



## Cost of regulation: transparency of reporting

### The Chartered Institute of Legal Executives and CILEx Regulation

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**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 research<sup>1</sup> 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 board of regulators hold its executives 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.

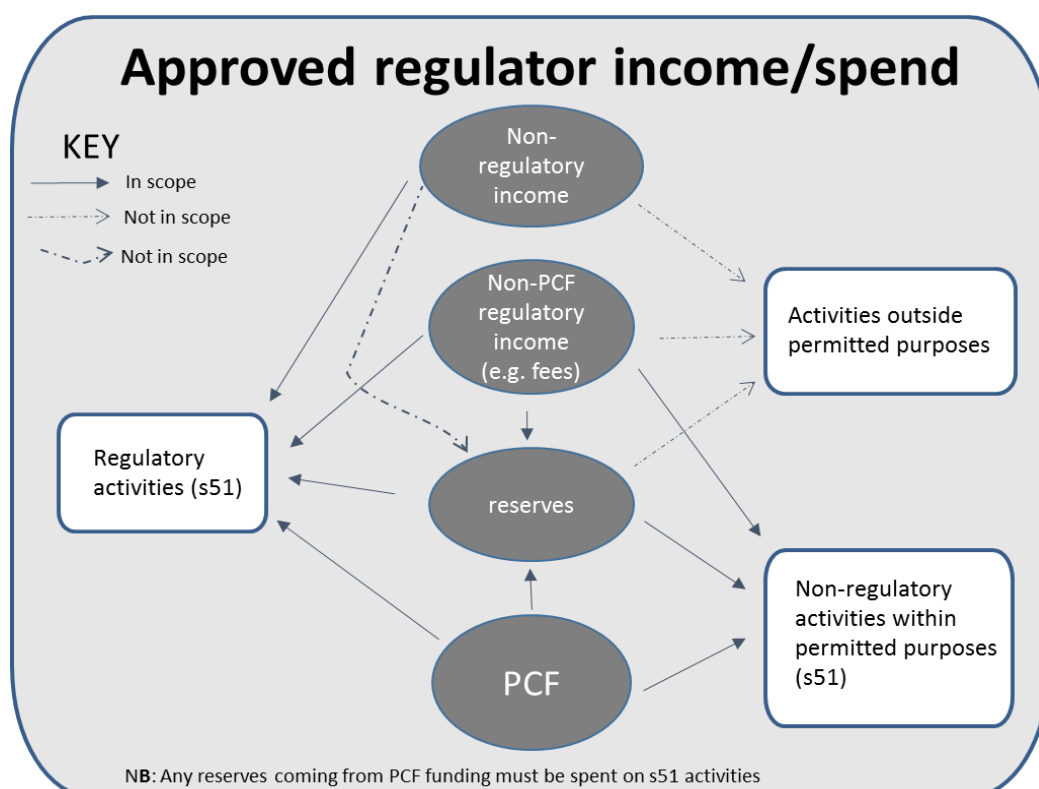
## **About the figures in this report**

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.
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 Chartered Legal Executives	This chart indicates the size of the regulator for contextual purposes based on the number of individuals it authorises. Chartered Legal Executives must have a current practising certificate to be authorised to carry out reserved legal activities.
B1	Average PCF for individuals authorised by CILEx Regulation	This chart indicates the direct cost to the profession of the regulator based on the annual PCF for individuals.
C1	Expenditure relative to PCF income and other 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.
E1	Expenditure on regulatory functions	This chart provides an illustrative overview of allocated spend 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 CILEx Regulation

12. CILEx Regulation is the independent regulatory arm of the Chartered Institute of Legal Executives (CILEx). CILEx Regulation is responsible for regulating Chartered Legal Executive and, in the case of probate and conveyancing work, non-members to provide reserved and regulated legal services.<sup>2</sup> CILEx Regulation also regulates Associate Prosecutor members. Together this community numbers nearly 8,000 individuals. For more information about CILEx Regulation, please see its website.<sup>3</sup>
13. The time series in this report covers the period between 2010 and 2014. However, the market that CILEx Regulation regulates has continued to change since then. In particular, it started granting litigation and probate and conveyancing rights to CILEx members from October 2014, and in January 2015 it began to regulate entities.<sup>4</sup>
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. CILEx Regulation's budget year runs from January to December. As such the actual spend figures for 2015 are not yet available. Instead the table uses projected 2015 expenditure figures in the 3 year budget presented for 2015-2017.

