee income and other income. Other income streams may be used to subsidise the cost of regulation.
D1	PCF income spent on non-regulatory permitted purposes	This chart indicates the sums raised by the PCF allocated to non-regulatory permitted purposes carried out by the Bar Council.
D2	Percentage PCF income spent on non-regulatory permitted purposes	This chart indicates the percentage of the PCF allocated to non-regulatory permitted purposes carried out by the Bar Council.
E1	Expenditure on regulatory functions	This chart provides an illustrative overview of expenditure for categories of regulatory activity.
F1	Unit cost	This chart gives an indication of the cost of the regulation per authorised person based on expenditure.

2. Background to the Bar Council and the Bar Standards Board

12. The Bar Standards Board (BSB) was established in January 2006. As the independent regulatory board of the Bar Council (BC), it is responsible for regulating more than 15,000 barristers in England and Wales. For more information about the BSB, please see its website.²
13. The time series in this report covers the period between 2010 and 2014. However, the market that the BSB regulates has continued to change since then, in particular it has started to regulate entities and authorise barristers to practice litigation.
14. As a guide to the current picture, the fact box overleaf includes information about numbers and types of authorised individuals and bodies, staff numbers and reserved activities covered by the regulator as at December 2015. Each regulator in the legal sector is unique and varies significantly across these categories.
15. The register of barristers published on the BSB's website does not include all authorised barristers as some barristers have withheld their permission to publish their details. As such the number of authorised individuals is likely to be slightly larger than the number of barristers included in the register. However, the last data for the total population of authorised individuals is from 2014 so this report has used the number from the public register as a guide to the most recent number of authorised barristers.
16. The BCs budget year runs from April to March of the following year. As such the actual spend figures for 2015/16 are not yet available. Instead the table uses the BSB total budget cost figure for 2015/16 from the PCF application submitted to the LSB for the 2015/16 PCF year. This figure is therefore an expected spend figure.

BSB Fact Box (December 2015)

No. authorised individuals	15,869 registered barristers ³
Reserved legal activities	<ul style="list-style-type: none"> • Exercise of a right of audience • Conduct of litigation • Reserved instrument activities • Probate activities • Administration of oaths
Entity regulator	Yes - 36 entities ⁴ (as of 01/12/2015)
Licensing authority	No
Employees	<p>As of 8 December 2015:</p> <p>80 staff working for BSB⁵</p> <p>34 staff working for resources group^{6a}</p>
BSB total regulatory costs (BSB + overheads, expected/budget). Year between 1 April 15 – 31 March 16	<p>BSB total cost: £8,502,000⁷</p> <p>Total includes contribution to resources group of £2,383,000⁸</p>

^a Figure includes 6 vacancies in the corporate team. Staff working for the shared resources group provide back-office service to both the BSB and the BC.

General notes to BSB figures

17. Data from this report has chiefly been drawn from three main data sources. These are the annual reports or financial statements of the BC, the equivalent reports for the BSB and figures on different types of barristers published on the BSB's website.
18. The BC changed its accounting year in 2011/12. The 2010 accounting period covered the calendar year. Then, from 2011 the accounting period ran from April to March of the following year. This meant that the 2011/12 accounting year covered a 15 month period from January 2011 to March 2012. For subsequent years the accounting year ran from April to March each year.
19. To allow for easy comparison of figures between different years, this report uses annualised figures for the 2011/12 accounting year. Where the BC has provided these figures, this report has used these. If the figures are not available, the LSB has calculated the annualised figure for the purpose of this report. In any case where a figure has been annualised the original 15 months' figure is included in a footnote to the relevant table for reference. As some income or expenditure (e.g. education) is seasonal any activities that occurred in the first three months of the year would have been included twice for the annualised period. Despite annualising figures any such category would be larger than the year immediately before and after it.
20. The changing of the accounting year also impacted on the PCF year. In 2010 self-employed and employed barristers had two different PCF years. The PCF year for self-employed barristers matched the calendar year for 2010. In line with the accounting changes set out above, this PCF year changed to run from April to March from 2011-12. As above, for consistency the costs for the resulting 15 months PCF year for self-employed barristers has been apportioned on a pro rata basis. The PCF year for employed barristers has run from April to March throughout the period in question.
21. The data on figures for practising barristers sourced from the BSB website does not specify the date at which the numbers were accurate. As these dates are unknown, it is unknown whether the PCF years for all barristers and the accounting years align. The table overleaf records how the LSB has mapped data for number of self-employed and employed barristers against financial reporting periods.

