



The regulated communities' views on the cost of regulation

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1. Overview

- 1.1 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 wants to ensure that regulation is proportionate and targeted to areas of greatest risk.
- 1.2 During the LSB's triennial review in 2012 and the Legal Services Red Tape Challenge Review in 2013, legal sector business raised concerns about the cost of regulation in the legal sector. However, there has been limited evidence available against which to assess these concerns.
- 1.3 As set out in our business plan 2014/15 and draft business plan for 2015/16, the LSB is undertaking the [cost of regulation](#) project to remedy the lack of evidence in this area. Establishing the cost of regulation in this sector is important because costs are borne by business and ultimately by consumers.
- 1.4 This report shares the results of the first stage of our work on the cost of regulation and in particular providers' views on the extent to which regulation represents value for money and areas where regulation could potentially be scaled back. It is based on a survey of 967 providers of legal services during eight weeks from October to December 2014. This report does not attempt to set out solutions to any issues raised by the findings in this report. Any issues arising from these findings within the LSB's remit need to be further explored before the LSB can design effective policy solutions to address them.

The key findings

- 1.5 We wanted to understand providers' attitudes towards the cost of regulation in the legal sector. Our findings show that providers consider the totality of regulation that they must comply with rather than the source of this regulation:
 - A significant proportion of both those regulated as entities and individuals rated areas that are **not** regulations specific to legal services (for example complying with Money Laundering regulations under the Proceeds of Crime Act 2002) as a regulatory cost.
 - A proportion of authorised professionals, whether entities or individuals, do not distinguish between statutory regulatory requirements and discretionary costs. A significant proportion of both those regulated as entities and individuals rated areas that are discretionary (for example membership of accreditation schemes) as a regulatory cost.¹

¹ Some accreditation schemes are de facto compulsory if a legal professional wants to practice a particular area of law e.g. Child Law.

- 1.6 Across the different professional groups, a number of respondents did not know what they paid for via their practising certificate fee (PCF). The majority of respondents knew that their PCF funded their respective regulator but were less clear on what else the PCF was used to fund:
- Between 41% and 67% knew that the PCF funded the LSB and between 43% and 65% knew that it funded the Legal Ombudsman.
 - Levels of awareness of the PCF funding other non-regulatory permitted purposes, such as certain representative activities, ranged between 29% and 85% but were generally lower than awareness of funding for the Legal Ombudsman and LSB.
- 1.7 Views on value for money regarding the fees paid to the regulator and the cost of compliance varied. Barristers and solicitors were more likely to see these as poor value for money:
- Entities regulated by the Solicitors Regulation Authority (SRA), and those regulated by the Bar Standards Board (BSB) and the Intellectual Property Regulation Board (IPReg), were more likely to see practising certificate fees as poor value for money, whereas those regulated by ILEX Professional Standards (IPS) and the Costs Lawyer Standards Board (CLSB) generally thought fees were reasonable.
 - SRA entities and barristers were more likely to see compliance costs as high, whereas costs lawyers, notaries and those regulated by IPReg saw compliance costs as reasonable.
 - The responses provide some indication that views on the cost of regulation vary by practice areas. Those practising criminal law report that they see the cost of fees and compliance as high. However, sample sizes are too small to be conclusive on this point.
 - Generally, views on regulation vary by size of the entity. Over half of sole practitioner entities see fees as poor value for money, whereas more than half of entities with more than 50 employees see fees as either reasonable or high but not excessive. Similarly, about 45% of entities with fewer than 50 employees see compliance costs as poor value for money, whereas 65% of entities with more than 50 employees see compliance costs as either reasonable or high but not excessive.
- 1.8 Professional Indemnity Insurance (PII), PCFs and keeping up to date with changes to regulations were perceived to be the highest cost areas of regulation:
- Areas of regulation rated as high cost vary significantly across those regulated as individuals, potentially indicating that the regulators' approach might impact on how much an activity costs for an individual.
 - Entities are more likely than individuals to see all areas of regulation as high cost, except in the case of separate client accounts and practising certificate

renewals. Regulation relating to client accounts is seen as high cost by 17% to 40% of individuals in these groups.²

- For entities, we found a significant difference in how SRA entities and CLC entities perceive the cost of file retention, with a significantly higher proportion of CLC entities rating it as high cost. This finding may indicate a need to explore whether the different approaches to regulation by the CLC and SRA lead to different experiences for their regulated communities.
- Over half of SRA entities see both fees and compliance costs as issues that need to be addressed together.
- A majority of between 58% and 85% of individuals spend up to 10% of their time complying with regulations while a majority of entity respondents spend up to 25% of their time on compliance.

1.9 There is limited consensus amongst both those regulated as entities, and among those regulated as individuals, on which parts of regulation should be removed or kept:

- In total, 9% of entity respondents suggested removing COLP/COFA and HOLP/HOFA regulations for a very broad spread of reasons.³
- While 19% of entities nominated PII as their priority to keep, 8% identified it as their priority to remove. Of those that wanted to keep PII, 53% - or 10% of all respondents - felt it should be kept because that specific regulation helps them get work and reduces the costs they would otherwise face.
- A minority of between 16% and 33% of respondents regulated by SRA, CLC, MoF, BSB and IPReg stated they would keep all areas of current regulation. However, for those regulated by CLSB, a majority wanted to keep all regulation, and for those regulated by IPS just under half wanted to keep all regulation.

Methodology

1.10 The legal services market is regulated by a number of different regulators authorising and regulating their own communities of legal professionals. This is the first time a survey about the cost of regulation has covered all parts of the regulated legal services market. A total of 967 authorised legal professionals provided full completed responses to the survey.

1.11 The LSB designed the survey to take account of the differences between and within the authorised communities and their specific regulatory arrangements.

1.12 The survey was designed to be flexible enough to cater for respondents who:

² Individuals regulated by IPReg, Council for Licenced Conveyancers (CLC) and Master of Faculties (MoF) may have client accounts. Individuals working for an SRA-regulated entity may have an entity level client account to comply with licencing rules.

³ COLP: Compliance Officer for Legal Practice, COFA: Compliance Officer for Finance and Administration. COLP and COFA are used by SRA regulated entities. HOLP: Head of Legal Practice, HOFA: Head of Finance and Administration refers to entities authorised by a licencing authority.

- are regulated as entities or individuals
- work in-house
- provide services to individual members of the public, Small and Medium Sized Enterprises (SMEs) and large businesses
- are members of the different legal professions
- are in an entity regulated by an approved regulator other than their individual regulator.

1.13 The survey was designed with reference to previous surveys that touch on this area and with input from representatives from the [LSB Research Strategy Group](#), a regulatory economist, and a legal sector expert.⁴ The survey was also piloted prior to full field work.

1.14 Where possible, the survey was sent to a random representative sample of authorised legal practitioners⁵. Additionally, alongside the sample groups, the survey was open to all regulated legal professionals.

1.15 The survey generated responses which are broadly representative on a number of measures of the profile of the regulated community. Annex F contains more information. The LSB does recognise that there are a number of potential respondent biases as a result of how respondents were engaged and those self-selecting to respond to the survey.⁶

1.16 That means some caution must be exercised when applying the findings to the whole population, although the survey still provides the views of a reasonable part of the regulated community. This also helps to explore why the cost of regulation is perceived to be a concern.

1.17 The survey period ran for eight weeks and, while response rates for some groups were low, the overall response rate was nearly twice as high as had originally been sought.⁷ The LSB decided to allow a one-week extension to the survey period to encourage additional responses from specific groups, as there had been ample opportunities for individuals and entities to be aware of and respond to the survey.

⁴ To ensure ongoing and independent oversight of the research programme, the LSB has brought together a Research Strategy Group (including independent representation) tasked with providing oversight for the research programme.

⁵ SRA entities, barristers and costs lawyers were all targeted via random samples.

⁶ Those who have responded may potentially be more concerned about the cost of regulation, and/or felt that taking the time to complete the survey was worthwhile. Where published data is available, the weighted profile of respondents broadly matches that of each of the regulated groups. Comparisons with other surveys, and comparisons with survey groups, provide limited or no evidence of these biases actually existing, but they may nevertheless exist.

⁷ The original research approaches document put forward a sample size of 587. This was based on a confidence interval of +/- 10% at a 95% confidence level and broke down as: SRA entities - 96; CLC entities – 68; IPReg – 65; BSB – 95; IPS individuals – 95; CLSB individuals – 82; MoF individuals – 86. See

http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/PDF/CoR_research_approac_%20ii.pdf

Next steps

- 1.18 This report provides a snap shot of what respondents perceived to be the cost of regulation. To better understand the actual cost behind the perceived costs of regulation, survey respondents were asked to volunteer to participate in a second round of research. This research will seek to assign actual costs to specific areas of regulation. The research will also attempt to understand which costs of regulation arise only as a consequence of legal sector regulation and which costs firms would have incurred anyway as part of good business practice. A total of 181 respondents agreed to participate in this research, which is currently in the field and due to be completed later this year.
- 1.19 A number of respondents provided comments about other areas of regulation aside from the ones included in the survey. These comments covered a wide range of areas spanning current regulatory approaches, such as outcomes-focused regulation (OFR), to views on the unregulated legal sector. The LSB is grateful for all of the suggestions received and will review them as the cost of regulation project progresses.
- 1.20 These results are part of a wider project that includes further research and policy analysis to map the cost of regulation. As such, the LSB will publish further analysis and commentary in due course.

2. Methodology

The aims of this research

- 2.1 This report summarises the findings of a survey on the costs of regulation on regulated legal providers authorised by the approved regulators to provide reserved legal activities.⁸
- 2.2 The survey was undertaken as part of the LSB's project looking at the cost of regulation and its impact on the regulated community.⁹ The cost of regulation project is designed to gather data on the cost of legal sector regulation. This is to contribute to the evidence base for any future recommendations for reducing the overall cost of regulation. As such, research to establish what the costs are, and how they breakdown, is a major element of this project. The survey represents the first part of the research planned to support the development of policy in this area.¹⁰
- 2.3 The key aims of the survey were to:
- 1) Gather views on the perceived cost of regulation split by different groups of authorised legal professionals, market segments, and experiences of regulation.
 - 2) Identify specific regulations and areas of regulation that cause the most concern for the regulated community, and identify where these are in the sphere of legal services regulation, or wider regulation.
 - 3) Generate volunteers to participate in the more in-depth but smaller-scale work to quantify the actual cost of regulation.
 - 4) Provide areas of focus for the in-depth work to quantify the cost of regulation.

Capturing the views of authorised legal professionals

- 2.4 This survey was open to all authorised legal professionals. The regulated legal community is very diverse, both within each profession and across the different professions. The survey was designed to be flexible enough to capture the range of approaches to regulation by each of the seven different regulatory bodies:
- 1) Solicitors Regulation Authority (SRA)
 - 2) Bar Standards Board (BSB)
 - 3) ILEX professional Standards (IPS)
 - 4) Intellectual Property Regulation Board (IPReg)
 - 5) Council for Licensed Conveyancers (CLC)

⁸ 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.

⁹ See http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/index.htm

¹⁰ See

http://www.legalservicesboard.org.uk/Projects/Reviewing_the_cost_of_regulation/PDF/CoR_research_approac_%20ii.pdf

- 6) Costs Lawyer Standards Board (CLSB)
 - 7) Master of the Faculties (MoF).
-
- 2.5 Accountants regulated to undertake reserved legal activities were not included in this survey because the necessary regulatory changes have only recently come into effect.
 - 2.6 A key distinction between regulators is whether they regulate their community as individuals, or as both individuals and entities. Some regulators also make a regulatory distinction between those providing services in-house and those providing services to the public. These distinctions are important and it seems reasonable to assume that there is a relationship between how someone is regulated and the cost of that regulation.
 - 2.7 Annex A contains more information about how the legal sector in England and Wales is regulated.
 - 2.8 This survey was designed to provide the most comprehensive range of views on the cost of regulation. It is the first time a pan-professional survey of this depth has been undertaken, although some regulators have looked at specific areas.¹¹ The survey sought to gather views from all parts of the regulated legal community on a variety of specific issues, such as: which aspects of regulation were seen as most costly; whether it is the time spent complying with regulation, the fee paid to regulators, or both that causes the biggest concern; and whether there are market segments where the cost of regulation is more of an issue than others.
 - 2.9 In line with LSB practice for research reports, a full copy of the survey and the data can be found on the [LSB research pages](#). Where appropriate the footnotes contain reference to the relevant questions in the survey.
 - 2.10 Annex C contains more information on how the survey was designed.

¹¹ The Law Society has researched the specific costs faced by SRA-regulated entities for Professional Indemnity Insurance every year since 2008, and also collects the views of firms on regulation with its Regulatory Performance Surveys in 2011 and 2012 <http://www.lawsociety.org.uk/policy-campaigns/research-trends/research-publications/>. They also recently consulted members on the practising certificate fee - <http://www.lawsociety.org.uk/news/stories/practising-certificate-fee-consultation-findings/>. The SRA has also looked at the impacts of regulation in its research into the impacts of outcomes-focused regulation published in 2013 - <http://www.sra.org.uk/sra/how-we-work/reports.page>. The BSB sought views on its performance in the 2013 Barristers Working Lives report https://www.barstandardsboard.org.uk/media/1597662/biennial_survey_report_2013.pdf

Response rates and approach to data analysis

2.11 Figure 1 below shows the number of surveys completed for each of the different groups. The final sample figure of 967 follows a process of data coding and checking which is outlined in the rest of this section and described in more detail in annex E.

Figure 1. Response numbers by different groups and survey

	Population 2014	Completed responses via online link (self-selecting)	Completed responses via sample	Total completed responses	Response as a percentage of population	Volunteer for in-depth work
Entity						
Council for Licensed Conveyancers	225	20	18	38	17%	6
Solicitors Regulation Authority	10,546	56	271	327	3%	82
Totals				365		88
Individual						
Costs Lawyer Standards Board	577	61	6	67	12%	5
The Master of the Faculties	792	79	-	79	10%	22
Bar Standards Board	15,279	90	113	203	1%	24
ILEX Professional Standards	7,927	58	1	59	1%	5
Intellectual Property Regulation Board	2,828	109	49	158	6%	27
Solicitors Regulation Authority	129,552	15	18	33	0.03%	9
Council for Licensed Conveyancers	1,222	0	0	0	0%	0
Totals	-	-	-	599	-	92
Heads of Chambers						
Barristers Chambers (2012)	824	2	1	3	-	1
Totals	-	-	-	967	-	181

- 2.12 All incomplete responses – those that had not answered all relevant questions for their part of the survey – are completely excluded from the main sample for this analysis. This is to allow analysis across market segments and attempt to ascertain how views on regulation vary by the area of work.
- 2.13 33 respondents indicated they were a solicitor and were replying as an individual member of the legal profession. Of these, four worked solely in-house and ten were responding as sole practitioners or from two partner firms.
- 2.14 The remaining 19 responses from solicitors are too small a sample to meaningfully compare to the wider population, and so cannot be considered applicable to the wider population. The 19 responses are included in the analysis of this report but should not be treated as representative of the solicitor profession's views.
- 2.15 Of those responding as SRA-regulated entities, four were individual licenced conveyancers so were regulated by CLC as individuals and regulated by the SRA for entity purposes. Further, all entity respondents reported that in total they employed 163 individual licensed conveyancers, 395 chartered legal executives and 156 costs lawyers.
- 2.16 Three Heads of Chambers responded to the survey on behalf of the barristers who work in their chambers. A total of 190 barristers work at these chambers, which are based in the North West, the South West, and the South East respectively. Despite the low response rate from Heads of Chambers, we have included their views where possible to reflect their perspective on the cost of regulation.

Potential response bias and respondent profile

- 2.17 A range of different approaches were taken to get survey participants. The overall effect of the different approaches introduced potential response bias into the survey results – if those who respond differ substantially from those who did not, the results may not directly allow generalisations to the population. This is particularly true where the survey was open to all members of a group and no sampling was used. For this survey this gives rise to two potential response biases:
- 1) 'Interest' bias – people who feel most strongly about the cost of regulation in terms of it being too high, too low or about right.
 - 2) 'Worthwhile' bias – people who think their views are likely to be listened to, and hence have an impact on the development of regulation in future, are more likely to spend the time responding to a survey from the oversight regulator.
- 2.18 To some extent these biases exist in any survey activity and are often mitigated through private survey companies offering incentives for responding, or

encouragement from a particular representative body.¹² Therefore, if we applied the survey results to the whole of the regulated community, the results might be overstating the true levels of concern with the cost of regulation.

2.19 To assess whether we can identify any evidence of potential bias we profiled the respondents to the survey against a range of key variables for each of the respective groups. We also weighted entity responses to reflect the size of the entity. This is limited in some areas because of the limited descriptive information available for some of these groups, and reference is made to the findings of other surveys where possible. Our findings are summarised in Figure 2 below.

Figure 2. Summary of potential response bias.