## CILEx Regulation Fact Box (December 2015)

No. authorised persons	7,848 Chartered Legal Executives, legal executive advocates and associate prosecutors (as of 01/04/2015) <sup>5</sup>
Reserved legal activities	<ul style="list-style-type: none"> <li>• The exercise of right of audience</li> <li>• The conduct of litigation</li> <li>• Reserved instrument activities</li> <li>• Probate activities</li> <li>• The administration of oaths</li> </ul>
Entity regulator	Yes – 2 <sup>6</sup>
Licensing authority	No
Employees	Unknown
Budget 2015	Total Entity regulation expenditure: £289,980 <sup>7</sup> Total Individual regulation expenditure: £2,346,905 <sup>8</sup>



## General notes to CILEx Regulation figures

16. Data for this report has been drawn chiefly from three main data sources: CILEx Regulation Annual Reports; annual CILEx and CILEx Regulation PCF applications to the LSB; and CILEx 3-year rolling budgets submitted with those PCF applications. Different reporting formats for income and expenditure have been used in the budgets and annual reports because the two reports are designed for different purposes.
17. These different purposes explains why there is significant difference in figures between the two data sources. In the narrative introducing each table this report notes the origin of the data which has been used.
18. Ideally all figures included in this report would be final audited figures. However, this is only the case for figures from the CILEx Regulation annual reports. All other figures are budget forecast and as such may be different from actual expenditure or income. CILEx annual reports were also reviewed but no additional data was found.
19. During the period between 2010 and 2014, CILEx and CILEx Regulation both changed their name. On 30 January 2012 the Institute of Legal Executives became the Chartered Institute of Legal Executives. At the same time members in active practice classed as Fellows were able to use the title Chartered Legal Executive.<sup>9</sup> For consistency the approved regulator will be referred to as CILEx in this report.
20. The regulatory arm of CILEx was known as ILEX Professional Standards (IPS) until 23 March 2015 when it changed its name to CILEx Regulation<sup>10</sup>. For consistency the regulatory arm of CILEx is referred to as CILEx Regulation throughout this report.
21. The financial year and PCF year for CILEx and CILEx Regulation follows the calendar year.
22. CILEx provides shared services to CILEx Regulation, which includes communications and corporate services. Where possible the cost of these services is included in the expenditure figures for CILEx Regulation set out in this report.

### 3. Transparency charts

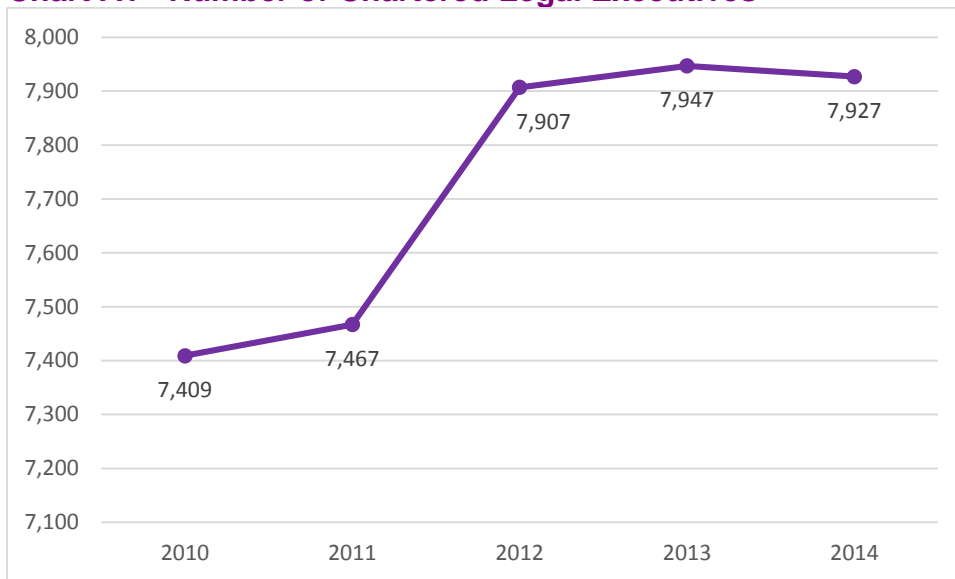
#### A. Number of authorised persons per regulator