PCF for self-employed barristers / accounting year	PCF for employed barristers	Count of practising barristers	Convention used in this report
2010 (January to December)	2010/11 (April to March)	2010	2010
2011/12 (January 2011 to March 2012)	2011/12 (April to March)	2011	2011/12
2012/13 (April to March)	2012/13 (April to March)	2012	2012/13
2013/14 (April to March)	2013/14 (April to March)	2013	2013/14

22. The BSB shares corporate services with the BC. Shared services are delivered by the Resources Group and cover HR, Finance, IT, Office Management, Records and project management services⁹. These services are referred to as 'shared services' throughout this report. Where possible this cost has been included in any figures used for the BSB and the BC. The explanatory text before every table contains more detail on whether it has been possible to include shared services in the relevant figures.

23. BSB began regulating entities in April 2015. Entity figures are not included in the analysis since the tables and charts cover the period from 2010 to 2014 only.

3. Transparency charts

A. Number of authorised persons per regulator

24. The cost of a regulator must be considered relative to the number of individuals, chambers or firms that it authorises. Therefore, before this report sets out data on costs, the table below provides information about the number of barristers authorised by the BSB during 2010 to 2014. Costs drivers also include, where applicable, the volume of regulatory activity that is undertaken, infrastructure investment which may take several years to produce a return on investment, financial policies within regulators to create or reduce reserves and operation improvements. In this report we have not sought to investigate the factors, nor to analyse or comment on their impact in any particular regulator. The BSB began authorising firms in April 2015 so firms are not included in the data series set out below.

25. Barristers are the second largest regulated legal profession. Every year barristers must renew their practising certificates with the BC to continue to be allowed to carry out reserved legal activities. All barristers with practising certificates may work as self-employed, employed or as dual practitioners. The majority are self-employed. Authorised barristers are referred to as 'practising barristers' in this report to avoid any confusion with historic titles.

26. Note that 'Unregistered Barristers' (formerly known as 'non-practising barristers') do not have a practising certificate but are subject to the Core Duties and certain Conduct Rules in the BSB Handbook. Unregistered barristers do not pay the PCF and are not included in the count in Table A1 below, but the cost to the BSB of carrying out its limited functions in relation to this group is recovered from practising barristers via the PCF.

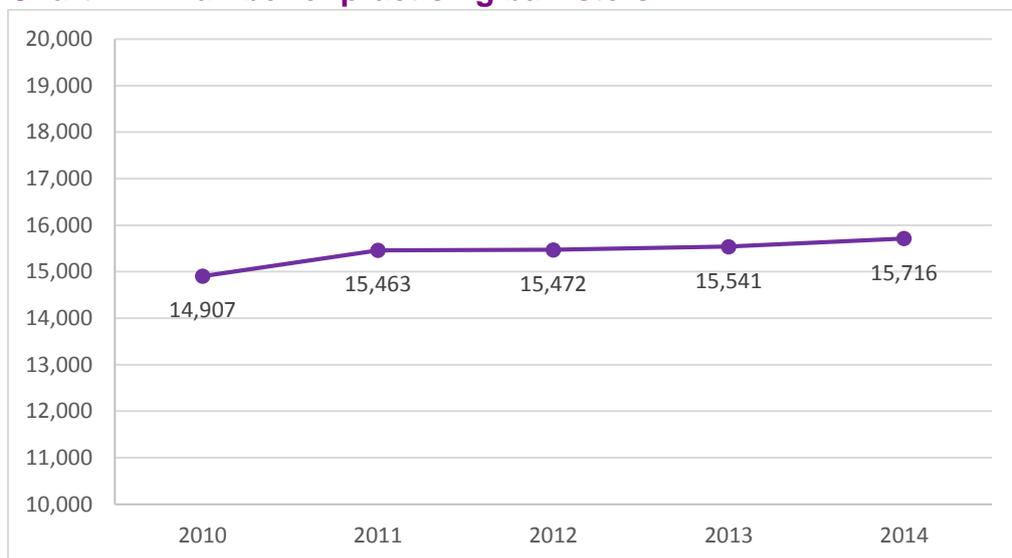
27. The number of practising barristers increased by 5.4% between 2010 and 2014 from 14,907 to 15,716 respectively.

28. For Table A1, this report uses data from the BSB's website for numbers of practising barristers for each year between 2010 and 2014. This data source does not specify at which point in time the data was recorded for each year.