	% of 'self-selecting' responses	Profile: sample compared to population	Evidence of 'interest' bias?	Evidence of 'worthwhile' bias?	Margin of Error ¹³
SRA regulated entities	17%	Entities with 2-4 solicitors are significantly under-represented in the sample	Self-selecting respondents were significantly less likely to see annual fees and compliance costs as poor value for money	Significant difference in proportion of selecting respondents volunteering to participate further	5.33
CLC regulated entities	53%	Larger entities make up proportionally more of the overall sample	Self-selecting respondents were more aware of fees and more likely to see fees paid as high but not excessive.	Unknown	14.53
Costs lawyers	92%	Number of years regulated - no significant difference	None available	None available	11.27
Notaries	100%	No significant bias identified	None available	None available	10.47
Barristers - exc. chambers	44%	Self-employed barristers are over represented in the sample	No significant differences identified	No significant differences identified	6.78
Chartered Legal Executives	98%	Geographical bias - shows differences in all the South West, East of England, West Midlands, and Yorkshire and the Humber	Unknown	Unknown	12.71
Patent attorneys and trademark attorneys	69%	Unknown	No significant differences identified	Unknown	7.58

- 2.20 Where appropriate, we also compared the findings of the two sources of sample within each group, looking at key areas of awareness of costs¹⁴, views on the level of fees paid¹⁵, and views on internal compliance costs¹⁶ to help determine any 'interest' bias. For evidence of any 'worthwhile' bias, we reviewed respondents' reasons for not participating in the next stage of the research.¹⁷
- 2.21 Where we can make direct comparisons with other research there is no evidence of any difference in the response profile. Using the Law Society survey findings and comparing views of internal compliance costs, the percentage of respondents who felt fees were high but not excessive or reasonable shows no significant difference between the two surveys.

¹² For example, cash, a donation to charity, or an introductory letter from the organisation's leader emphasising why it's in the respondent's interest and the wider profession's interests to participate.

¹³ The margin of error is also called the **confidence interval**. It is the plus-or-minus figure usually reported in newspaper or television opinion poll results. The **confidence level** tells you how sure you can be. It is expressed as a percentage and represents how often the true percentage of the population who would pick an answer lies within the confidence interval. Looking at the confidence level and the confidence interval together, we can say that we are 95% sure that the true percentage of the population feels the same as the survey respondents, plus and minus the margin of error.

¹⁴ Questions 5-6 for Entities, 45-51 for individuals, and 77 for Heads of Chambers asked respondents to state whether they were aware of the range of organisations funded by their particular regulator's practising certificate fees.

¹⁵ Question 7 for Entities, 52 for individuals, and 78 for Heads of Chambers: Which of the following statements best represents your view of the annual fees collected by your legal services regulator?

¹⁶ Question 19 for Entities, 56 for individuals, and 85 for Heads of Chambers: Which of the following statements best represents your view of the overall internal compliance costs or regulation imposed by your legal services regulator?

¹⁷ Question 43 for Entities, 76 for individuals, and 107 for Heads of Chambers: Please could you select one of the following reasons behind your decision not to participate further?

Figure 3. Sample profile: SRA entity views on internal compliance costs of regulation

	TLS Regulatory performance surveys (weighted) ¹⁸			LSB cost survey (un-weighted) ¹⁹	LSB cost survey Weighted
	2009 (n=1,000)	2011 (n=1,001)	2012 (n=1,001)	2014 (n=327)	2014 (n=316)
They are poor value for money	-	-	-	46%	48%
Internal costs are excessive	37%	39%	47%	-	-
They are high, but not excessive	35%	32%	33%	32%	31%
They are reasonable	26%	27%	18%	14%	13%
Do not know	2%	3%	2%	6%	5%

2.22 Annex E contains more information about potential response bias and respondent profile. Overall, while it is sensible to be aware of the potential respondent bias, there is limited evidence of the potential bias actually impacting on survey responses.

¹⁸ See table 4.1 Evaluation of internal compliance costs (2009-2012) Regulatory Performance survey, The Law Society 2013. Compliance costs here were costs excluding contributions to the Compensation Fund, professional indemnity insurance and PC fees. Internal costs would include the cost of compliance staff, fee-earner time spent on compliance, IT systems, documentation, CPD and staff training on compliance issues. This was a telephone survey.

¹⁹ Question 19. Which of the following statements best represents your view of the overall internal compliance cost of regulation imposed by your legal services regulator? Internal costs would include the cost of compliance staff, fee-earner time spent on compliance, IT systems, documentation, CPD, staff training on compliance issues and professional indemnity insurance.

3. What is 'legal services regulation'?

- 3.1 The Legal Services Act 2007 (The Act) introduced a new structure of regulation which broadly took effect from 2009 onwards. The Act introduced significant regulatory changes with separation of representative and regulatory functions and explicit identification of reserved legal activities.
- 3.2 Alongside legal sector regulation, many legal professions must also comply with other statutory regulation which does not originate from the legal sector regulators. This could be company law regulation mandated on all companies such as audit and registration. It also includes laws flowing from the UK's transparency agenda such as "know your customer" and money laundering regulation.
- 3.3 As a consequence, what is perceived as 'legal services regulation' may not in fact be within the scope of legal service regulators to address. The survey contained a number of questions which sought to probe the respondent's concept of what constitutes 'legal services regulation' and their awareness of what their fees were used for under the Act.

The practising certificate fee

- 3.4 Annual practising certificate fees (PCF) are used by the regulators to fund regulatory activity. A portion of the revenue from these fees is also used to fund the Office for Legal Complaints, which runs the legal ombudsman, and the LSB. In some cases the PCF also funds permitted purposes²⁰ of the approved regulators. Permitted purposes include representative activities on behalf of the regulated profession. Each respondent was provided with a breakdown of their regulator's annual expenditure for 2013, and asked to indicate if they were aware that their fee contributed to each part of the breakdown.²¹
- 3.5 Figure 4 below shows the general levels of awareness of what these fees are used to fund. The headings used are those used by each regulator to report on their proposed practising certificate fees and so should be familiar to those responding to the survey.²²

²⁰ Section 51(4), Legal Services Act 2007 which outlines the permitted usage of money raised from practising fees for the professional body's representative costs.

²¹ For respondents answering as entities - Questions 5 or 6; for respondents answering as individuals – Questions 45 to 51 depending on which regulator; for respondents answering as Barristers clerks - Question 77.

²² See

http://www.legalservicesboard.org.uk/Projects/statutory_decision_making/section_51_practising_fees.htm

Figure 4. General awareness of what PCFs are used to fund

	Regulator	LSB	Legal Ombudsman	Representation (where applicable)	Disciplinary (where applicable)	Contingency (where applicable)	Corporate services (BSB only)	Central Services (BSB only)	Other PCF expenditure (IPS only)
Entity									
CLC	83%	41%	52%	-	-	-	-	-	-
SRA	90%	52%	60%	83%	69%	50%	-	-	-
Individual									
BSB	92%	61%	60%	85%	-	-	48%	58%	-
CLSB	94%	55%	57%	-	63%	-	-	-	-
IPS	75%	42%	53%	-	-	-	-	-	48%
IPReg	98%	45%	43%	-	54%	29%	-	-	-
MoF	67%	67%	65%	-	-	-	-	-	-

- 3.6 Generally the majority of respondents were aware that their PCF funded their respective regulator (always over two thirds)²³, and where applicable the relevant representative functions of the approved regulator. However, only between 41% and 67% of respondents were aware that the PCF funds the LSB and between 43% and 67% were aware that it funds the Legal Ombudsman.
- 3.7 Levels of awareness of the PCF funding other areas were generally lower. Looking across the different regulators, SRA-regulated entities were, on average, most aware of what the PCF is used to fund (an average of 68% across each category), compared to an average of 54% for individuals regulated by IPReg and IPS.
- 3.8 There was no significant difference in awareness amongst entities regulated for more than five years and entities regulated for less than five years²⁴. For those regulated as individuals, as a group, there is a statistically significant difference between the proportion of respondents regulated for more than five years who gained the highest possible awareness score and those who had been regulated for less than five years (35% compared to 25%).²⁵ This suggests that awareness of what practising certificate fees are funding does increase as time spent regulated increases. However, even after

²³ Some approved regulators have other income streams than the PCF income so are only part funded by the PCF.

²⁴ This involved giving a score for each respondent as to how aware they were, and then comparing the overall scores for those regulated for 5 years or more with those regulated for less than 5 years.

²⁵ The Z-Score is 2.1347. The p-value is 0.03318. The result is significant at $p < 0.05$

five years of regulation, just over one third of respondents are fully aware of what their PCF is funding.

Views of what comprises legal sector specific regulation

3.9 Survey respondents were asked whether they would characterise a list of specific areas as either a regulatory cost or not a regulatory cost.²⁶ They were also given a 'do not know' and 'not applicable' option. The list comprised specific legal services regulatory requirements, other business costs that might potentially be seen as legal services regulation, and the Act's 'permitted purposes'.²⁷ Figure 5 below summarises the responses by the different categories of respondent.

Figure 5. Views on what constitutes a regulatory cost

No	Area	Brief description	SRA entity	CLC entity	CLSB	MoF	BSB	IPS	IPReg
1	Professional indemnity insurance costs	Compulsory legal services regulation - fees paid to private companies	66%	70%	57%	53%	39%	77%	28%
2	Practising certificate fees	Compulsory legal services regulation - fees paid to regulators annually	97%	97%	88%	85%	89%	83%	90%
3	Accreditation scheme fees	Discretionary, non-regulatory requirement	46%	35%	29%	38%	55%	53%	37%
4	Professional development training course fees	Compulsory legal services regulation - fees paid to private companies	60%	54%	64%	77%	66%	51%	48%
5	Membership of your representative body	Compulsory legal services regulation for solicitors and barristers ²⁸ Voluntary, non-regulatory requirement for all others	60%	50%	64%	33%	52%	71%	40%
6	Membership of a specialist professional association	Voluntary, non-regulatory requirement	19%	17%	35%	20%	11%	27%	18%
7	Contributions to the compensation fund	Compulsory legal services regulation for solicitors and barristers and CLC licensed entities	91%	95%	56%	80%	57%	61%	54%
8	Compliance staff costs	Compulsory legal services regulation for entities, discretionary levels of expenditure for individual	76%	63%	55%	56%	81%	55%	65%

²⁶ For respondents answering as entities - Question 10; for respondents answering as individuals - Question 54; for respondents answering as Barristers clerks - Question 80. How would you characterise the following costs?

²⁷ Section 51(4), Legal Services Act 2007 which outlines the permitted usage of money raised from practising fees for the professional body's representative costs.

²⁸ Barristers can opt into additional member services beyond Bar Council representation.

No	Area	Brief description	SRA entity	CLC entity	CLSB	MoF	BSB	IPS	IPReg
9	Money laundering regulatory compliance	Central government business regulation	87%	78%					
10	Legal aid contracting documentation	Non-regulatory requirement	42%	18%					
11	Know your customer requirements from HMRC	Central government business regulation	51%	49%					
12	Contributing towards maintaining and raising professional standards	Compulsory legal services regulation for solicitors, barristers and chartered legal executives. Permitted usage of money raised from practising fees for the approved regulators' representative costs	45%	31%	28%	42%	57%	41%	19%
13	Contributing towards supporting and advising authorised persons (plus prospective authorised persons) about practice management	Compulsory legal services regulation for solicitors, barristers and chartered legal executives. Permitted usage of money raised from practising fees for the approved regulators' representative costs	54%	51%	23%	40%	55%	30%	32%
14	Contributing towards the professions participation in law reform and the legislative process	Compulsory legal services regulation for solicitors, barristers and chartered legal executives. Permitted usage of money raised from practising fees for the approved regulators' representative costs	30%	33%	12%	27%	23%	44%	26%
15	Contributing towards the provision of pro-bono work to the public	Compulsory legal services regulation for solicitors, barristers and chartered legal executives. Permitted usage of money raised from practising fees for the approved regulators' representative costs	16%	9%	2%	8%	11%	26%	4%
16	Supporting the promotion and protection by law of human rights and	Compulsory legal services regulation for solicitors, barristers and legal executives. Permitted usage of	15%	0%	5%	14%	10%	30%	14%

No	Area	Brief description	SRA entity	CLC entity	CLSB	MoF	BSB	IPS	IPReg
	fundamental freedoms	money raised from practising fees for the approved regulators' representative costs							
17	Contributing towards the promotion of relations between the approved regulator and relevant national or international bodies, governments or the legal professions of other jurisdictions	Compulsory legal services regulation for solicitors, barristers and chartered legal executives. Permitted usage of money raised from practising fees for the approved regulators' representative costs	43%	50%	35%	43%	55%	44%	50%

3.10 Broadly speaking, areas one to seven are areas of regulation that legal services regulators have direct control over – continuing professional development (CPD) requirements, levels of contribution to the compensation fund etc.

3.11 Areas eight to 11 are areas where costs are imposed by forms of regulation or activity that legal services regulators have no control over – for example, the costs involved with legal aid contract documentation, or joining an accreditation scheme. Areas 12 to 17 are the permitted purposes. For those entities regulated by the SRA, these are the areas that the portion of the PCF going to the Law Society is used for under the terms of the Act.

3.12 For all groups, the majority of respondents identified practising certificate fees, compliance staff costs and compensation fund costs as regulatory costs. However, compulsory regulatory costs such as professional indemnity insurance and continuing professional development training course fees were less likely to be rated as regulatory costs, even though they arise as a result of specific legal services regulation.

3.13 Costs faced in relation to non-legal services regulation were identified as regulatory costs. For example, 87% of SRA-regulated entities stated that money laundering compliance was a regulatory cost, 46% did so for accreditation fee schemes, and 42% did so for legal aid contracting documentation.

3.14 The level of perception of some of the permitted purposes of the approved regulators as regulatory costs was relatively low - in particular, in relation to the provision of pro-bono work (SRA regulated entities 16%, and BSB regulated individuals 11%). Perception of supporting the promotion and protection by law of human rights and fundamental freedoms (SRA-regulated entities 15%, and BSB regulated individuals 10%) as a regulatory cost was also relatively low.

3.15 A number of comments highlighted that the costs of complying with regulations that involve discretion on the part of providers are of concern. These tended to relate to training, for example:

“Regulation has opened the door for independent organisations to provide training, but they do so at a very high cost - all of which is eventually passed onto clients, and the public. In this respect regulation has not necessarily provided any benefit.”²⁹

3.16 Another issue identified was in relation to PII where one respondent mentioned the lack of choice imposed by regulation:

“The Bar has a monopoly insurer, BMIF. But it fails to provide predictable and universal cover for the defence of all disciplinary matters... the market should be opened up to competitors.”³⁰

3.17 Generally speaking, the responses to this question demonstrate that what is perceived as a regulatory cost is not always solely regulation imposed by legal service regulators. Considering that legal services suppliers interact with a range of different agencies, rules, and codes, this is not a surprise. The “cross reference / duplicity [duplication] of regulatory practice between different bodies” was referred to in a number of comments from respondents to the survey, which might suggest a lack of coordination between the application of some regulations and regulatory bodies.³¹

3.18 The comments identified a number of specific areas including:

- Regulations imposed by other bodies within the market, for example:

“You should be looking at other areas of regulation that conveyancers have to meet such as CML Handbook, FCS requirements and so on.”³²

- ‘Regulations’ imposed by voluntary schemes, for example:

“A lot of precious time goes into dealing with the lenders for purposes of obtaining conveyancing panel memberships. There is no sufficient clarity, transparency and fairness in how and what criteria the lenders should set in dealing with panel membership applications and legislation should impose obligations on the lenders to adopt fairness and transparency.”³³

²⁹ Respondent ID 3564455214

³⁰ Respondent ID 3520045337

³¹ Respondent ID 3609390108

³² Respondent ID 3614924586

³³ Respondent ID 3610151434

- ‘Regulations’ imposed by legal aid, for example:

“The burdens placed on me by legal aid requirements are far worse than regulatory ones as they actively inhibit me doing my job and representing clients.”³⁴

- Lack of join-up with PII requirements and regulatory requests, for example:

“The actual cost in terms of time spent in providing information for Lenders Panels, PI Insurers and the SRA (Practising Certificate renewals), who could do with applying a little consistency to their requirements so that similar areas did not have to be analysed again and again.”³⁵

- Duplication of existing regulation in relation to data protection was mentioned by one respondent who stated:

“Why do I have to be regulated by the ICO, at a cost, when I can also be disciplined by the BSB for Data Protection issues? It amounts to an extra cost and a double jeopardy of punishment?”³⁶

- Duplication across different legal services regulators was mentioned, for example in relation to PII:

“The barrister usually comes into a case (unless he has Direct Access to the public) after a solicitor has first seen the case and spoken to the client. Why is it necessary for the small business, self-employed barrister to pay professional insurance as well? The solicitor’s firm already pays it. ...The only people benefiting from this double up in insurance payments are the insurance companies.”³⁷

3.19 For any regulator of legal services this demonstrates the challenge of coordinating regulatory requirements with a wide range of different regulatory bodies, avoiding duplicating regulation in some areas, and ensuring regulation is targeted appropriately without losing necessary consumer protection.

³⁴ Respondent ID 3516474393

³⁵ Respondent ID 3544300374

³⁶ Respondent ID 3564307994

³⁷ Respondent ID 3516423538

4. Time and money: Which aspect of cost causes the most concern?

- 4.1 The survey sought to understand respondents' views on the cost of regulation through asking a series of questions around whether they felt the cost of regulation was too high. As with other surveys into the cost of regulation, the survey made a key distinction between:
- The annual fees paid to regulators – including practising certificate fees, registration fees, firm fees, compensation fund payments and other financial payments.
 - The cost of complying with regulation – including the cost of compliance staff, fee-earner time spent on compliance, IT systems, documentation, CPD and staff training on compliance issues and professional indemnity insurance.
- 4.2 This section reports on the range of views from respondents and seeks to identify what might be driving these views.

Entities

- 4.3 Figures 6 and 7, below shows the range of views for entities on annual fees paid³⁸ and for compliance costs.³⁹

³⁸ Question 7 for Entities, 52 for individuals, and 78 for Heads of Chambers: Which of the following statements best represents your view of the annual fees collected by your legal services regulator?