23. The cost of a regulator must be considered relative to the number of individuals or firms that a regulator authorises. Therefore, before this report sets out data on costs, the chart overleaf provides information about the number of individuals authorised by CILEx Regulation. Entities are not included because the first entities were authorised outside the 2010-14 reporting period. 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.
24. Chartered Legal Executives are the third largest regulated legal profession. Every year Chartered Legal Executives must renew their practising certificate with CILEx Regulation to continue to be authorised to carry out reserved legal activities.
25. For Table A1, this report gives the number of persons authorised by CILEX Regulation as of April each year. These figures are published in a rounded format in the LSB business plan for each year but this is the first time that the LSB has published the exact figure for 2010, 2011 and 2012. A change in the LSB standard press releases after 2012 means that for 2013 and 2014, they set out the exact size of CILEx Regulation's authorised community.
26. The number of Chartered Legal Executives increased by 6.99 per cent between 2010 and 2014, increasing from 7,409 to 7,927.

**Table A1 - Number of Chartered Legal Executives**

Year	2010	2011	2012	2013	2014	% change 2010 - 2014
Chartered Legal Executives holding PC	7,409 <sup>11</sup>	7,467 <sup>12</sup>	7,907 <sup>13</sup>	7,947 <sup>14</sup>	7,927 <sup>15</sup>	+6.99%

**Chart A1 - Number of Chartered Legal Executives**



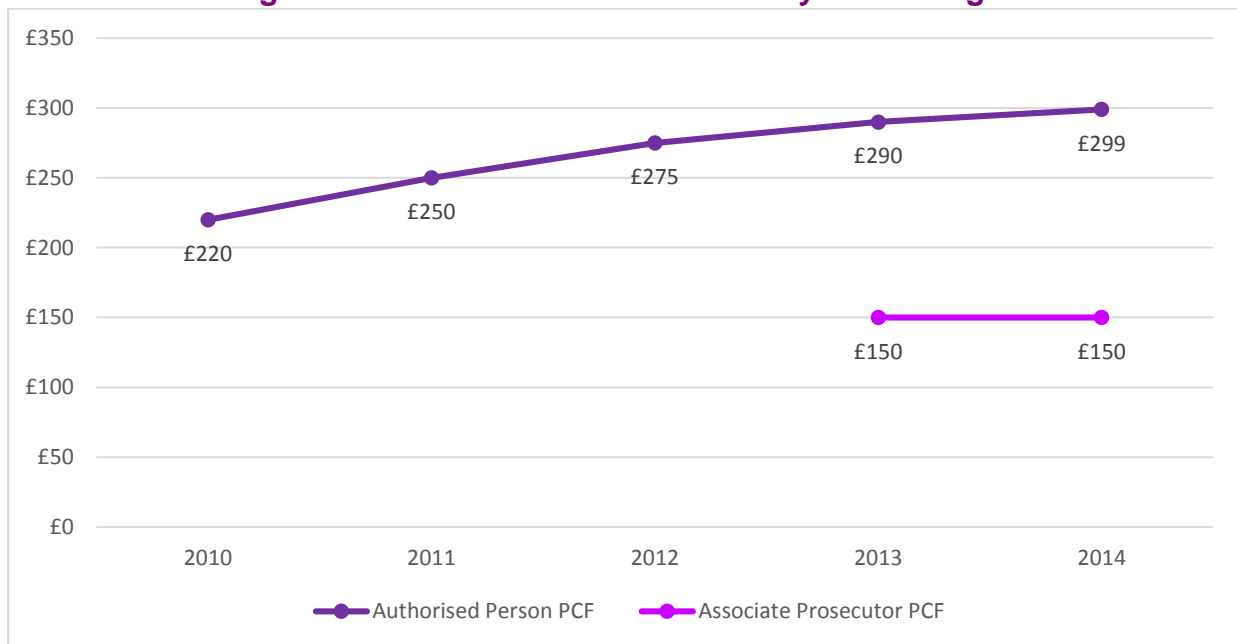
## B. Practising certificate fee (PCF)