Table A1 - Number of practising barristers

	2010	2011	2012	2013	2014	% change 2010 - 2014
Number of practising barristers ¹⁰	14,907	15,463	15,472	15,541	15,716	+5.43%

Chart A1 - Number of practising barristers



B. Practising Certificate Fee (PCF)

29. A direct cost of regulation for barristers authorised by the BSB is experienced when they renew their practising certificate. Income from this source is used in part to fund the cost of regulation. Fee income is also used to fund non-regulatory permitted purposes by the BC, and statutory levies for LSB and the Legal Ombudsman. The BSB charges a fee for the practising certificate which authorised legal professionals must hold in order to practise as a barrister in England and Wales.
30. Between 2010 and 2014 the PCF fee for a practising barrister depended on seniority defined by years of call or being a Queen's Counsel (QC). Furthermore, fees differed between self-employed and employed barristers. From the 2014/15 PCF year, the methodology for calculating the PCF changed from being based on years of call to bands based on earnings.¹¹
31. For Table B1, there is a difference in the PCF year between employed barristers and self-employed barristers. For self-employed barristers the PCF year ran from January to December in 2010, and was then changed to run from January 2011 to March 2012 and then from April to March for subsequent years.¹² To allow comparison of PCF figures between different years, this report uses annualised figures for the 2011-12 PCF year, which the BC has provided in its PCF application to the LSB for the 2011 PCF year. For ease of reference, these are also set out in a footnote under the table. For employed barristers the PCF year has run between April and March across 2010-14.
32. For Table B1, the core fee excludes LSB and Office for Legal Complaints (OLC) levies, and pension scheme levies.¹³ The LSB and OLC levies are presented differently in the accounts of each regulator. Focusing on the core fee enables the BSB's costs to be isolated. A separate report on the LSB's costs is being published alongside this one.