³⁹ Question 19 for Entities, 56 for individuals, and 85 for Heads of Chambers: Which of the following statements best represents your view of the overall internal compliance costs or regulation imposed by your legal services regulator?

Figure 6. Views on fees paid to regulator by entities

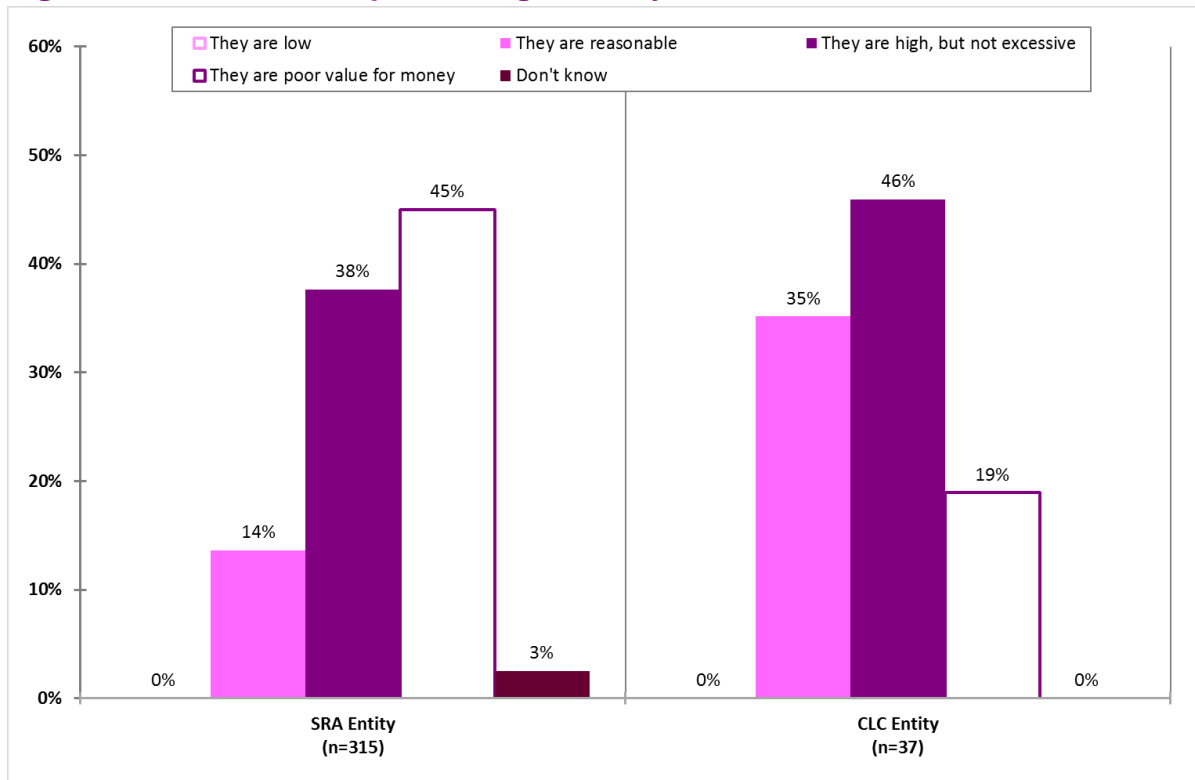
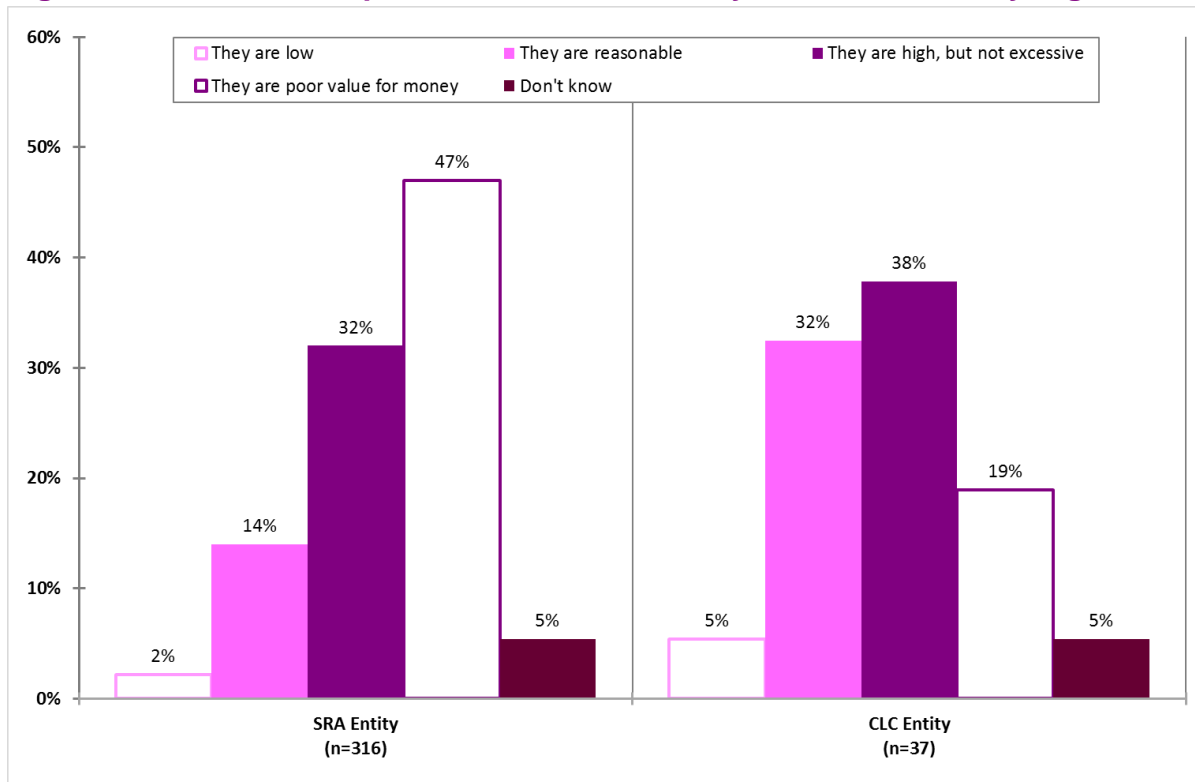


Figure 7. Views on compliance costs incurred by entities shown by regulator



- 4.4 In terms of entity regulators, 45% of SRA-regulated entities felt the annual fees paid to the regulator were poor value for money and 47% of SRA entities thought the compliance costs represented poor value for money.
- 4.5 For CLC entities, 46% felt the annual fees paid to the regulator were high but not excessive. 38% of these providers thought the compliance costs were high but not excessive.
- 4.6 Providers were also asked whether it was the fees paid, the cost of complying with regulation or both that caused them the most concern. This is shown in Figure 8 below.⁴⁰

Figure 8. Compliance costs, or fees, or both? – entity views by regulator



- 4.7 As can be seen from Figure 8, above, 51% of SRA entities responded that both issues should be considered together. The Figure was slightly lower for CLC entities where 38% held similar views. However, for both groups the biggest group of respondents wanted both fees and compliance costs to be considered together.

⁴⁰ Question 9 entities, Question 53 individuals, Question 79 Heads of Chambers - When thinking about regulatory costs you face, do you make a distinction between the annual financial cost of legal services regulation and the 'internal costs' of complying with that regulation (e.g. staff time filling in regulatory forms, etc)?

Figure 9. Time and money: SRA regulated entities responses

Fees paid	They are low	They are reasonable	They are high, but not excessive	They are poor value for money	Do not know
Compliance costs					
They are low	0%	1%	0%	1%	0%
They are reasonable	0%	6%	6%	2%	0%
They are high, but not excessive	0%	4%	20%	6%	1%
They are poor value for money	0%	4%	9%	33%	1%
Do not know	0%	0%	2%	3%	1%

4.8 As can be seen from Figure 9 above, 60% of SRA regulated entities gave the same answers for views on fee paid and internal compliance costs. For example, 33% of SRA-regulated respondents answered that the fees paid and the compliance costs represented poor value for money. A further 20% suggested they were high but not excessive and 6% thought they were reasonable.

Individuals

4.9 Figures 10 and 11 below show the range of views, for individuals, on annual fees paid⁴¹ and for compliance costs.⁴²

⁴¹ Question 7 for Entities, 52 for individuals, and 78 for Heads of Chambers: Which of the following statements best represents your view of the annual fees collected by your legal services regulator?

⁴² Question 19 for Entities, 56 for individuals, and 85 for Heads of Chambers: Which of the following statements best represents your view of the overall internal compliance costs or regulation imposed by your legal services regulator?

Figure 10. Views on fees paid by individual to their regulator

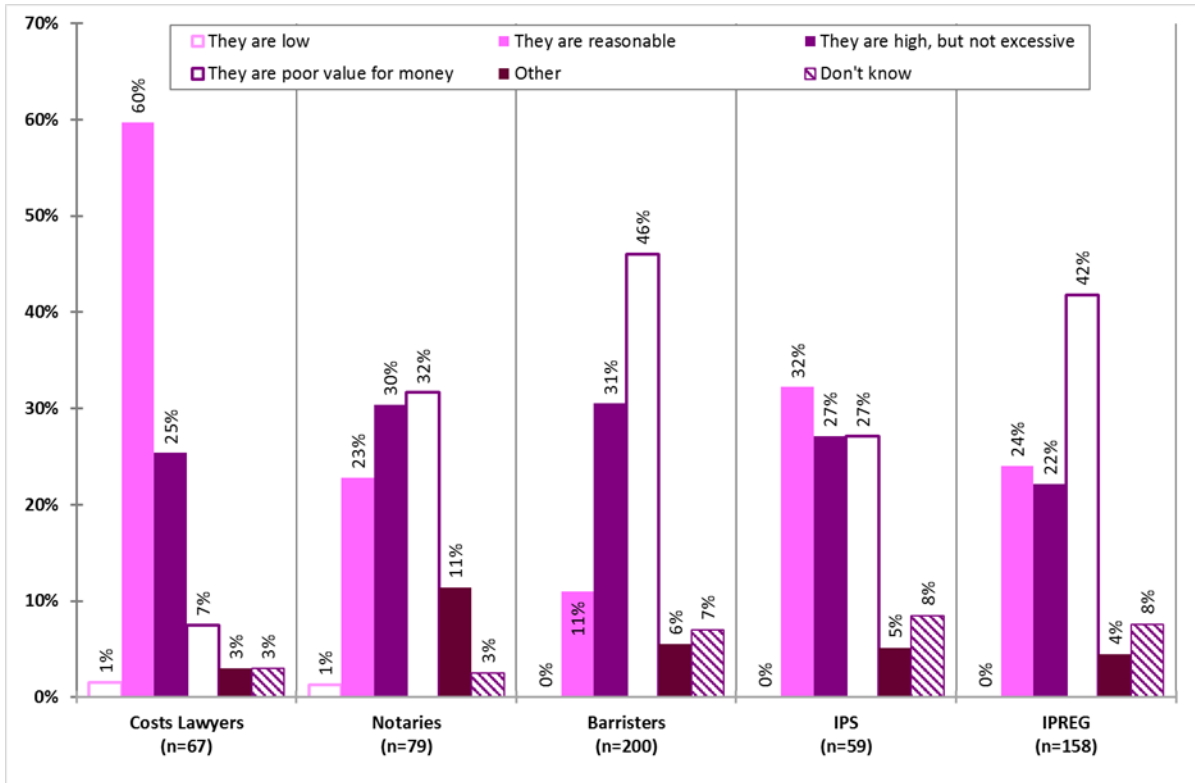
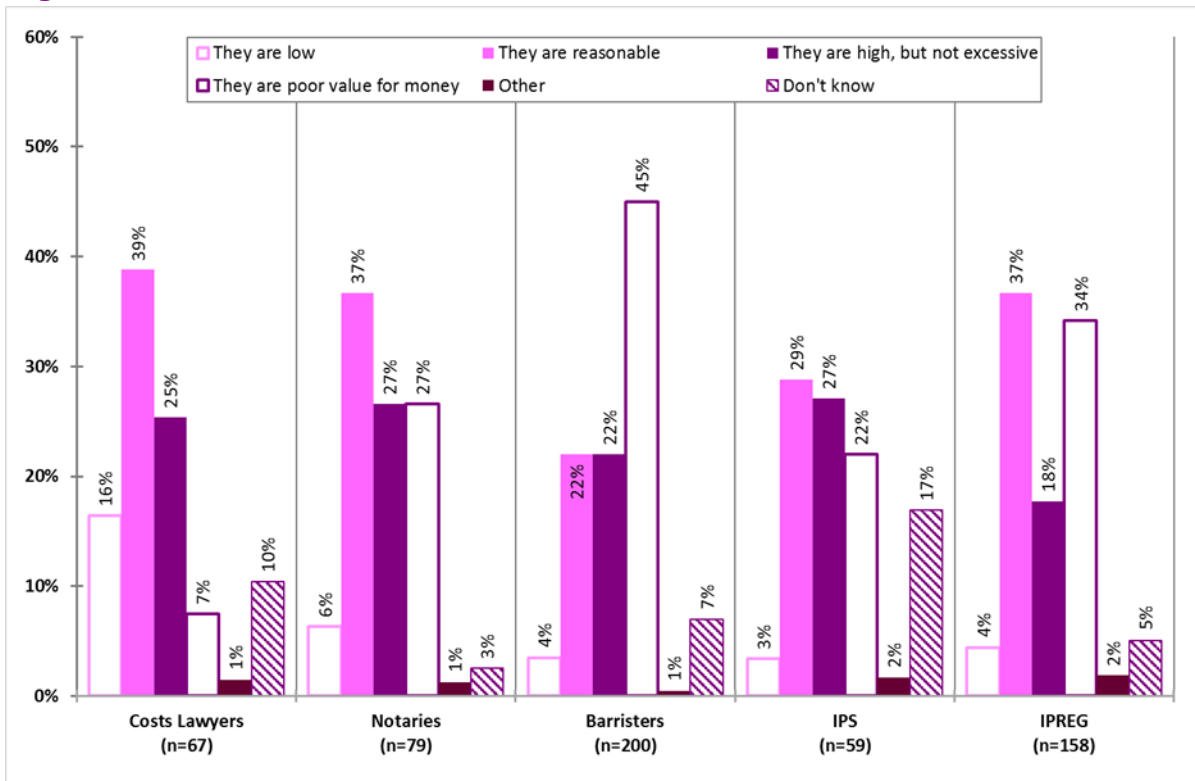


Figure 11. Views on compliance costs incurred by individuals shown by regulator



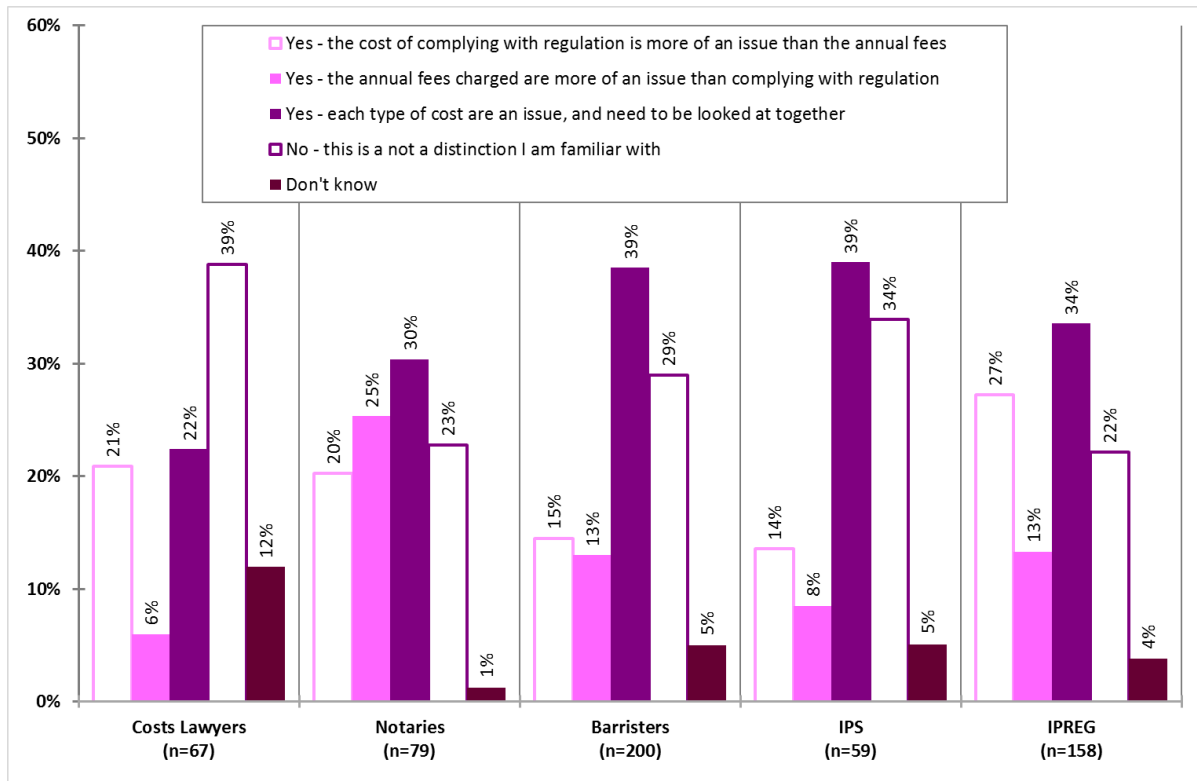
4.10 For individual regulators, barristers were equally concerned about the level of fees paid and the compliance costs. Costs lawyers were the most likely to think the fees

paid and cost of compliance was reasonable or low. Overall a higher percentage of notaries felt that the fees paid were high but not excessive, or poor value for money than they did with regard to compliance costs (62% compared to 53%). The same was true for those regulated by IPReg (64% compared to 52%).