27. A direct cost of regulation for Chartered Legal Executives is experienced when they renew their practising certificate. Income from this source is used in part to fund CILEx Regulation's regulatory costs. This fee income is also used to fund non-regulatory permitted purposes by CILEx, and statutory levies for LSB and the Legal Ombudsman. CILEx Regulation charges a fee for the practising certificate which authorised individuals hold in order to carry on reserved legal activities in England and Wales.
28. For Table B1, ideally, this report would have used actual year end income figures for PCF income. However, this information was not found in published sources. Therefore, the PCF income included in the table is from budget information submitted to the LSB as part of the annual PCF approval process. As such actual PCF income may be different to the figure included in table B1.
29. From the 2013 PCF year onwards, fees for Associate Prosecutors are recorded in the data series alongside those for Fellows. Associate Prosecutors are employed by the Crown Prosecution Service (CPS) and authorised by CILEx Regulation to carry out litigation and advocacy<sup>16</sup>. The CPS, rather than individual prosecutors, pays these fees which CILEx Regulation determines after consultation with the CPS. Since Associate Prosecutors are a relatively small proportion of the regulated community, this report does not present an average PCF across both Fellows and Associate Prosecutors.

**Table B1 - Average PCF for individuals authorised by CILEx Regulation**

	2010	2011	2012	2013	2014	% Change 2010-2014
Total PCF income (budget)	£1,540,000 <sup>17</sup>	£1,753,300 <sup>18</sup>	£1,888,800 <sup>19</sup>	£2,257,870 <sup>20</sup>	£2,326,387 <sup>21</sup>	51.06%
Authorised Person PCF (Fellow)	£220 <sup>22</sup>	£250 <sup>23</sup>	£275 <sup>24</sup>	£290 <sup>25</sup>	£299 <sup>26</sup>	35.91%
Associate Prosecutor PCF	-	-	-	£150 <sup>27</sup>	£150 <sup>28</sup>	

Chart B1 - Average PCF for individuals authorised by CILEx Regulation



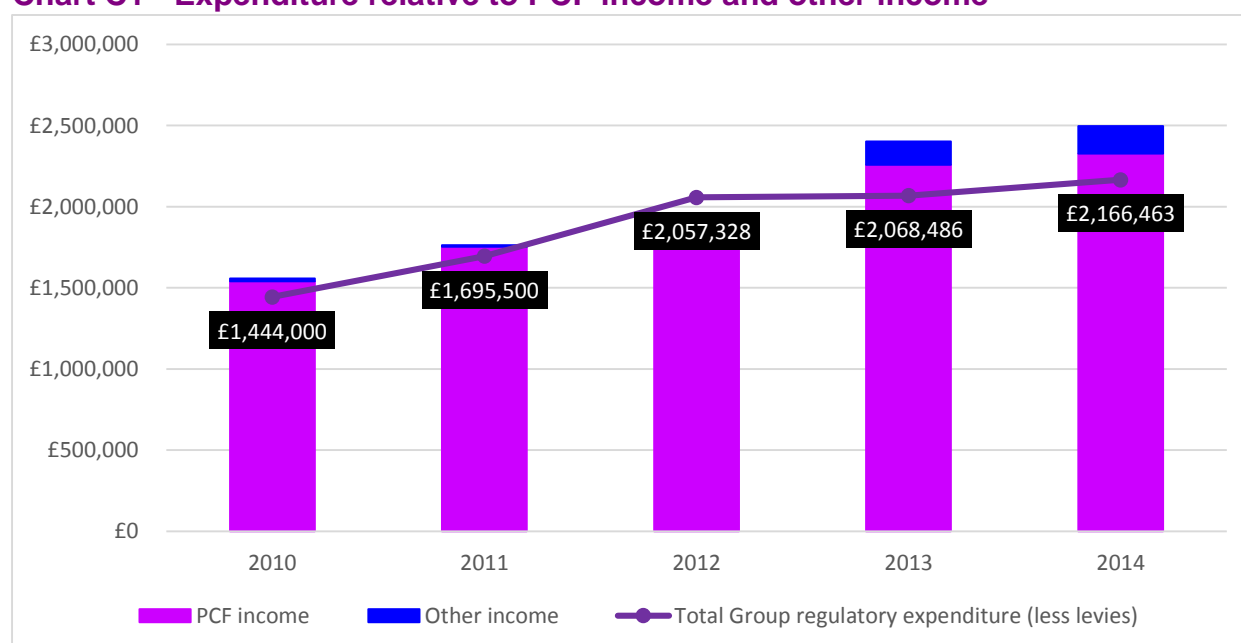
## C. Other income relative to PCF income and expenditure