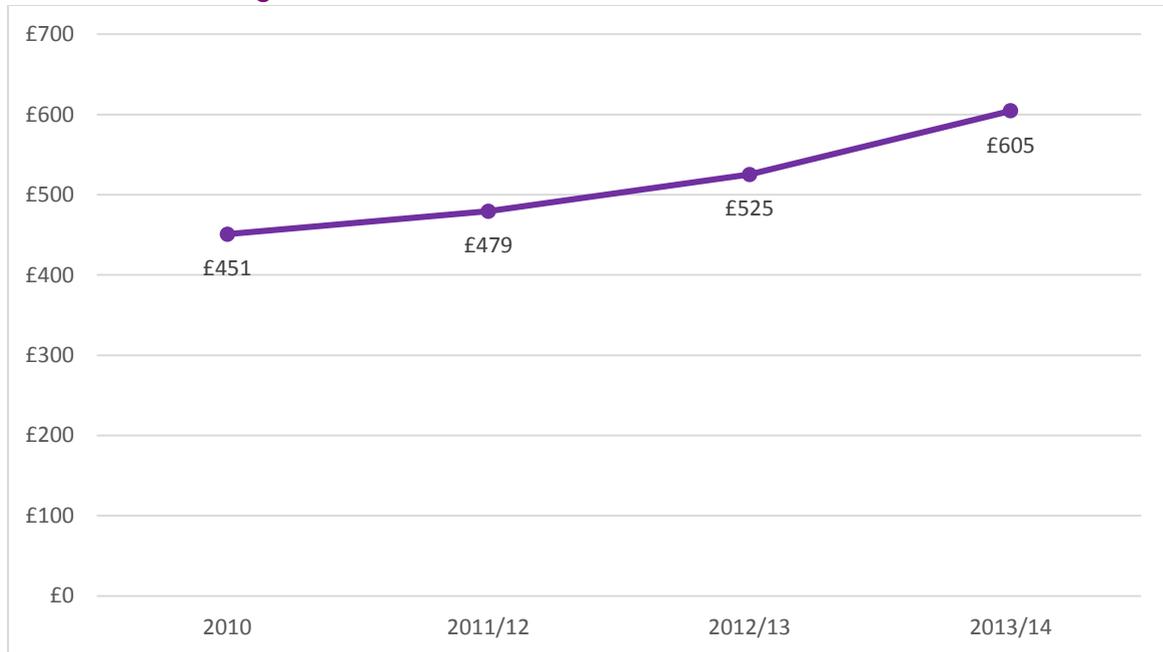
Table B1 - Core PCF for barristers

Self-employed Bar					
	2010	2011/12	2012/13	2013/14	% change 2010 - 2014
	Core Fee ¹⁴	Core Fee ¹⁵ (Annualised ^b)	Core Fee ¹⁶	Core Fee ¹⁷	
Queen's Counsel	£931	£978	£1,007	£1,202	+8.16%
13+ years call	£629	£660	£681	£813	+8.27%
8-12 years call	£322	£338	£349	£417	+8.39%
5-7 years call	£172	£181	£186	£222	+8.14%
3-4 years call	£62	£65	£67	£80	+8.06%
0-2 years call	£62	£65	£67	£80	+8.06%
Employed Bar					
	2010/11	2011/12	2012/13	2013/14	% change 2010 - 2014
	Core Fee ¹⁸	Core Fee ¹⁹	Core Fee ²⁰	Core Fee ²¹	
Queen's Counsel	£660	£693	£714	£877	+32.88%
13+ years call	£440	£462	£501	£615	+39.77%
8-12 years call	£260	£273	£281	£340	+30.77%
5-7 years call	£140	£147	£151	£183	+30.71%
3-4 years call	£62	£65	£67	£80	+29.03%
0-2 years call	£62	£65	£67	£80	+29.03%
For all practising barristers					
	2010	2011/12 (Annualised)	2012/13	2013/14	% change 2010 - 2014
PCF Income for BSB and BC	£6,720,000 ²²	£7,412,000 ^{23c}	£8,126,000 ²⁴	£9,396,000 ²⁵	+39.82%
No of all practising barristers	14,907	15,463	15,472	15,541	+4.25%
Average Core PCF for all practising barristers	£451	£479	£525	£605	+34.12%

^b Self-employed figures for 15 months between January 2011 and March 2012: QC: £1222, 13+ years call: £826, 8-12 years call: £423, 5-7 years call: £226, 3-4 years call: £81. 1-2 years call: £81

^c PCF income for Bar Council and Bar Standards Board during 15 months period from January 2011 to March 2015 was £9,265,000.

Chart B1 - Average core PCF for all barristers



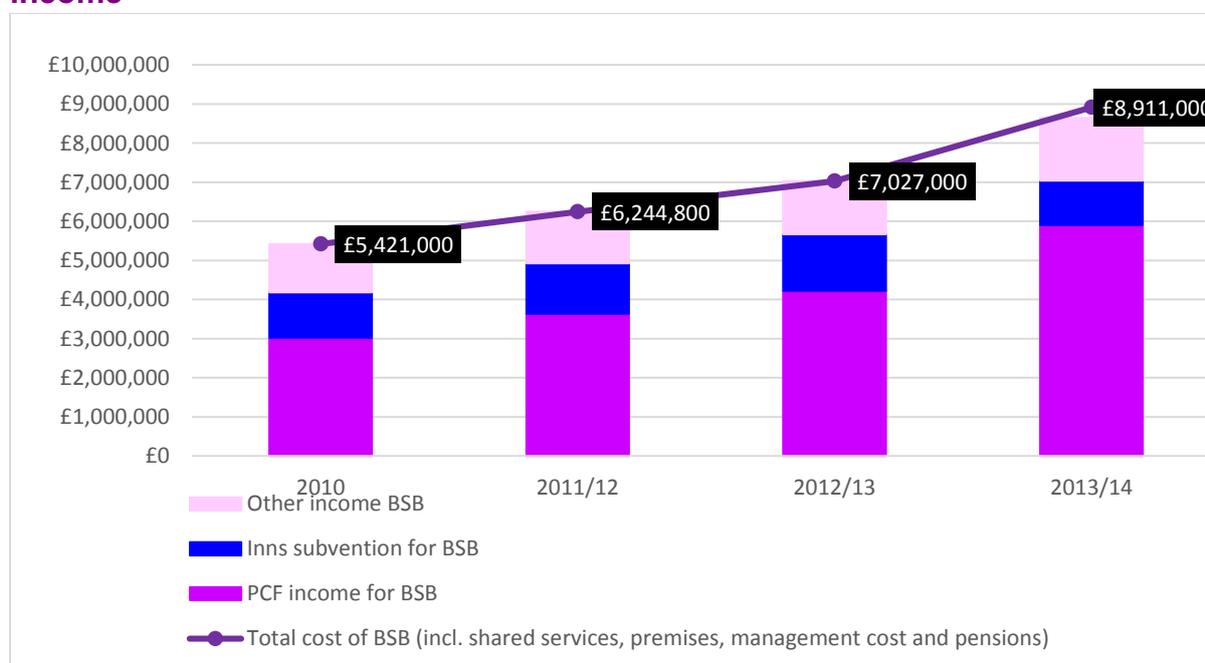
C. Expenditure relative to PCF income and other income