4.11 Of the three responses from Heads of Chambers, two felt fees paid were poor value for money and one felt they were high but not excessive. The situation was reversed for views on compliance costs with two responding that compliance costs were high but not excessive and one responding they were poor value for money.

4.12 Providers were also asked whether it was the fees paid or the time spent complying with regulation or both that caused them the most concern. This is shown in Figure 12 below.⁴³

Figure 12. Compliance costs, or fees, or both? individuals' views by regulators



4.13 Figure 12 shows a diversity in views between regulated individuals. For all groups no view was held by a majority of the respondents. However, for all but costs lawyers the largest group indicated that cost of compliance and fee should be considered together.

⁴³ Question 9 entities, Question 53 individuals, Question 79 Heads of Chambers - When thinking about regulatory costs you face, do you make a distinction between the annual financial cost of legal services regulation and the 'internal costs' of complying with that regulation (e.g. staff time filling in regulatory forms, etc)?

Comments from authorised legal professionals

- 4.14 Looking at the views of fees paid, in addition to concerns about the level of fees paid, a number of views were expressed about how fees were calculated. Most frequently mentioned was how some parts of the profession appear to subsidise others. For entities, the key issue was size; as one respondent stated:

“High volume high turnover firms pay a disproportionate amount of the cost of regulation with no more benefit and often the high turnover is false turnover as it may include up to 60% referral fees. It would be much fairer to base the practice fee on the number of branches rather than a percentage of turnover, the amount of supervision is significantly [a]ffected by the number of branches supervised.”⁴⁴

- 4.15 For individuals the concerns tended to be more about one part of the profession paying more than other parts. For example, one barrister respondent stated

“The idea that the costs of regulating the Bar should fall for the most part on the commercial Bar (which is small and generates very little regulatory risk) is abhorrent to any sense of fairness or equity. It is taxation without mandate.”⁴⁵

- 4.16 Other commonly expressed views on fees paid were in relation to the relevance of regulation to the range of work undertaken by the individual. As one respondent stated:

“Actually regulation is optional for my firm, and I submit to it at present, but there is a growing disquiet and over time I expect that patent attorneys will move away from the re[gu]lated environment. Whereas up to 10% of my time is spent on regulated activities, about 30% of my time is spent on client work, so the ratio of regulated activities to client work is 1:3 which is unacceptably high.”⁴⁶

Awareness and views

- 4.17 Grouping respondents by the level of awareness of what their PCF funds were used for showed no significant differences in views on whether fees paid or compliance costs were reasonable or poor value for money.⁴⁷ This was true for both those regulated as individuals and those regulated as entities. The biggest variations were for those who are regulated as individuals. Those with low levels of awareness

⁴⁴ Respondent ID 3615056918, CLC Regulated entity - Question 28 for Entities, 65 for individuals, and 94 for Heads of Chambers: Are there any other specific areas of internal regulatory compliance costs that we should consider in the course of this investigation?

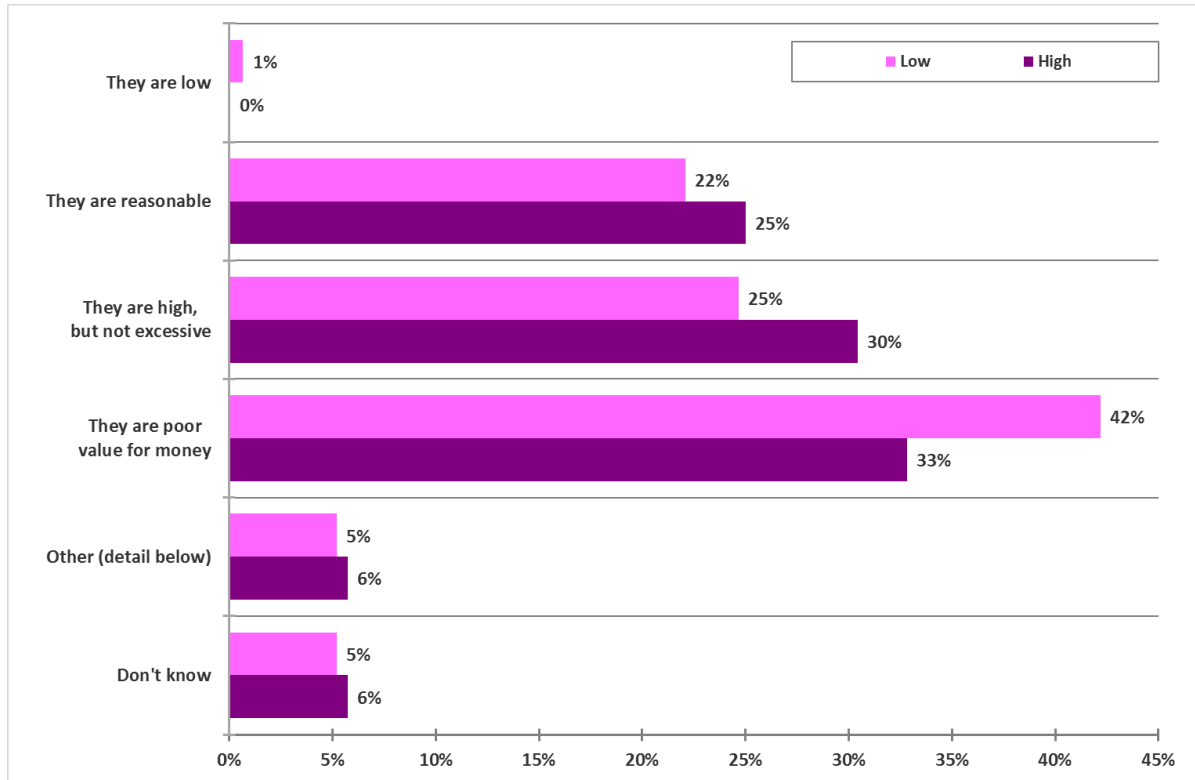
⁴⁵ Respondent ID 3532796670

⁴⁶ Respondent ID 3518623322

⁴⁷ This involved giving a score for each respondent as to how aware they were, and then comparing the overall scores between the highest and lowest scoring groups.

tended to rate fees paid as poor value for money more often than those with high levels of awareness. This is shown in Figure 13 below. However, these differences are not statistically significant.

Figure 13. Levels of awareness and views of fees paid – individuals



Size of entity

4.18 For those regulated as entities, the survey asked a number of questions to establish entity size and levels of involvement with regulation. Figures 14 and 15 below show the views on fees paid and compliance costs by size of entity for all regulated entities.⁴⁸

⁴⁸ Question 31. Please estimate how many people in total (including non-lawyers) work in your organisation to the nearest full time equivalent?

Figure 14. Views on fees paid by entity number of employees

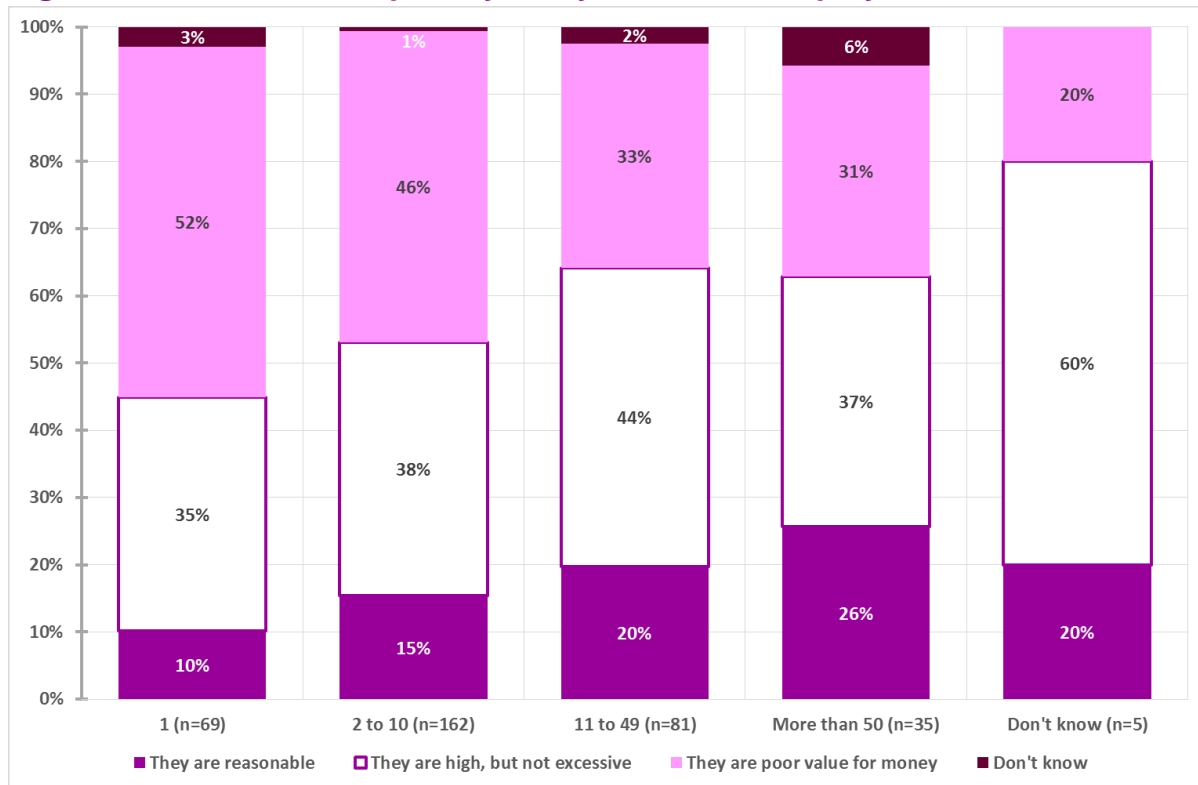
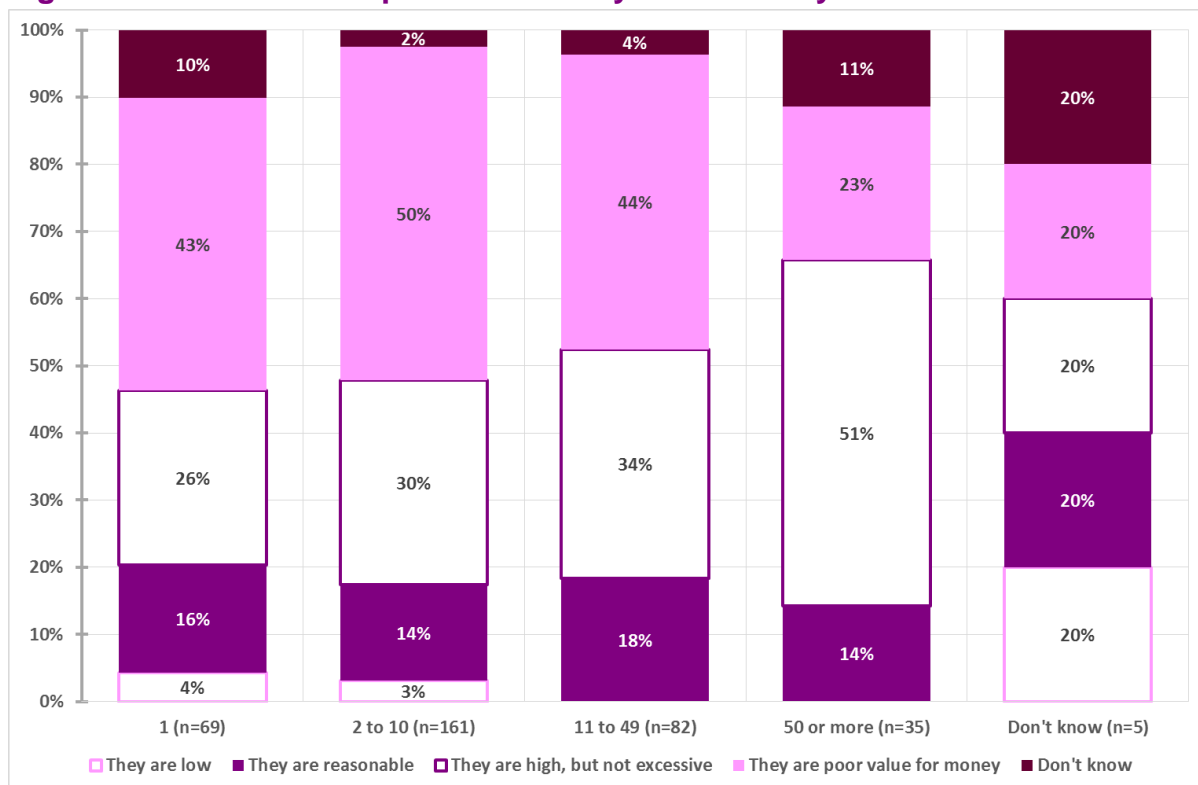


Figure 15. Views on compliance costs by size of entity

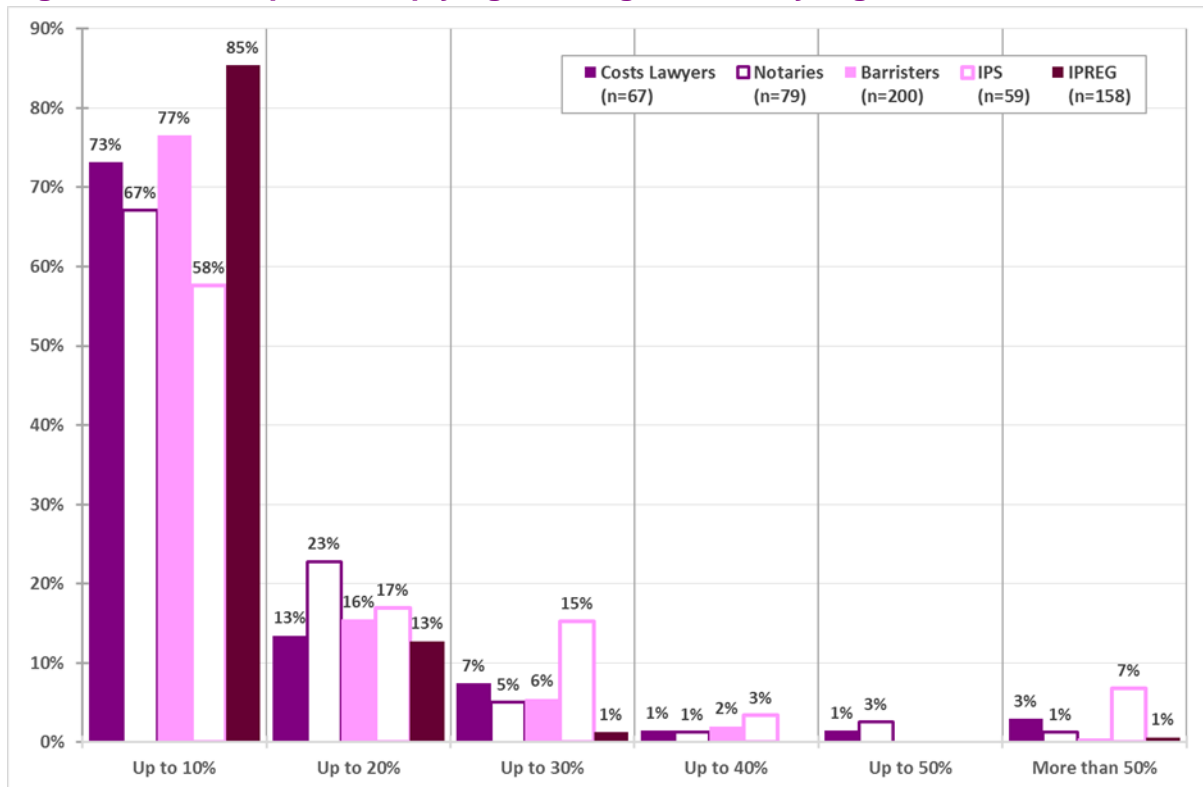


- 4.19 Larger entities, especially those with more than 50 employees are less likely to see fees paid and compliance cost as poor value for money:
- For entities with 50 or more employees, only 31% of respondents see fees paid as poor value for money, but for entities with only one employee the corresponding figure is 52%.
 - 23% of entity respondents with 50 or more employees see compliance costs as poor value for money, but for entities with between two and 10 employees 50% see compliance cost as poor value for money.
- 4.20 There are two major specified regulatory roles within regulated entities. These are:
- 1) Compliance Officer for Legal Practice (COLP) or Head of Legal Practice (HOLP) at SRA regulated or CLC regulated entities respectively, and
 - 2) Compliance Officer for Finance and Administration (COFA) or Head of Finance and Administration (HOFA) at SRA regulated or CLC regulated entities respectively.
- 4.21 There is no significant difference in the perception of fees or compliance costs by whether or not the COLP/HOLP and the COFA/HOFA is the same person.⁴⁹

Time spent on compliance

- 4.22 Respondents were asked to identify how much time they spent on complying with regulation.
- 4.23 As shown below in Figure 16, looking at the responses in relation to time spent on regulation for those regulated as individuals, the majority of individuals spend up to 10% of their time complying with regulations. Entities were also asked how much time they spend on regulation. The majority of the respondents selected the lowest category of up to 25% of their time. For both individuals and entities the majority of respondents selected the lowest available option which may indicate that some respondents spend a lot less time than the 10% or 25% for individuals and entities respectively.