30. Some approved regulators have other income from other sources such as training or corporate hospitality. 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 regulator. This shows that PCF income represented between 93% and 99% of the CILEx Group's total regulatory activities income between 2010 and 2014. However, in numerical terms regulatory activities income from other sources rose from £18,000 to £171,000 over this period.
31. The increase in income from other sources from 2013 or 2014 reflects the fact that CILEx Regulation was able to offer Practice Rights from 2014. This was a new income stream for CILEx Regulation and it based its budgets on the results of the research that was undertaken prior to launch. However, take up of Practice Rights was far lower than predicted, which is reflected in a much reduced budgeted income figure for 2015 (outside of the reporting period in this report). The additional source of 'other income' is from disciplinary activities, which represents the recovery of costs that CILEx Regulation incurs when undertaking disciplinary activities.
32. For expenditure, Table C1 includes both the total regulatory activities budget of the CILEx Group and direct expenditure for CILEx Regulation. The former figure includes shared services with CILEx Regulation; the calculations used by the LSB for total expenditure include shared services but exclude LSB and OLC levies. These levies are presented differently in the accounts of each regulator. Focusing on the core fee enables CILEx Regulation's costs to be isolated. A separate report on the LSBs costs is being published alongside this one.
33. Table C1 would ideally have used audited figures from annual accounts since these record actual income and expenditure. However, the data available from the CILEx annual reports do not provide data on PCF income as they are prepared under accounting standards in statutory format, and there is no requirement to provide this information. Furthermore, the annual reports appear to exclude costs on shared services from the expenditure figures for CILEx Regulation. Finally, this source does not set out the expenditure on OLC and LSB levies. Instead, all data in Table C1 is from CILEx 3 year rolling budgets published alongside PCF applications for approval by the LSB. As such actual figures may be different to these projected figures.

**Table C1 - Expenditure relative to PCF income and other income**

	2010	2011	2012	2013	2014	% change 2010 - 2014
PCF income	£1,540,000 <sup>29</sup>	£1,753,300 <sup>30</sup>	£1,888,800 <sup>31</sup>	£2,257,870 <sup>32</sup>	£2,326,387 <sup>33</sup>	51.06%
Other income	£18,000 <sup>34</sup>	£9,000 <sup>35</sup>	£10,000 <sup>36</sup>	£145,000 <sup>37</sup>	£171,000 <sup>38</sup>	850.00%
Total income	£1,558,000	£1,762,300	£1,898,800	£2,402,870	£2,497,387	60.29%
% PCF income to all income	98.84%	99.49%	99.47%	93.97%	93.15%	
CILEx Group – regulatory expenditure	£1,589,000 <sup>39</sup>	£2,163,000 <sup>40</sup>	£2,340,240 <sup>41</sup>	£2,304,486 <sup>42</sup>	£2,380,463 <sup>43</sup>	49.81%
CILEx Regulation – direct expenditure	£506,000 <sup>44</sup>	£692,300 <sup>45</sup>	£927,995 <sup>46</sup>	£1,025,676 <sup>47</sup>	£997,243 <sup>48</sup>	97.08%
LSB/OLC levies	£145,000 <sup>49</sup>	£467,500 <sup>50</sup>	£282,912 <sup>51</sup>	£236,000 <sup>52</sup>	£214,000 <sup>53</sup>	50.03%
Total Group regulatory expenditure (less levies)	£1,444,000	£1,695,500	£2,057,328	£2,068,486	£2,166,463	50.97%