33. Some approved regulators have other income from other sources such as training or corporate hospitality. The BC has this type of income but not its regulatory arm, the BSB. The BSB has income from authorisations and education and training activities. This income may be used to reduce the cost of the PCF so that instead of collecting the entire cost of regulation from authorised individuals or authorised firms these regulators can collect less money from the profession than would otherwise have been necessary. Table C1 shows how much of the cost of regulation to the profession is reduced by other income generated by the BSB. This shows that the total PCF income represented only between 56% and 68% of total income for the BSB between 2010 and 2014.
34. To calculate total income for the BSB this report has summed PCF income, the Inns' subvention – the financial contribution made by the Inns – and other income. For PCF income data from BSB annual reports is used. For other income and income from the Inns' subvention – the financial contribution made by the Inns – the tables use either BC or BSB annual reports or financial statements. All sources have been cross referenced and no discrepancies found. Figures for the total cost of the BSB were sourced from the relevant BC annual reports or financial statements and are final audited figures.
35. Since the BSB shares services, premises, management and pension costs with the BC, Table C1 includes these costs in the total cost calculated for the BSB.

Table C1 - Total cost of BSB relative to PCF income and other sources of income

	2010	2011/12 (annualised ^d)	2012/13	2013/14	% change 2010 - 2014
PCF income for BSB	£3,025,000 ²⁶	£3,636,000 ²⁷	£4,220,000 ²⁸	£5,903,000 ²⁹	+95.14%
Other income BSB	£1,243,000 ³⁰	£1,319,200 ³¹	£1,365,000 ³²	£1,605,000 ³³	+29.12%
Inns subvention for BSB	£1,153,000 ³⁴	£1,289,600 ³⁵	£1,442,000 ³⁶	£1,137,000 ³⁷	-1.39%
Total income BSB	£5,421,000	£6,244,800	£7,027,000	£8,645,000	+59.47%
Total cost of BSB (incl. shared services, premises, management cost and pensions)	£5,421,000 ³⁸	£6,244,800 ³⁹	£7,027,000 ⁴⁰	£8,911,000 ⁴¹	+64.68%
BSB PCF income relative to all income	55.8%	58.22%	60.05%	68.28%	

Chart C1 - Total cost of BSB relative to PCF income and other sources of income



^d Non annualised figures for 15 months to March 2012 are: PCF Income for BSB 4,545,000, Other income £1,649,000, Inns Subvention £1,612,000, total cost £7,806,000. Sources for original figures given as endnotes to annualised figures.

D. Expenditure of the approved regulator on non-regulatory permitted purposes

36. Part of the cost of regulation is where income from the individual practising certificate fee pays for the cost of permitted non-regulatory activities. Table D1 sets out how the proportion of the PCF spent on non-regulatory permitted activities has varied over the last five years. This shows that total PCF income increased by 40% over this period, while the proportion of this income allocated to non-regulatory permitted purposes decreased by 18%.

37. Section 51 of the Legal Services Act 2007^e sets out how the approved regulator may spend income derived from the practising certificate fee that all authorised persons must pay to their regulator. These activities are commonly referred to as permitted purposes and cover the following areas:

- a) the regulation, accreditation, education and training of relevant authorised persons and those wishing to become such persons, including—
 - a. the maintaining and raising of their professional standards, and
 - b. the giving of practical support, and advice about practice management, in relation to practices carried on by such persons;
- b) the payment of a levy imposed on the approved regulator under section 173;^f
- c) the participation by the approved regulator in law reform and the legislative process;
- d) the provision by relevant authorised persons, and those wishing to become relevant authorised persons, of reserved legal services, immigration advice or immigration services to the public free of charge;
- e) the promotion of the protection by law of human rights and fundamental freedoms;
- f) the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions.

38. These activities can be broken down into regulatory and non-regulatory permitted purposes. Regulatory functions are those carried out by the regulatory arm (BSB) and non-regulatory activities are those carried out by the BC as part of its role in representing barristers and undertaking other non-regulatory permitted purposes.

39. The data in Table D1 is drawn from BSB annual reports and BC annual report and finance statements. For the 2010, 2011/12 and 2012/13 accounting years

^e [Legal Services Act 2007](#)

^f The levy pays for the LSB and the Legal Ombudsman

the annual reports include data for both the Core PCF fee and all PCF income. Core PCF covers all activities undertaken by the Approved Regulator (the BC), the BSB and such representational functions as fall within the permitted purposes.⁴² The core fee excludes PCF income ring-fenced for LSB and OLC levies and for pensions. For the 2013/14 accounting year since this distinction is no longer evident in the financial reports the reported figure had to be used. The figure for “Amount PCF income spent on non-regulatory permitted purposes” included actuarial losses accrued to the BC for 2010, 2011/12 and 2012/13. From 2013/14 a different accounting mechanism was used so gains and losses are no longer relevant to the calculation.