⁴⁹ Question 13. In your organisation is the COLP/HOLP and the COFA/HOFA the same person?

Figure 16. Time spent complying with regulation⁵⁰ by regulator – individuals

4.24 10% of respondents indicated they had experienced a one-off or infrequent event with their regulator or the Legal Ombudsman.⁵¹ In this group 44% spent more than 10% of their time complying with regulation in the last 12 months. This compares to 25% of those who had not experienced such an event. This was a significant difference.⁵²

4.25 However, when looking at differences between those who spent more than 20% of their time complying with regulation in the last 12 months, the difference is not significant – 16% of those that experience an event compared to 9% of those who had not. There were a very wide range of events reported⁵³ but 45% of them were complaints. The next biggest single area was in relation to an inspection, at 7%. The incidence of reporting a one-off event varied by regulator. In all, 14% of barristers reported an event, 12% of those regulated by IPS, 8% of notaries, 4% of costs lawyers, and 3% of those regulated by IPReg.

4.26 It would seem reasonable to assume that as the relevance of regulation to an individual's work activity increases, the perception of fees paid and time spent might

⁵⁰ Question 55. Please estimate to the nearest 10% what proportion of your time was spend on compliance with your legal services regulators rules and requirements(as opposed to complying with other non-legal services regulation , or other business activities)

⁵¹ Question 68. In the past 12 months have you experienced a one off or infrequent event (e.g. complaint, inspection, regulatory action, etc.) that has involved your regulator or the Legal Ombudsman.

⁵² The Z-Score is 3.0801. The p-value is 0.00208. The result is significant at $p < 0.05$.

⁵³ Question 69. Please briefly describe this event that involved your regulator or the Legal Ombudsman – responses coded by the LSB.

become more favourable. However, comparing responses to key questions in the survey provides no evidence of a clear link. This is shown in Figures 17 and 18 below which compare the amount of reserved legal activity undertaken and a decrease in the proportion of individuals stating either fees paid or internal compliance costs are high or poor value for money.

Figure 17. Views on cost of annual fees and amount of activity is made up of reserved legal services - individuals⁵⁴

Estimate of total activity made up of reserved legal activities	% of all respondents (n=603)	They are low	They are reasonable	They are high, but not excessive	They are poor value for money	Other	Do not know
0%	19%	0%	28%	27%	35%	4%	6%
10%	9%	2%	31%	19%	37%	8%	4%
20%	5%	0%	21%	32%	36%	4%	7%
30%	3%	0%	37%	26%	21%	5%	11%
40%	2%	0%	8%	17%	50%	17%	8%
50%	3%	0%	26%	42%	26%	0%	5%
60%	1%	0%	43%	29%	14%	14%	0%
70%	1%	0%	22%	44%	33%	0%	0%
80%	1%	0%	14%	29%	57%	0%	0%
90%	2%	0%	25%	17%	58%	0%	0%
100%	53%	0%	21%	28%	38%	6%	6%

⁵⁴ Question 71: Please estimate what percentage of your total activity is made up of the following activities. Please estimate to the nearest 10%.

Figure 18. Views on internal compliance costs and amount of activity is made up of reserved legal services - individuals

Estimate of total activity made up of reserved legal activities	%age of all respondents (n=603)	They are low	They are reasonable	They are high, but not excessive	They are poor value for money	Other	Do not know
0%	19%	7%	28%	22%	33%	3%	7%
10%	9%	4%	42%	17%	27%	6%	4%
20%	5%	11%	36%	14%	32%	4%	4%
30%	3%	11%	32%	26%	11%	11%	11%
40%	2%	0%	17%	8%	67%	8%	0%
50%	3%	11%	16%	42%	16%	5%	11%
60%	1%	0%	43%	14%	43%	0%	0%
70%	1%	0%	22%	22%	56%	0%	0%
80%	1%	0%	0%	43%	43%	14%	0%
90%	2%	0%	25%	33%	33%	8%	0%
100%	53%	5%	30%	20%	30%	6%	9%

4.27 The amount of time spent complying with regulation does not appear to be related to the proportion of respondents who stated that internal compliance costs are high or poor value for money. This is shown in Figure 19 above.

Figure 19. Views on internal compliance costs and time spend complying with regulation - individuals⁵⁵

Estimate of time spent complying with regulation	%age of all respondents (n=603)	They are low	They are reasonable	They are high, but not excessive	They are poor value for money	Other	Do not know
0%	72%	0%	22%	29%	36%	6%	6%
10%	17%	0%	28%	23%	40%	3%	6%
20%	6%	0%	28%	31%	36%	3%	3%
30%	1%	0%	33%	33%	33%	0%	0%
40%	1%	0%	25%	0%	0%	75%	0%
50%	<1%	0%		0%	100%		0%
More than 50%	1%	0%	38%	0%	38%	13%	13%

⁵⁵ Question 55: Please estimate to the nearest 10% what proportion of your time was spend on compliance with your legal services regulators rules and requirements(as opposed to complying with other non-legal services regulation , or other business activities)

Comments from authorised professionals

4.28 Looking behind the views on the compliance costs of regulation, a key message from the comments made was a frustration with having to comply with regulation that was not relevant to the work of the individual being regulated. This took a number of specific forms, for example in relation to supervision requirements one respondent stated:

“Sole practitioners who do not employ any staff appear to be subject to the same internal reporting requirements as larger practices and it is sometimes baffling to have to report on how you are supervising your own activity.”⁵⁶

4.29 While this relates to SRA-regulated entities, the need to tailor regulation to organisation or individual activity was mentioned by barristers, chartered legal executives and those regulated by IPReg. Other common examples related to having to report on very low level client account balances and applicability based on the size of the organisation.

4.30 Some comments also pointed to a tension between collective regulation as a profession and regulation for individual businesses. For example, in relation to PII, one respondent stated:

*“A one size fits all approach is wholly inappropriate to a diverse profession. At the moment small and efficient firms subsidise large and inefficient organisations protected by the establishment - as evidenced by the recent hysteria when the SRA rightly proposed reducing the minimum PII cover. Firms like mine bitterly resent being forced to carry vastly excessive cover that will never be necessary to cross-subsidise large commercial ventures in the cities”.*⁵⁷

4.31 For those regulated by IPReg a number of respondents expressed concern that they would in due course be subject to additional regulation because of a desire among part of their profession for change that they did not necessarily agree with. One respondent stated

“If larger patent firms want to offer solicitor services so be it, but do not make life difficult for the rest of the profession by requiring client accounts/money laundering provisions for those who simply want to operate as patent and trademark attorneys.”⁵⁸

4.32 However, there was also a desire for more certainty in what is required from regulators, and specific concerns that outcomes-focused regulation does not provide

⁵⁶ Respondent ID 3517302678

⁵⁷ Respondent ID 3548172915

⁵⁸ Respondent ID 3567894841

the certainty that is desired as “*firms need clear helpful guidelines to follow not “indicative behaviours”*”.⁵⁹ These themes also emerged from previous research looking at barriers to entry, exit and merger of SRA-regulated entities.⁶⁰ The approach taken by some in the regulated community suggests that outcomes-focused regulation has not resulted in a more flexible approach to complying. As one respondent stated:

“The costs of recording everything e.g. risk register, risk reviews, complaints money laundering issues it all takes huge amounts of time and has to be done by expensive people as that is where the buck stops”.⁶¹

⁵⁹ Respondent ID 3595992377

⁶⁰ Understanding barriers to entry, exit and changes to the structure of regulated legal firms, Regulatory Policy Institute 2013, <https://research.legalservicesboard.org.uk/wp-content/media/RPI-Final-Report-for-LSB-and-TLS-15-December-2013.pdf>

⁶¹ Respondent ID 3597911342

5. Time for change: Specific regulations to keep and remove

- 5.1 A key aim of the survey was to move understanding beyond general statements about the cost of regulation and to start to understand which specific areas of regulation were high cost and which were less of an issue for the legal profession. This section presents an analysis of the views expressed in these areas.
- 5.2 The survey asked each respondent to rate a predetermined list of areas of regulation in terms of the cost on a scale of one to five.⁶² The list was taken from previous research that looked at the impact of different areas of regulation.⁶³ It was comprised of the following ten areas
- 1) Annual renewal of authorisation to practise
 - 2) Information requests from your regulator – such as client money balances, diversity of employee information
 - 3) Consumer information disclosure - such as how the case will be handled, etc
 - 4) Ongoing supervision activity by your regulator – such as additional information requirements or site visits
 - 5) Requirements to have professional indemnity insurance
 - 6) If they handle client money, requirements to have separate client accounts
 - 7) Compliance with money laundering regulations
 - 8) Enforcement mechanisms – such as handling of conduct complaints, etc
 - 9) File retention
 - 10) Keeping up to date with changes in regulations.

Entities

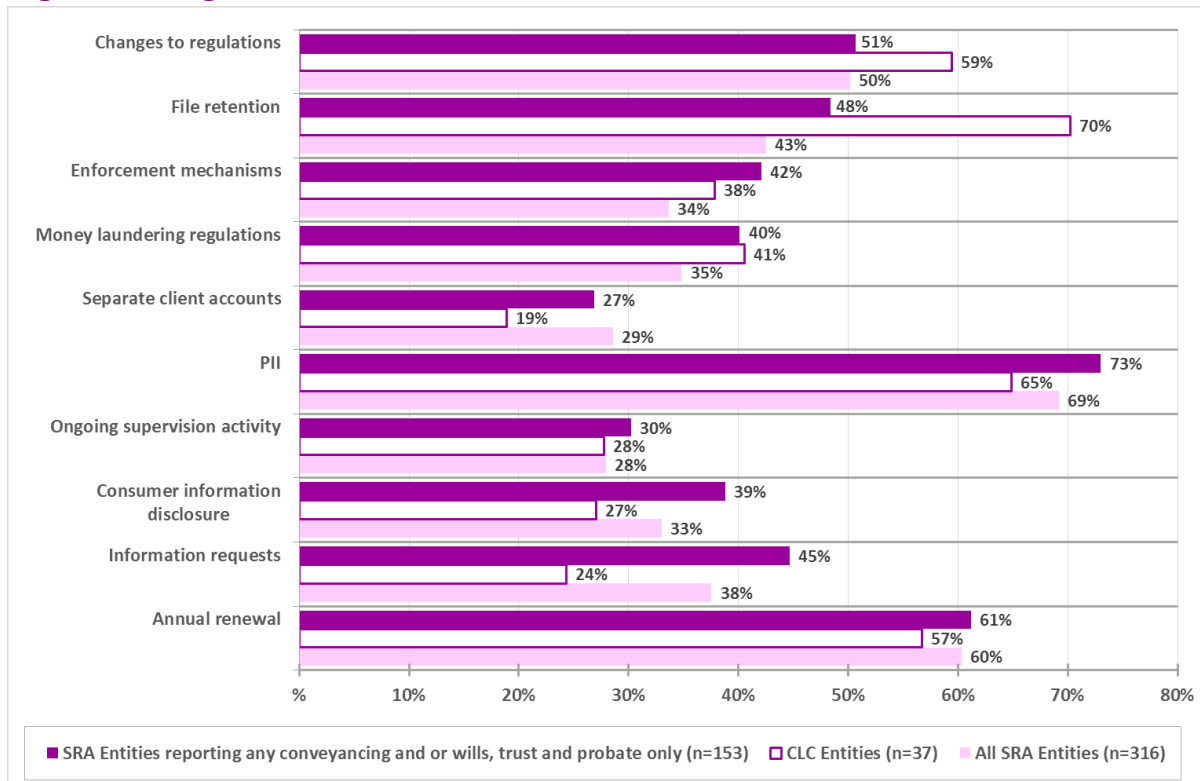
- 5.3 Figure 20 below shows high cost areas for entities. For SRA-regulated entities, the requirement to have PII was rated as high cost (four or five) by 69% of respondents, the annual renewal of authorisation to practice was rated as high cost by 60%, and keeping up to date with changes in regulations was rated as high cost by 50% of respondents. Other areas were rated as high cost by around a third of respondents.

⁶² Entities Question 20, individuals Question 57, Heads of Chambers Question 86: Based on your experiences of regulation, please rate each of the following broad areas of regulation in terms of the cost to your firm.

⁶³ Malcolm, K. (June 2013) 'The proportionality of legal services regulation'. Available at: <https://research.legalservicesboard.org.uk/wp-content/media/2013-06-14-LSB-final-report-STC.pdf> [Accessed 16 March 2015]

5.4 For CLC-regulated entities, the pattern is very similar, as shown in Figure 20 below. However, the only statistically significant difference between CLC-regulated and SRA-regulated entities' views on cost is with regard to file retention.⁶⁴ 70% of CLC entities rated this as high cost, compared to just 48% of SRA entities reporting any conveyancing and/or wills, trust and probate work, and 43% of all SRA regulated entities. No other differences are statistically significant.

Figure 20. High cost areas for entities⁶⁵



5.5 16 entity respondents suggested a wide range of additional areas to consider when looking at broad areas of regulation. These included the high cost of getting an annual accountant's report (mentioned by 3 respondents) and the issue of a lack of coordination of information requests between respective bodies (also mentioned by 3 respondents). As one respondent stated:

"The massive amount of information needed to satisfy the requirements of professional indemnity insurers, lenders panels, Practising Certificate renewals, CQS, Lexcel, COLP & COFA responsibilities places a huge burden on firms. Much of this information is duplicated. Much of it is similar, but the not the same. If there were liaison, co-operation and consistency applied the burden and cost could be significantly reduced".⁶⁶

⁶⁴ The Z-Score is -3.6279. The p-value is 0.00028. The result is significant at $p < 0.05$.

⁶⁵ Excluding not applicable answers

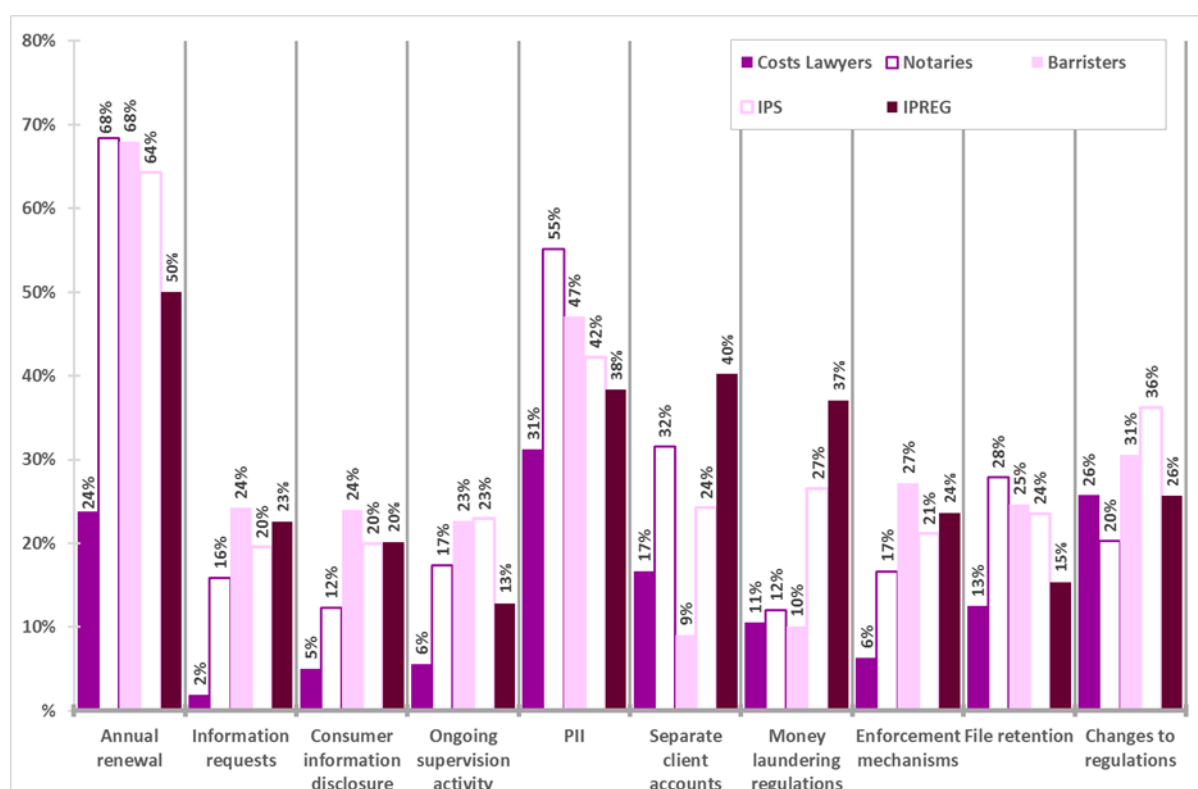
⁶⁶ Respondent ID: 3544300374

5.6 This reinforces the finding reported in section 3 about the need to consider legal services regulation in the context of the wider regulation faced by legal service providers.

Individuals

5.7 Looking at the responses provided by individuals, broadly speaking, the *annual renewal exercise*, the *requirements to have professional indemnity insurance*, and *keeping up to date with regulations* were most likely to be rated as high cost. This is shown in Figure 21 below.