**Chart C1 - Expenditure relative to PCF income and other income**



## D. Expenditure of the Approved Regulator on non-regulatory permitted purposes

34. Part of the cost of regulation is where income from the individual practising certificate fee pays for the cost of permitted non-regulatory activities. Reports on the other regulators include information setting out the proportion of the PCF spent on non-regulatory permitted activities. However, based on information from CILEx three year rolling budgets, it appears that CILEx does not spend any PCF income on non-regulatory permitted purposes. Therefore, no table has been produced for this report, but background information is provided below.

35. Section 51 of the Legal Services Act 2007<sup>54</sup> 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;<sup>1</sup>
- 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.

36. These activities can be broken down into regulatory and non-regulatory permitted purposes. Regulatory functions must be carried out by the regulatory arm (CILEx Regulation) and non-regulatory activities will be those carried out by CILEx as part of its role in representing Chartered Legal Executives and undertaking other non-regulatory permitted purposes.

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<sup>1</sup> The levy pays for the LSB and the Legal Ombudsman



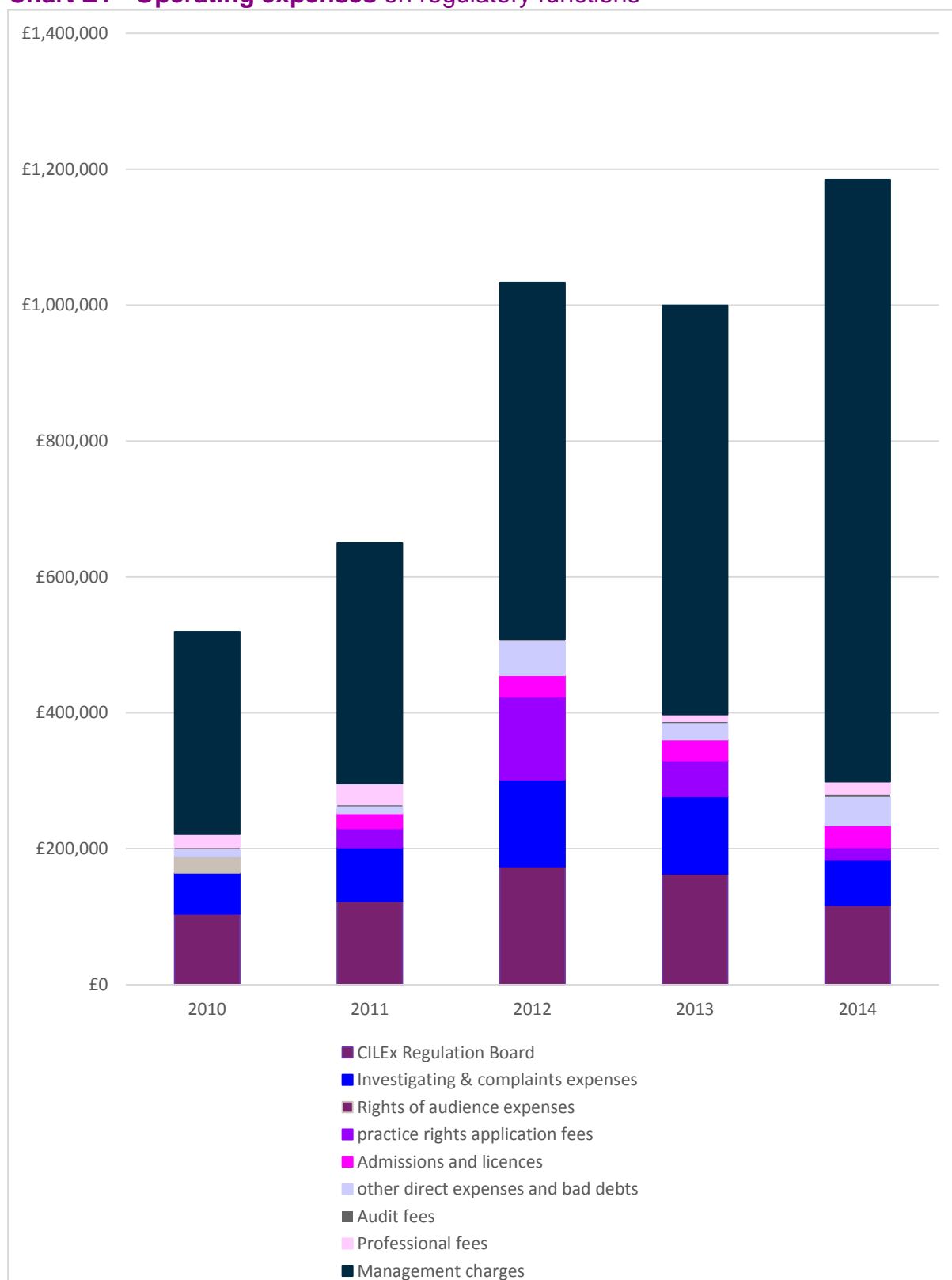
## E. Expenditure on regulatory functions over time