40. Ideally, Table D1 would have included a figure for the BC’s PCF spend which included its expenditure on shared services. However, this data has not been possible to find in publicly available material. Table D1 uses the core PCF income as the basis of calculations for 2010, 2011/12 and 2012/13. Table D1 uses the only available PCF income figure for 2013/14. As such there is a risk that the two figures are not directly comparable. The PCF in Table D1 includes all non-regulatory permitted purposes including corporate functions of the BC such as the Chairman’s office. The Chairman’s office is responsible for the entire BC which includes the BSB and as such will spend some of their time addressing BSB’s non-regulatory issues such as accommodation.

Table D1 - PCF income spent on non-regulatory permitted purposes

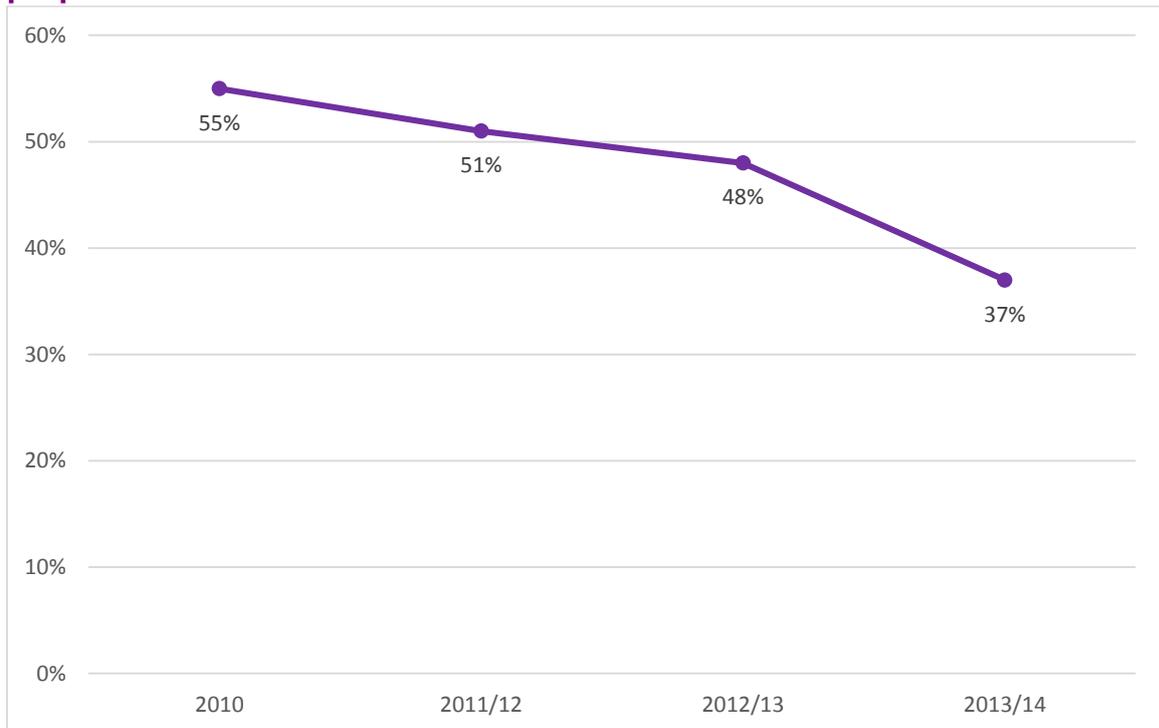
	2010	2011/12 (annualised ⁹)	2012/13	2013/14	% change 2010 - 2014
Total core PCF income for BC and BSB	£6,720,000 ⁴³	£7,412,000 ⁴⁴	£8,126,000 ⁴⁵	£9,396,000 ⁴⁶	+39.82%
Amount PCF income spent on non-regulatory permitted purposes	£3,695,000 ⁴⁷	£3,776,000 ⁴⁸	£3,906,000 ⁴⁹	£3,493,000 ⁵⁰	-5.47%
% of core PCF income spent on non-regulatory permitted purposes.	54.99%	50.94%	48.07%	37.18%	

⁹ Original figures for 15 months to 31/03/2012: Core PCF income £9,265,000, Amount PCF for permitted purposes £4,621,000 + Actuarial loss of £99,000

Chart D1 - PCF income spent on non-regulatory permitted purposes



Chart D2 - Percentage of PCF income spent on non-regulatory permitted purposes



E. Expenditure on regulatory functions over time

41. This report has so far attempted to establish the summary level costs of the BSB and BC. This section of the report seeks to provide a breakdown of how the BSB divides its expenditure between different regulatory activities. This section is included to give an understanding of the various activities that together add up to the cost of regulation. Some regulators publish more information about their regulatory functions than others and some regulators will change their reporting categories and change what is included within categories from year to year.
42. Table E1 uses data from BC annual reports or financial statements. As such all figures are actual expenditure figures. The different categories in Table E1 all include the BSB's expenditure on shared services, premises and management costs. To simplify Table E1 expenditure on Quality and QASA has been combined into one category for 2011/12, 2012/13 and 2013/14. Additionally professional practice and professional standards have been combined for all years. The relevant footnotes set out the individual figures.