Figure 21. High cost areas for individuals⁶⁷



5.8 However, ratings in all areas varied significantly, except for file retention and keeping up to date with changes to regulations

- 64% of IPS-regulated individuals rated the cost of annual renewal of authorisation to practice as high, compared to just 24% of costs lawyers.
- A significantly greater proportion of BSB-regulated individuals (24%) than CLSB-regulated individuals (2%) rated information requests from their regulator as high cost.
- A significantly greater proportion of BSB-regulated individuals (24%) than CLSB-regulated individuals (5%) rated consumer information disclosure as high cost.
- 23% of IPS-regulated individuals rated the cost of ongoing supervision activity by their regulator as high, compared to just 6% of costs lawyers.

⁶⁷ Excluding those who responded not applicable

- 55% of notaries rated the cost of professional indemnity insurance requirements as high, compared with 31% of costs lawyers.
- 37% of IPReg-regulated individuals rated the cost of complying with money laundering regulations as high, compared with 10% of barristers⁶⁸.
- 27% of BSB-regulated individuals rated the cost of enforcement mechanisms as high, compared with 6% of costs lawyers.
- Of the three responses from Heads of Chambers, among the areas rated as high cost, two rated annual renewal as high cost, and two rated file retention.

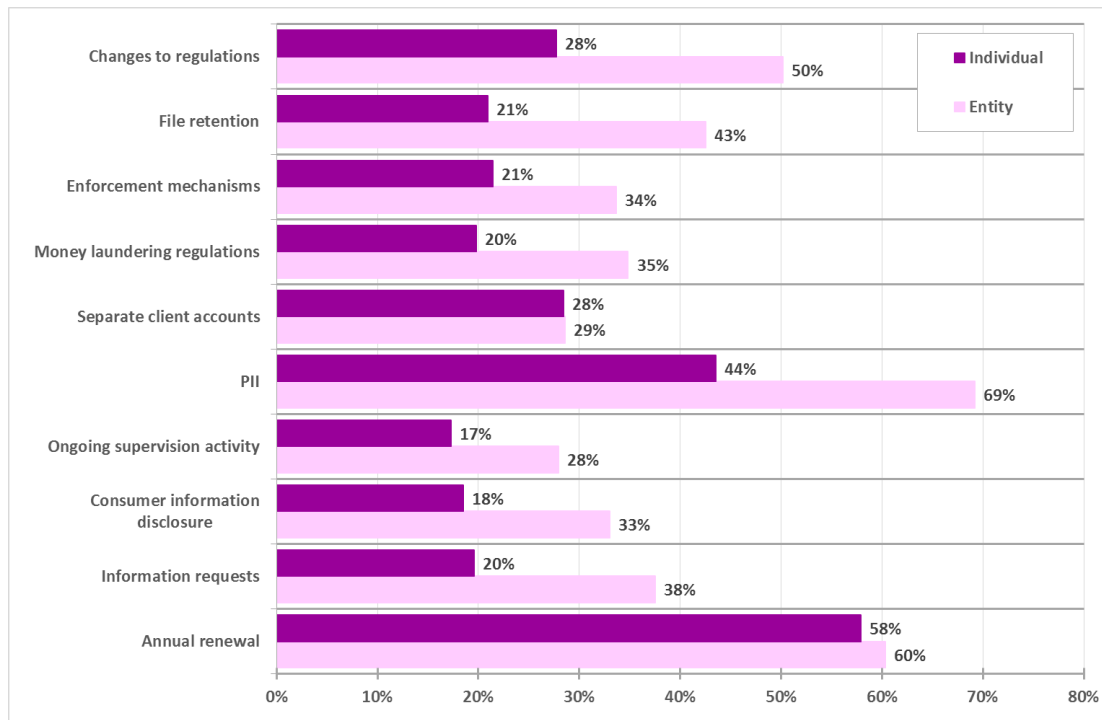
5.9 Of the 598 regulated individuals who responded to this question about which areas of regulation they perceived to be high cost, 22 made additional comments. These comments mainly explained why they had rated certain areas in the way they had. Of these, eight were regulated by IPReg, and raised further cost concerns about the way the money laundering regulations had been interpreted as well as professional indemnity insurance, and the diversity reporting requirements. Of all the additional comments, the requirements for continuing professional development were mentioned most often – by four out of 22 respondents.

Comparing entities and individuals

5.10 The data shows that there are differences in the proportion of entities and individuals rating areas as high cost, as set out in Figure 22 above. Only the difference between ratings of annual renewal and requirements to have separate client accounts are not significant – all other areas are.⁶⁹

⁶⁸ Barristers are not normally subject to money laundering regulations

⁶⁹ Using a Z test, testing at 5% significance level

Figure 22. High cost areas for all entities and individuals⁷⁰

5.11 These differences most likely reflect the different effects of regulation applying to an entity and an individual. The range of activity being undertaken by an entity is likely to be significantly wider than that being undertaken by an individual, and may therefore result in higher compliance costs around areas such as communicating changes to regulations across the organisation.

5.12 The data also suggests that annual renewal of authorisation to practice is seen to be costly by the majority of each group regardless of the nature of regulation and the different ways in which regulators calculate fees and collect information. Further, the data suggests an equal likelihood of regulation relating to client accounts being seen as costly by a minority of individuals and entities, regardless of the nature of regulation.

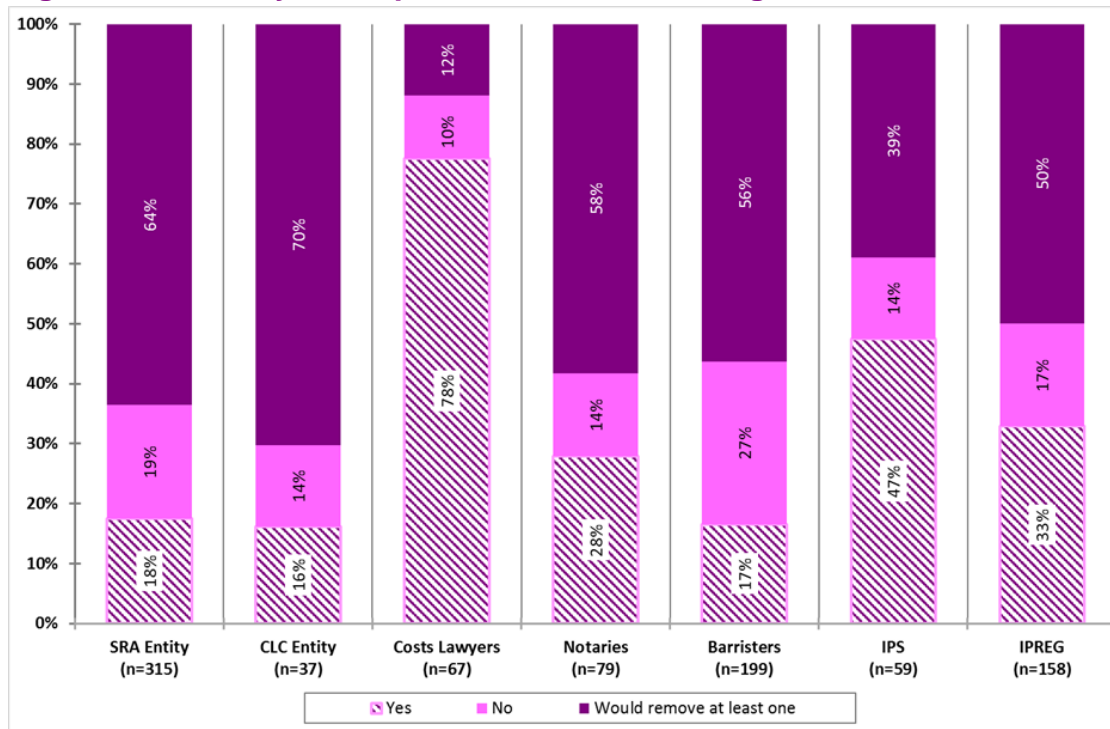
Removing regulation

5.13 Building on the ratings above, respondents were also asked whether they would remove one or more areas of regulation on the grounds of disproportionate cost.⁷¹ If they answered yes, they were asked to specify which area of regulation they would remove. If they answered no, they were asked whether they would keep all current areas of regulation. With the exception of those regulated by CLSB, the minority of respondents stated they would keep all areas of current regulation.

⁷⁰ Excluding respondents who answered not applicable

⁷¹ Entities Questions 21-24, individuals Questions 58-61, Heads of chambers Questions 87-90

Figure 23. Would you keep all areas of current regulation?



5.14 For entities, 63% stated they would remove at least one area of regulation, and suggested a wide variety of areas for removal. These areas were coded into 28 different categories. The top 20 are shown in Figure 24 below alongside the reasons for their choice.

5.15 In total 9% of entity respondents suggested removing COLP/COFA and HOLF/HOFA regulations for a very broad spread of reasons.

5.16 While overall just 7% of regulated entities suggested that money laundering compliance regulations should be removed, this was the second most frequently mentioned area. Respondents were most likely to cite the fact that it does not achieve its purpose or it does not achieve its purpose cost effectively as their reason for wanting it to be removed. As one entity respondent stated:

“Money laundering checks are important but the rules are unclear and the guidance also not especially helpful. There is an uneasy balance, with which I struggle, between using common sense to judge whether money laundering or criminality may be involved in work being done and more formal 'box ticking' processes. I think the former should prevail.”⁷²

5.17 PII was chosen as the regulation to remove by 6% of entity respondents, with half of these citing cost or cost effectiveness as their reason for wanting to remove PII.

⁷² Respondent ID 3584390159

5.18 Broadly speaking, reasons put forward for choosing any particular area of regulation to remove were more likely to be around costs, value and regulation not achieving its purpose (57% of reasons stated), and less likely to be around the way a particular regulator interprets the chosen regulation (13%), or wider regulation making the specific legal services regulation unnecessary (9%).

5.19 Entities were asked to specify one main area of regulation to remove and provided with a list of reasons why:

- A. The way my regulator interprets this rule makes the time spent complying excessive
- B. It costs far more than the value it adds
- C. It does not achieve its purpose/it does not achieve its purpose cost-effectively
- D. We have to comply with wider regulation so the additional legal services regulation is unnecessary
- E. It is good business practice anyway and it just makes the rules more complicated
- F. It stops us doing things that clients want from us
- G. It is of no value to consumers
- H. Other

Figure 24. Top twenty areas of regulation to remove and reasons why - entities

	Areas of regulation to remove	% of all entity respondents (n = 353)	A	B	C	D	E	F	G	H	Total
1	Compliance COLP/COFA HOLP/HOFA	9%	16%	29%	23%	19%	3%	3%	3%	3%	100%
2	Money laundering compliance	7%	15%	19%	35%	8%	0%	0%	12%	12%	100%
3	PII	6%	0%	40%	15%	0%	5%	5%	15%	20%	100%
4	Other	5%	6%	13%	31%	13%	13%	6%	6%	13%	100%
5	Practice certificate renewal (process)	4%	0%	36%	21%	14%	0%	0%	21%	7%	100%
6	Information requests	4%	8%	15%	31%	8%	15%	15%	8%	0%	100%
7	File retention	3%	0%	42%	33%	8%	0%	0%	0%	17%	100%
8	Complaints Handling Procedure	3%	33%	33%	0%	0%	33%	0%	0%	0%	100%

	Areas of regulation to remove	% of all entity respondents (n = 353)	A	B	C	D	E	F	G	H	Total
9	CPD	3%	0%	22%	56%	0%	0%	11%	11%	0%	100%
10	Diversity	3%	33%	0%	11%	22%	0%	0%	11%	22%	100%
11	Client Accounts/ Money	2%	63%	38%	0%	0%	0%	0%	0%	0%	100%
12	Accounts Reporting/Audit	2%	0%	29%	29%	14%	0%	0%	14%	14%	100%
13	Consumer/Client Information	2%	17%	0%	67%	0%	0%	17%	0%	0%	100%
14	Ongoing Supervision	1%	0%	0%	20%	20%	40%	0%	0%	20%	100%
15	LSB	1%	0%	50%	25%	0%	0%	0%	25%	0%	100%
16	Practice Certificate Costs	1%	0%	25%	25%	25%	0%	25%	0%	0%	100%
17	Enforcement Mechanisms	1%	0%	33%	33%	0%	33%	0%	0%	0%	100%
18	Insurance	1%	33%	33%	0%	33%	0%	0%	0%	0%	100%
19	Ombudsman	1%	67%	0%	33%	0%	0%	0%	0%	0%	100%
20	Own Regulator	1%	0%	33%	33%	0%	0%	0%	0%	33%	100%

5.20 Just under half of those regulated as individuals chose an area of regulation to remove. Individuals chose a broadly similar set of areas to remove as entities but with different frequency and for different reasons. The range of responses were coded into 23 different categories, and the top 20 most frequently mentioned are shown in Figure 25 below alongside the reasons for their choice.

5.21 Similar to entities, individuals were provided with a list of reasons they might want to remove regulation:

- A. The way my regulator interprets this rule makes the time spent complying excessive
- B. It costs far more than the value it adds
- C. It does not achieve its purpose/it does not achieve its purpose cost-effectively
- D. We have to comply with wider regulation so the additional legal services regulation is unnecessary

- E. It is good business practice anyway and it just makes the rules more complicated
- F. It stops us doing things that clients want from us
- G. It is of no value to consumers
- H. Other

Figure 25. Top twenty areas of regulation to remove and reasons why - Individuals

	Chosen area of regulation to remove	% of all respondents (n = 598)	A	B	C	D	E	F	G	H	Total
1	Money laundering compliance	6%	24%	21%	24%	6%	3%	3%	6%	15%	100%
2	Continued professional development	6%	12%	18%	36%	9%	6%	0%	9%	9%	100%
3	Complaints handling procedure	4%	22%	30%	9%	9%	4%	0%	13%	13%	100%
4	Information requests	3%	11%	22%	22%	0%	0%	0%	44%	0%	100%
5	Practice certificate costs	3%	0%	63%	11%	5%	0%	0%	5%	16%	100%
6	Other	3%	6%	12%	18%	6%	12%	6%	18%	24%	100%
7	LSB	3%	0%	38%	6%	25%	0%	0%	19%	13%	100%
8	PII	3%	0%	50%	19%	6%	6%	0%	0%	19%	100%
9	Client accounts/ Money	2%	14%	43%	7%	0%	0%	0%	21%	14%	100%
10	Diversity (Information Requests)	2%	0%	25%	25%	8%	0%	0%	33%	8%	100%
11	Practice Certificate Renewal	2%	0%	55%	27%	0%	0%	0%	9%	9%	100%
12	Client Information	2%	10%	20%	20%	0%	10%	0%	30%	10%	100%

	Chosen area of regulation to remove	% of all respondents (n = 598)	A	B	C	D	E	F	G	H	Total
13	Keeping up to date with changes to regulations	2%	10%	20%	20%	20%	10%	0%	0%	20%	100%
14	Own regulator	2%	10%	60%	0%	0%	0%	0%	20%	10%	100%
15	Ongoing Supervision	2%	0%	22%	11%	33%	22%	0%	11%	0%	100%
16	File retention	1%	0%	50%	0%	0%	17%	0%	17%	17%	100%
17	Multiple Regulators	1%	0%	50%	0%	17%	0%	0%	17%	17%	100%
18	Compliance	1%	40%	0%	20%	40%	0%	0%	0%	0%	100%
19	Enforcement mechanisms	1%	50%	0%	0%	0%	50%	0%	0%	0%	100%
20	Compensation fund	<1%	0%	0%	50%	0%	0%	0%	0%	50%	100%

5.22 Overall, 6% of regulated individuals suggested that money laundering compliance regulations should be removed which makes this the most frequently mentioned area. However, respondents were as likely to cite the fact that it does not achieve its purpose (cost effectively) as they were to mention how the regulator interprets the rule.

5.23 The removal of CPD was more frequently chosen by those responding as individuals than entities (second most frequently chosen compared to tenth most frequently chosen), as was removal of the LSB (seventh compared to sixteenth). Conversely, diversity information collection was chosen less frequently by individuals when compared to entities (tenth compared to fifth), as was PII (eighth compared to second). Individuals were similar to entities, broadly speaking, by referring to issues of costs, value, and regulation not achieving its purpose (47% of reasons stated) as reasons to remove any particular area of regulation.

5.24 Looking at the different groups of regulated individuals, just seven costs lawyers indicated they would remove one area of regulation – 10% of respondents from this group. These were spread across seven different areas.

- 5.25 For barristers, 113 (56% of respondents) indicated that they would remove one area of regulation. Their responses were classified into 20 different categories. Of these, 12% indicated they would remove CPD, 11% the costs of the practising certificate, 10% the complaints handling procedure, 9% the LSB and 8% information requests.
- 5.26 Of the 79 notaries who responded, 58% indicated they would remove one area of regulation. Their responses were classified into 14 different categories. Of these, 15% indicated they would remove CPD, 15% professional indemnity insurance, 13% complaints handling procedure, 9% the LSB and 9% ongoing supervision.
- 5.27 Of the 59 IPS respondents, 36% indicated they would remove one area of regulation. Of these 24% would remove CPD, 19% professional indemnity insurance, 14% practising certificate renewal and 10% would remove file retention.
- 5.28 For those regulated by IPReg, 79 of the 158 respondents indicated they would remove one area of regulation. Of these, 35% would remove the money laundering compliance regulations, 18% regulations relating to client accounts, 10% CPD, 5% the costs of the practising certificate and 5% information requests.
- 5.29 Of all respondents, 3% of individuals suggested that the one area of regulation to remove was the LSB. The rationale for this was broadly speaking based on two reasons. Firstly, some respondents objected in principle to the idea of having oversight regulation as enshrined in the Act, for example

“Why on earth are there two regulators, the LSB and the BSB? It is obviously unnecessary.”⁷³

- 5.30 The second reason was the LSB was felt to be making the regulators undertake unnecessary activity to demonstrate they are regulating effectively, for example

“Where there is no question of any incompetence and no complaints we [notaries] should be left alone to carry out our important task in the professional manner we have always done. I believe the Master is under pressure to make intrusive changes that he has no appetite for.”⁷⁴

- 5.31 Of the three responses from Heads of Chambers, only one identified an area of regulation to remove. This was risk based supervision, which was deemed unnecessary because they have to comply with wider regulation.