37. This report has so far attempted to establish the summary level costs of CILEx Regulation and CILEx. This section of the report seeks to provide a breakdown of how CILEx Regulation 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.
38. Table E1 is based on data available in the annual reports published by CILEx Regulation. As set out in the general notes to this report, the purpose of the PCF information and the annual accounts are different and as such the figures in here are significantly different from budget figures used in Table C1. One possible explanation for this difference is that central resources provided by CILEx to CILEx Regulation are not included in the expenditure figures from the annual report. However, given the discrepancy between budget expenditure figures for CILEx Regulation set out in Table C1 this appears unlikely to fully explain the difference between the figures.

**Table E1 - Operating expenses on regulatory functions**

Year	2010 <sup>55</sup>	2011 <sup>56</sup>	2012 <sup>57</sup>	2013 <sup>58</sup>	2014 <sup>59</sup>
CILEx Regulation Board	£103,793	£122,553	£173,618	£162,644	£116,944
Investigating & complaints expenses	£60,392	£79,061	£127,955	£114,227	£66,228
Rights of audience expenses	£24,378	-	-	-	-
Practice rights application fees	-	£28,500	£122,057	£52,917	£18,934
Admissions and licences	-	£21,728	£31,740	£30,757	£31,858
Other direct expenses	£10,831	£10,536	£39,136	£25,290	£51,383
Bad Debts	-	-	£11,324	-£875	-£9,251
Audit fees	£2,600	£2,600	£2,750	£2,800	£4,500
Professional fees	£19,365	£30,453	£0	£9,485	£18,160
Management charges	£298,058	£354,665	£524,797	£602,393	£886,057
<b>Total operating expenses</b>	<b>£519,417</b>	<b>£650,096</b>	<b>£1,033,377</b>	<b>£999,638</b>	<b>£1,164,813</b>

Chart E1 - Operating expenses on regulatory functions



## F. Unit cost

39. 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.

40. Table F1 shows that the unit cost for the CILEx Regulation increased by just over 40% between 2010 and 2014. This table uses data previously included in tables A1 and C1. As such the expenditure figures for CILEX Regulation are budget figures for expenditure including shared services. Therefore the actual expenditure of CILEx Regulation may have been different to the figures included in Table F1.

**Table F1 - Unit cost**

	2010	2011	2012	2013	2014	% Change 2010 - 2014
Chartered Legal Executives holding PC	7,409	7,467	7,907	7,947	7,927	+6.99%
Total Group regulatory expenditure (less levies)	£1,444,000	£1,695,500	£2,057,328	£2,402,870	£2,166,463	+50.97%
Unit Cost	£193.01	£227.07	£260.19	£302.36	£273.30	+41.60%

**Chart F1 - Unit cost**



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