Table E1 - Expenditure on regulatory functions

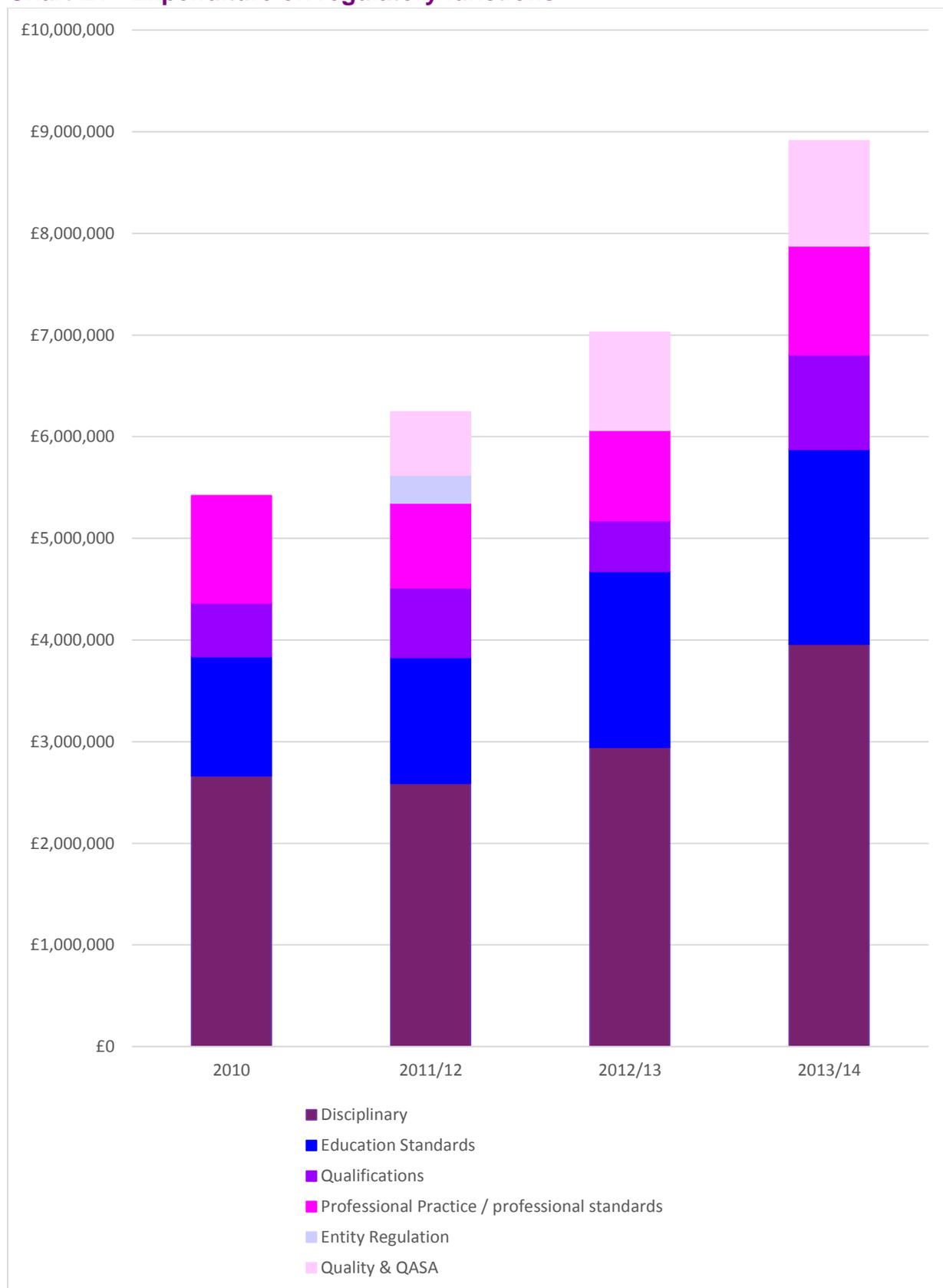
	2010 ⁵¹	2011/12 ⁵² , (annualised ^h)	2012/13 ⁵³	2013/14 ⁵⁴
Disciplinary	£2,665,000	£2,662,400	£2,945,000	£3,958,000
Education Standards	£1,172,000	£1,238,400	£1,729,000	£1,917,000
Qualifications	£528,000	£685,600	£500,000	£932,000
Professional Practice/ Professional standards	£1,056,000	£832,800	£889,000	£1,069,000
Entity Regulation	-	£275,200	-	-
Quality (Incl. QASA)	-	£622,400	£964,000 ⁱ	£1,034,000 ^j
Total	£5,421,000	£6,244,800	£7,027,000	£8,911,000