⁷³ Respondent ID 3554985487

⁷⁴ Respondent ID 3516430619

Keeping regulation

5.32 In order to help understand the areas of regulation that respondents felt to be the most valuable, they were also asked: if they had to keep just one area of regulation, what would it be and why?⁷⁵

5.33 For entities, 80% of respondents answered this question and identified a very broad range of areas of regulation that they would keep. These were coded into 36 different categories, with the top twenty most frequently mentioned areas shown in Figure 26 below. Key to Figure 26:

- A. Being able to demonstrate we comply with this rule encourages our clients to use our services, giving us a competitive edge
- B. Collective regulation in this area reduces the cost individual firms face
- C. Having certainty as to what the regulator wants allows us to manage our business more effectively
- D. Being able to demonstrate we comply with this rule allows us to bypass regulation in other sectors
- E. Other
- F. Do not know.

Figure 26. Top twenty areas of regulation to keep and reasons why - entities

	Chosen area of regulation to keep	% of all respondents (n = 353)	A	B	C	D	E	F	Total
1	PII	18%	44%	11%	10%	2%	29%	5%	100%
2	Client accounts/Money	11%	39%	13%	29%	3%	16%	0%	100%
3	Practice certificate/renewal	10%	50%	15%	12%	6%	12%	6%	100%
4	Code of Conduct/ Professional Standards	7%	71%	8%	8%	0%	13%	0%	100%
5	Accounts Reporting/Audit	4%	29%	21%	21%	0%	14%	14%	100%
6	Money Laundering Compliance	4%	9%	36%	18%	18%	9%	9%	100%
7	Continued Professional Development	3%	38%	0%	38%	0%	25%	0%	100%

⁷⁵ Entities Questions 26-27, individuals Questions 63-64, Heads of chambers Questions 92-93

	Chosen area of regulation to keep	% of all respondents (n = 353)	A	B	C	D	E	F	Total
8	Complaints Handling Procedure	3%	13%	25%	13%	13%	13%	25%	100%
9	Consumer/Client Information	2%	50%	0%	13%	13%	25%	0%	100%
10	Other	2%	63%	25%	0%	0%	0%	13%	100%
11	Compliance COLP/COFA HOLP/HOFA	2%	43%	0%	29%	0%	29%	0%	100%
12	Insurance	2%	29%	0%	29%	14%	14%	14%	100%
13	No regulation should be kept	2%	0%	0%	0%	0%	0%	100%	100%
14	Training/Qualification Requirements	1%	25%	25%	25%	0%	25%	0%	100%
15	The Law Society	1%	0%	67%	0%	0%	33%	0%	100%
16	Practice Certificate Costs	1%	0%	50%	0%	0%	0%	50%	100%
17	Risk Based Regulation	1%	0%	100%	0%	0%	0%	0%	100%
18	SRA	1%	0%	0%	50%	0%	50%	0%	100%
19	Own regulator	1%	0%	50%	50%	0%	0%	0%	100%
20	Disciplinary procedures	1%	100%	0%	0%	0%	0%	0%	100%

5.34 Similarly for individuals, 75% of respondents answered the question about which regulations to keep and why. Figure 27 below provides the top 20 most popular answers. Key to Figure 27:

- A. Being able to demonstrate we comply with this rule encourages our clients to use our services, giving us a competitive edge
- B. Collective regulation in this area reduces the cost individual firms face
- C. Having certainty as to what the regulator wants allows us to manage our business more effectively
- D. Being able to demonstrate we comply with this rule allows us to bypass regulation in other sectors
- E. Other

Figure 27. Top twenty areas of regulation to keep and reasons why - individuals

	Chosen area of regulation to keep	% of all respondents (n = 598)	A	B	C	D	E	Total
1	PII	19%	36%	20%	9%	0%	35%	100%
2	CPD	13%	56%	7%	11%	0%	26%	100%
3	Code of conduct/professional standards	9%	46%	11%	4%	2%	37%	100%
4	Practice certificate/renewal	7%	44%	12%	15%	2%	27%	100%
5	Client accounts/money	3%	71%	0%	7%	0%	21%	100%
6	Do not Know	3%	0%	0%	0%	0%	100%	100%
7	Other	3%	41%	0%	24%	0%	35%	100%
8	Complaints handling procedure	2%	46%	8%	23%	0%	23%	100%
9	No regulation should be kept	2%	100%	0%	0%	0%	0%	100%
10	Money laundering compliance	1%	17%	17%	33%	17%	17%	100%
11	Disciplinary procedures	1%	43%	14%	0%	0%	43%	100%
12	Training/qualification requirements	1%	83%	17%	0%	0%	0%	100%
13	Consumer/client Information	1%	100%	0%	0%	0%	0%	100%
14	Keeping up to date with changes to regulations	1%	100%	0%	0%	0%	0%	100%
15	Ongoing supervision	1%	50%	0%	25%	0%	25%	100%
16	Cab rank rule	1%	0%	0%	0%	0%	100%	100%
17	File retention	1%	67%	0%	0%	33%	0%	100%
18	Accounts reporting/Audit	<1%	0%	0%	50%	0%	50%	100%

	Chosen area of regulation to keep	% of all respond ents (n = 598)	A	B	C	D	E	Total
19	Enforcement mechanisms	<1%	0%	50%	0%	0%	50%	100%
20	Quality assurance	<1%	50%	0%	0%	0%	50%	100%

5.35 Of those who answered this question, 51% of entities and 49% of individuals chose the area of regulation to keep either because they felt being able to demonstrate they complied with this rule encouraged clients to use their services, or because they felt collective regulation reduced the costs they would otherwise face. A significant proportion of both entity respondents and individual respondents provided more explanation of their reasons behind the choice of regulation to keep.

5.36 The highest ranked area of regulation to keep was PII, with 18% of entities and 19% of individuals choosing this area.⁷⁶ The comments made suggested that it was an area to keep because of the protection it provides to those in business. As one entity respondent stated:

"I'm human, therefore I'm fallible. It makes good economic sense and is good risk management to have an insurance policy in case something goes wrong".⁷⁷

5.37 However other comments recognised the value to the profession and the public in having PII; one entity respondent stated that *"PII is a necessary if expensive 'evil'"*.⁷⁸

5.38 Regulations relating to client accounts and money were chosen as the area to keep by 11% of entity respondents and 3% of individual respondents, mainly on the basis of encouraging clients to use their services. Further, the annual practising certificate renewal was chosen by 10% of entity respondents and 7% of individual respondents.

5.39 The professional code of conduct was chosen as the area to keep by 7% of entity respondents and 9% of individual respondents, most frequently because of its value in encouraging consumers to use their services. However, a number of respondents challenged the current focus on outcomes, as one respondent stated:

"OFR is a fad. Lawyers need clear rules - break them and you are out. Being judged on outcome is like trying to drive forward looking out of the

⁷⁶ During the survey period there was high profile application by the SRA to reduce the limits required for Professional Indemnity Insurance, which may have resulted in so many respondents choosing this as an area to keep.

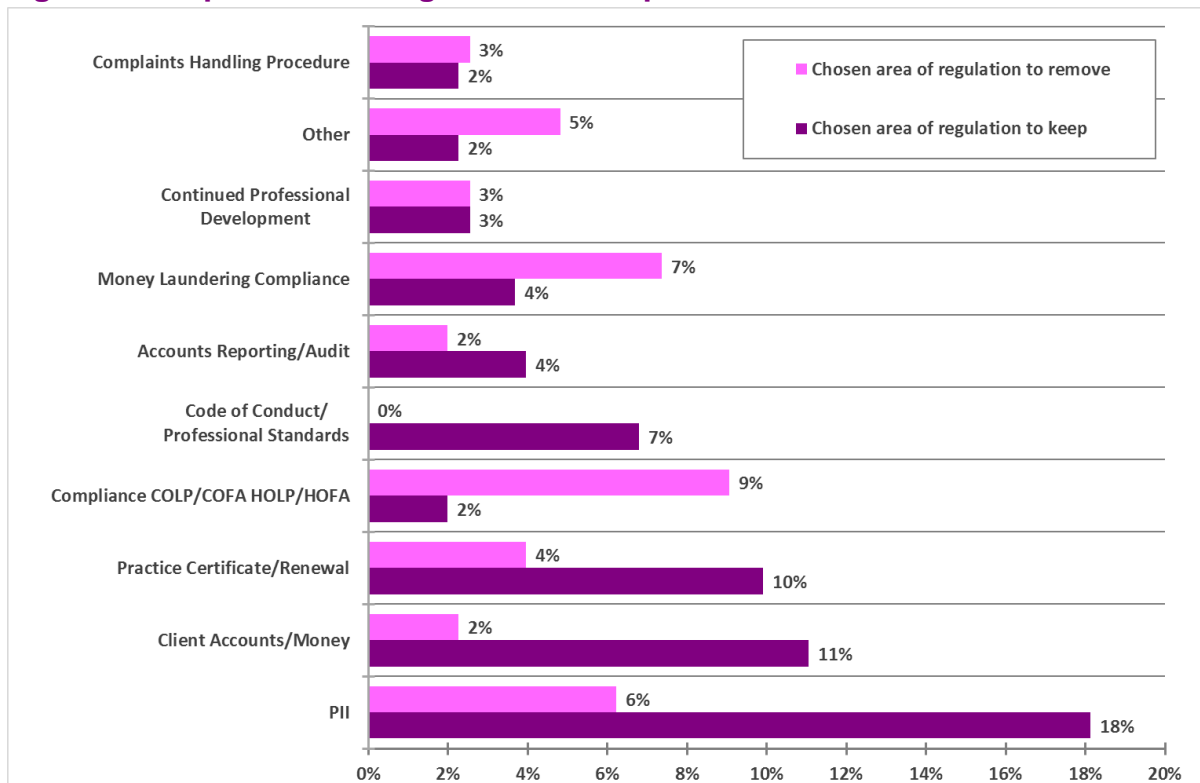
⁷⁷ Respondent ID 3609371384

⁷⁸ Respondent ID 3567846612

back window. You can only assume you know what the outcome will be".⁷⁹

- 5.40 Of the three responses from Heads of Chambers, two identified an area of regulation to keep – PII, on the basis of encouraging clients to use their services, and quality assurance, on the basis that collective regulation is cheaper.
- 5.41 Grouping respondents by the level of awareness on what their PCF funds showed no significant differences in views on which regulations to keep or remove.⁸⁰
- 5.42 There are similarities between the areas chosen to remove and the areas chosen to keep. Figures 28 and 29 show the main areas chosen to keep (excluding those who answered 'Do not know') alongside the proportion of respondents who chose that same area of regulation to be removed. This illustrates that there is little consensus within each group about which one or more areas of regulation should be removed.

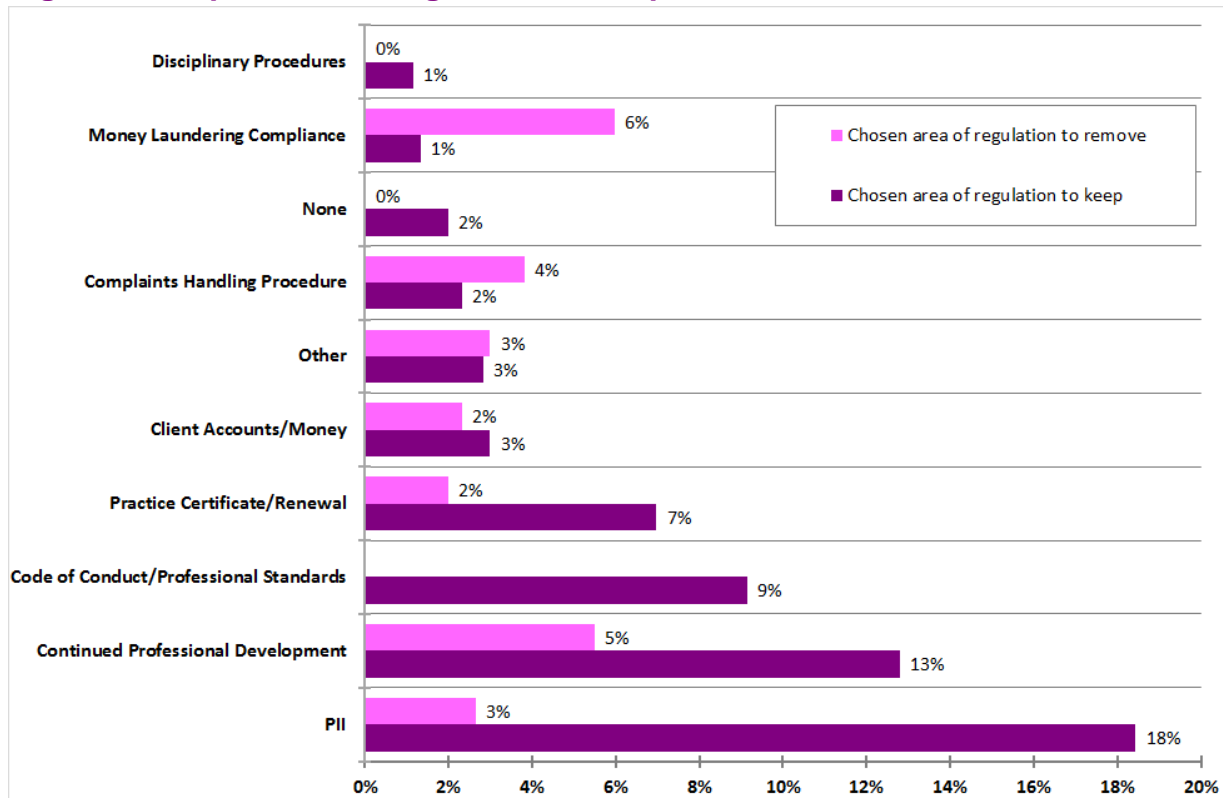
Figure 28. Top areas⁸¹ of regulation to keep and remove – entities



⁷⁹ Respondent ID 3567871018

⁸⁰ This involved giving a score for each respondent as to how aware they were, and then comparing the overall scores between the highest and lowest scoring groups.

⁸¹ Excludes Do not Knows

Figure 29. Top areas⁸² of regulation to keep and remove - individuals

5.43 While regulation clearly has different impacts between entities and individuals, there are similarities in the areas chosen to remove and keep by the entities and individuals. Looking at responses overall, and looking across all the different groups, generally there is acceptance that some regulation is necessary and of benefit, even if it is high cost.

5.44 Taking PII as an example: while this was rated as high cost by the majority of respondents, it is also the area of regulation that was most frequently chosen as the one most important regulation to keep. In addition, looking at the reasons why respondents chose certain regulations to keep or remove unsurprisingly shows a preference for keeping areas of regulation they find help them deliver the services, and dissatisfaction with those that cost too much.

5.45 If relevance of regulation to those who are being regulated is important this might suggest a greater tailoring of regulation would be of benefit in reducing the costs faced by regulated entities and individuals.

5.46 That there is no consensus on which regulations are worth keeping and which are not is probably the main overall conclusion to draw, with a divergence of views within and across each profession and regulated group. Ultimately the potential regulatory

⁸² Excludes Do not Knows

response is not as simple as removing areas of regulation wholesale but delivering on “*Regulation to be proportionate to firm turnover/size.*”⁸³

⁸³ Respondent ID 3567964004 Question 28 for Entities, 65 for individuals, and 94 for Heads of Chambers: Are there any other specific areas of internal regulatory compliance costs that we should consider in the course of this investigation?