^h Original figures for 15 months to 31/03/2012: Disciplinary £3,238,000, Education Standards £1,548,000, Qualifications £857,000, Professional standards £1,041,000, Entity Regulation £344,000, Quality £561,000 QASA £217,000

ⁱ Quality: £708,000, QASA: £256,000

^j Quality: £758,000, QASA: £276,000

Chart E1 - Expenditure on regulatory functions



F. Unit cost

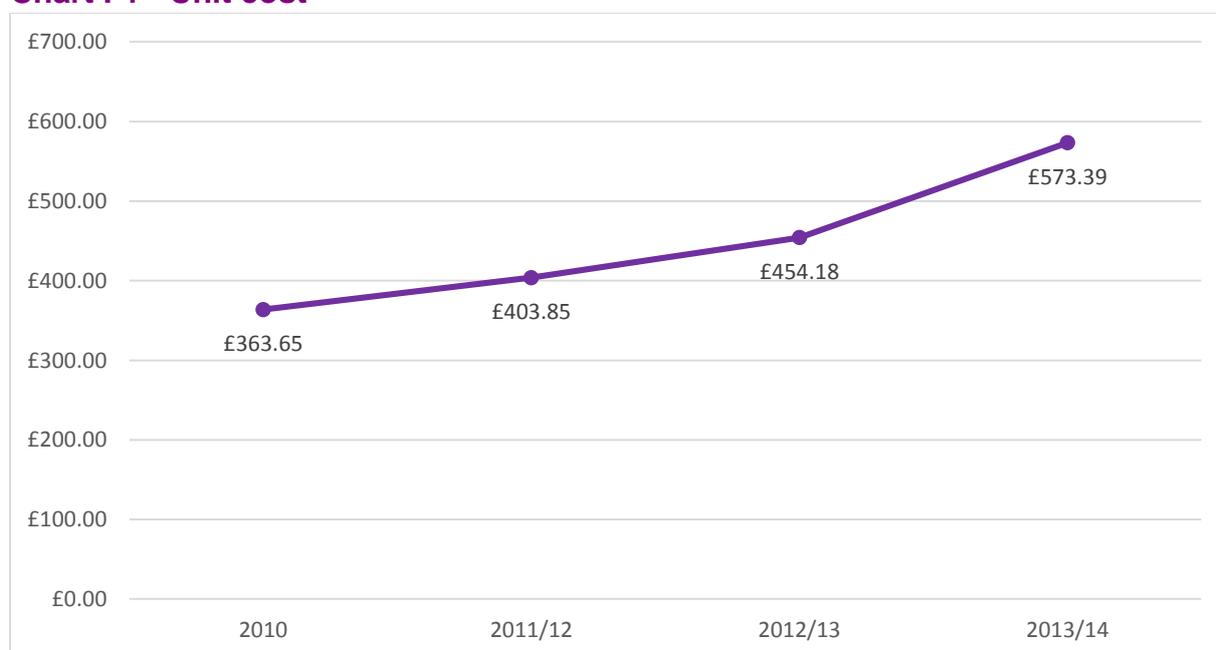
43. One way to analyse the cost of regulation is to calculate the unit cost of a regulator relative to the size of its regulated community. This is calculated by dividing the total expenditure by the number of authorised individuals. However, unit costs should be treated with a high degree of caution as they are not comparable from regulator to regulator as the scope and complexity of the activities of each regulator is different.

44. Table F1 shows that the unit for the BSB increased by 58% between 2010 and 2014. This table uses data previously included in tables A1 and C1.

Table F1 - Unit cost

	2010	2011/12	2012/13	2013/14	% change 2010-2014
Number of practising barristers	14,907	15,463	15,472	15,541	+4.25%
Total cost of BSB (incl. shared services, premises, management cost and pensions)	£5,421,000	£6,244,800	£7,027,000	£8,911,000	+64.68%
Unit cost of BSB	£363.65	£403.87	£454.18	£573.39	+57.64%

Chart F1 - Unit cost



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