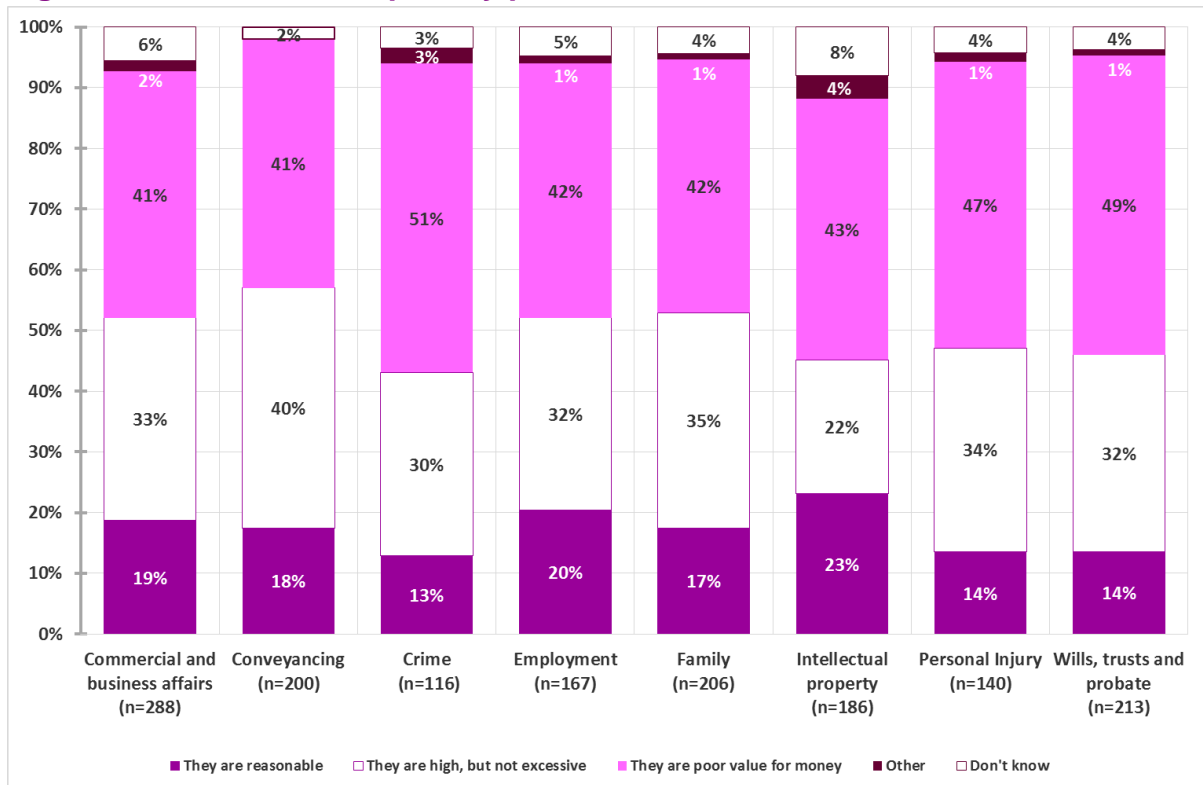
6. Findings on area of work and views

- 6.1 As part of seeking to understand why views on regulation vary, the survey collected information on the areas of law in which respondents practised. This allows us to consider how views vary by practice area and whether this might suggest something about the nature of the work impacting on how the cost of regulation is perceived.
- 6.2 The analysis that follows describes the survey results looking at eight practice areas where services are delivered by more than one type of regulated legal professional. For example, reserved legal services in intellectual property are delivered by those regulated by IPReg, SRA and the BSB.⁸⁴ Small sample sizes do not allow for more in-depth analysis.
- 6.3 Figure 30 shows the variation in views of fees paid by the main different practice areas, where the respondent reported doing any work in these areas.⁸⁵ The proportion of respondents in each area rating fees paid as poor value for money does fluctuate, with the biggest difference being between crime (51%) and conveyancing (41%). This might be driven more by the different types of regulators within each group – crime: SRA and BSB, conveyancing: SRA and CLC - because annual fees paid do not tend to vary by area of work undertaken, but on other factors such as turnover or year of tenure.

⁸⁴ For a breakdown see section K <https://research.legalservicesboard.org.uk/wp-content/media/Changes-in-competition-in-market-segments-ANNEX.pdf>

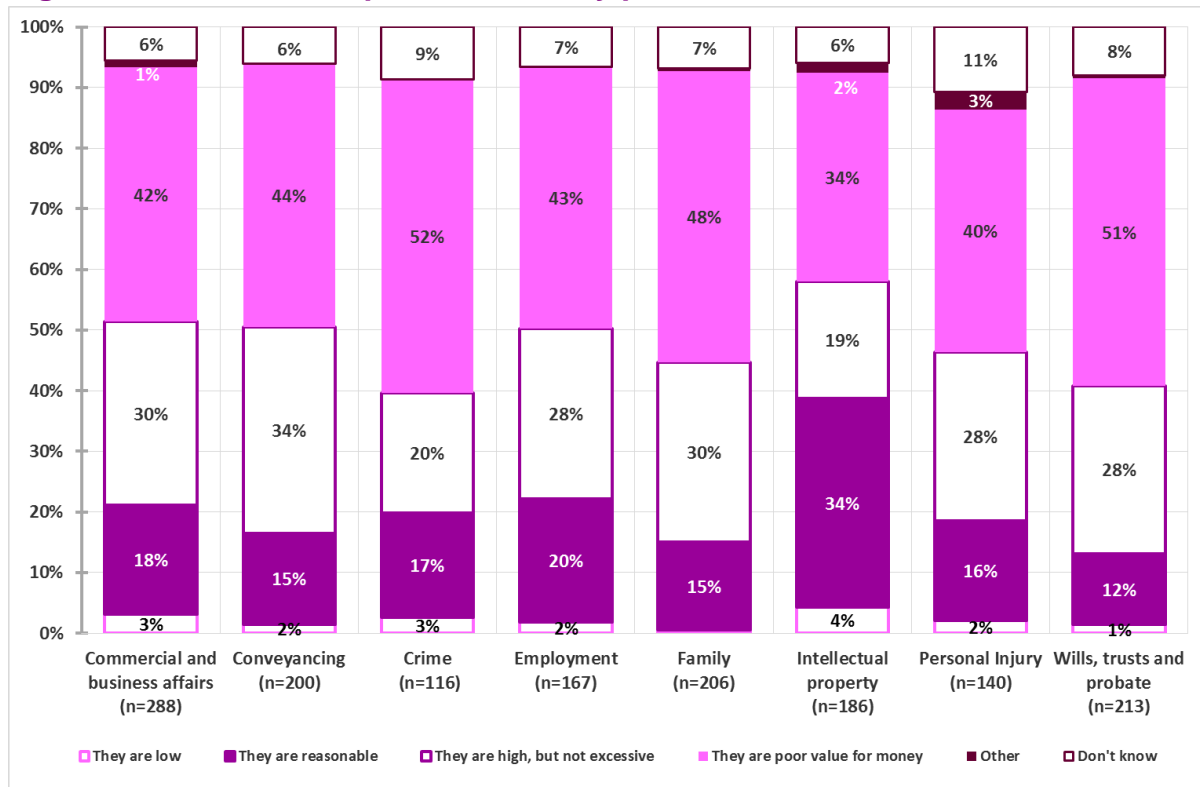
⁸⁵ Question 29 for entities, question 66 for individuals, and question 95 for chambers: From the list below please indicate your organisations areas of practice, estimating to the nearest 10% of your fee income from each area.

Figure 30. Views on fees paid by practice area



6.4 Looking at compliance costs, again the proportion of respondents in each area rating compliance costs as poor value for money fluctuates. Figure 31 shows the variation in views of compliance costs by the main different practice areas, where the respondent reported doing any work in these areas. The biggest differences were between Crime (51%) and Intellectual property (34%). Just 17% of respondents who undertake work in crime rated compliance costs as reasonable. This compares to 34% of respondents who undertake work in intellectual property.

Figure 31. View on compliance costs by practice area



6.5 Of potentially greater interest is how nominations for regulations to keep and remove change when areas of practice are considered. This is shown in Figure 32 below.

Figure 32. Nominated area of regulation to remove by practice area

	Chosen area of regulation to remove	% of all respondents (n = 964)	Commercial and business affairs (n=288)	Conveyancing (n=200)	Crime (n=116)	Employment (n=167)	Family (n=206)	Intellectual property (n=186)	Personal Injury (n=140)	Wills, trusts and probate (n=213)
1	Money Laundering Compliance	7%	7%	12%	6%	5%	8%	17%	6%	9%
2	Continued Professional Development	4%	4%	4%	3%	3%	4%	4%	1%	3%
3	Compliance COLP/COFA HOLF/HOFA	4%	5%	6%	3%	4%	4%	2%	6%	5%
4	PII	4%	5%	6%	3%	3%	3%	1%	5%	3%

	Chosen area of regulation to remove	% of all respondents (n = 964)	Commercial and business affairs (n=288)	Conveyancing (n=200)	Crime (n=116)	Employment (n=167)	Family (n=206)	Intellectual property (n=186)	Personal Injury (n=140)	Wills, trusts and probate (n=213)
5	Complaints Handling Procedure	3%	3%	4%	7%	4%	5%	2%	4%	3%
6	Information Requests	3%	6%	6%	3%	4%	6%	2%	3%	6%
7	Diversity (Information Requests)	3%	3%	4%	2%	5%	3%	1%	1%	6%
8	Practice Certificate Costs	2%	3%	2%	4%	2%	2%	2%	2%	2%
9	Practice Certificate /Renewal	2%	2%	3%	3%	2%	3%	1%	6%	3%
10	File Retention	2%	1%	4%	2%	3%	4%	1%	1%	2%

- 6.6 In terms of regulation to remove, money laundering compliance regulations remained the most commonly mentioned for each practice area group, with the exception of crime, employment, and personal injury. In crime, the most frequently nominated area to remove was the complaints handling procedure, and in personal injury it was the practising certificate renewal process. In employment, money laundering compliance regulations were mentioned as frequently as diversity information requests.

Figure 33. Nominated area of regulation to keep by practice area

	Chosen area of regulation to keep	% of all respondents (n = 964)	Commercial and business affairs (n=288)	Conveyancing (n=200)	Crime (n=116)	Employment (n=167)	Family (n=206)	Intellectual property (n=186)	Personal Injury (n=140)	Wills, trusts and probate (n=213)
1	PII	16%	15%	17%	15%	16%	20%	11%	18%	17%
2	Continued Professional Development	9%	3%	3%	4%	5%	2%	22%	5%	3%
3	Code of Conduct/ Professional Standards	8%	12%	7%	10%	10%	9%	10%	11%	8%
4	Practice Certificate Renewal	8%	9%	10%	7%	9%	5%	8%	5%	7%
5	Client Accounts /Money	6%	8%	12%	3%	11%	9%	2%	6%	10%
6	Insurance	3%	2%	2%	1%	2%	4%	1%	1%	4%
7	Money Laundering Compliance	3%	5%	5%	3%	4%	2%	1%	3%	5%
8	Complaints Handling Procedure	2%	3%	3%	3%	2%	4%	4%	3%	3%
9	Accounts Reporting /Audit	2%	3%	5%	1%	1%	4%	1%	3%	4%
10	No regulation should be kept	2%	1%	1%	3%	2%	1%	3%	1%	2%

6.7 In terms of regulation to keep, PII remained the most commonly mentioned for each practice area group, with the exception of intellectual property. Here, it was continuing professional development that was most frequently mentioned as the one area to keep. This is shown in Figure 33 above.

6.8 Isolating those main practice areas and suggested areas of regulation to remove shows that:

- For those whose main source of income came from crime, CPD was the most frequently mentioned area of regulation to remove (11%).
- For those whose main source of income came from family, the complaints procedures were the most frequently mentioned area of regulation to remove (11%).
- For those whose main source of income came from wills, trusts, and probate, diversity information requests were the most frequently mentioned area of regulation remove (19%).
- For those whose main source of income came from personal injury, the practising certificate renewal was the most frequently mentioned area of regulation to remove (14%).
- For those whose main source of income came from one of commercial (9%) conveyancing (14%), and intellectual property (35%), money laundering was the most frequently suggested area of regulation to remove.

6.9 Isolating those main practice areas and suggested areas of regulation to keep shows that:

- Those whose main source of income came from commercial and business affairs were as likely to nominate Code of Conduct and CPD as regulations to keep (21% each).
- 21% of those whose main source of income came from wills, trusts, and probate nominated Client Accounts /Money as the chosen regulation to keep.
- 33% of those whose main source of income came from intellectual property nominated CPD as the chosen regulation to keep.
- Those whose main source of income came from one of conveyancing (26%), personal injury (30%), family (24%), crime (20%), and immigration (38%) most frequently nominated PII as the one regulation to keep.

6.10 Sample sizes are very small and do not allow significant conclusions to be drawn. However, these observations show variations in views on the cost of regulation by practice area.

7. Conclusions and next steps

- 7.1 The results in this report are based solely on the 967 responses to the LSB survey about the cost of regulation for authorised legal professionals. The survey was open to all regulated legal professionals and in some areas, where available, representative samples were also targeted. As such, the results are necessarily more representative of some groups of authorised professionals than others. Nonetheless, the results from this survey are a useful insight into the views that the respondents have regarding the cost of regulation in the legal sector.
- 7.2 Based on the evidence included in this report there are five high level findings as set out below.
- 7.3 First, when we asked respondents about what they considered to be regulation, it was clear that providers think about the totality of regulation that they must comply with rather than the source of this regulation. Furthermore, a number of providers also consider certain incremental and discretionary costs that they incur (e.g. voluntary accreditation schemes as a consequence of commercial decisions to pursue specific legal activities) as regulatory costs.
- 7.4 As a consequence, what is perceived as ‘the cost of legal services regulation’ may not in fact be within the scope of legal service regulators to address. In light of the difference between the regulation that stems from the Act and the broader view of regulation held by many legal providers, it may be relevant for legal regulators to be mindful of the totality of cost that their regulated community faces when reviewing any legal sector regulation. This way regulators may gain a deeper understanding of how various regulatory requirements interact with each other and impact on legal sector providers.
- 7.5 Secondly, a number of respondents did not know what they paid for via their PCF. The relatively low level of awareness among authorised individuals that their money pays for various non-regulatory permitted purposes as well as the LSB and the Legal Ombudsman may suggest that awareness could be raised around what the PCF pays for. It is possible that if the legal profession were more aware of how PCF money is spent then more individuals would question whether the current allocation of funds is the correct one.
- 7.6 Thirdly, views varied on the fees paid to the regulator and the cost of compliance. A number of respondents (notably SRA entities and barristers) saw these as poor value for money. There were also some regulated groups who generally thought that the regulatory fees and compliance burden were reasonable.
- 7.7 This may suggest that different regulators can learn from each other, when considering their handbooks, to adopt best practice from one another.

- 7.8 Our data showed that larger entities tend to see fees and the cost of compliance as either reasonable or high but not excessive. Smaller entities and individuals were generally less positive. This is an interesting finding as entity fees generally increase in line with turnover and, as such, some of the larger firms will pay higher fees than individuals and smaller entities.
- 7.9 Fourthly, PII, PCFs and keeping up to date with changes to regulations were perceived to be the highest cost areas of regulation. This might suggest a challenge for regulators to allow individuals more efficient ways of complying. As the process for renewal of PCF was an area that some individuals and entities of all regulators considered high cost, regulators may want to seek out and learn from best practice from other regulated professions in this area. Amongst individuals, there was significant variation for the same area of regulation between different legal communities. This may indicate that the approach of some regulators to some areas is more costly to comply with than that of other regulators for the same area of regulation, in turn indicating that those regulators perceived to be more costly could learn from best practice from other regulators.
- 7.10 For entities, we found a significant difference in how SRA entities and CLC entities perceive the cost of file retention, with a significantly larger proportion of CLC entities rating this area as high cost. This finding may indicate that the different approaches to regulation by the CLC and SRA leads to different outcomes for their regulated communities. However, it may also be that historical trends or any recent changes in this area have had an impact on the results.
- 7.11 Finally, there is limited consensus amongst both those regulated as entities, and amongst those regulated as individuals, on which parts of regulation should be removed or kept. When the scores for entities and individuals are combined, money laundering regulation is the regulation that most of our respondents wanted to remove. This area of regulation is the only area which has more respondents wanting to remove it than keep it. Some of the comments we received suggested that some areas of regulation such as PII should be kept because it helps respondents get work and reduces the costs they would otherwise face. There was also a sizeable proportion of between 16% (CLC entities) and 78% (costs lawyers) respondents who wanted to keep all areas of regulation.
- 7.12 The views on what regulation to keep and what regulation to remove, combined with the findings on what areas of regulation are most costly, suggest that there may be a number of regulations that should be kept but in an updated form which allow requirements to be tailored against the activities of the individual or entity. This is further supported by our findings that respondents favoured those areas of regulation they find help them to deliver their services, and were dissatisfied with those that cost too much.

Next steps

- 7.13 As set out in our draft business plan for 2015/16, the LSB will continue the cost of regulation [project](#) after the initial phase of this project has ended. The intention is to use the evidence that we have gathered to develop policy proposals which will contribute towards breaking down regulatory barriers to competition, growth and innovation.
- 7.14 This is the first report in the initial phase of the LSB's cost of regulation project. This phase seeks to establish the cost of regulation in terms of costs imposed on providers of legal services and the cost of the regulators.⁸⁶
- 7.15 The results of this survey provide a snapshot of respondents' views at the time they completed the survey. However, given the limitations of this survey in terms of numbers of respondents, any bias that respondents may hold, and how well respondents represent the general population, it is premature to set out policy proposals based on these survey responses alone.
- 7.16 To better understand the actual cost behind the perceived costs of regulation, survey respondents were asked to volunteer to participate in a second round of research. This research will seek to assign actual costs to specific areas of regulation. The research will also attempt to understand which costs of regulation arise only as a consequence of legal sector regulation and which costs firms would have incurred anyway as part of good business practice. A total of 181 respondents agreed to participate in this research, which is currently in the field and due to be completed later this year.
- 7.17 This report has attempted to set out the survey results without speculating in great detail about any wider context which may have caused respondents to answer questions in a particular way. Where respondents directly explained the reasons behind their views, we have included a representative set of comments in the report.
- 7.18 A number of respondents provided comments about other areas of regulation aside from the ones included in the survey. These comments covered a wide range of areas, spanning current regulatory approaches, such as outcomes-focused regulation, to views on the unregulated legal sector. The LSB is grateful for all of the suggestions received and will review them as the cost of regulation project progresses.
- 7.19 A report later this year (2015) will draw together all the research from the initial phase of the cost of regulation project. This report will discuss the possible reasons for the results and draw conclusions around areas that may need further investigation and policy analysis before the LSB can set out policy proposals.

⁸⁶ The scoping paper for the [cost of the regulators can be found here](#).

Glossary

BSB	Bar Standards Board
CILEX	Chartered Institute of Legal Executives
CLC	Council of Licenced Conveyancers
CLSB	Costs Lawyer Standards Board
COFA	Compliance Officer for Finance and Administration
COLP	Compliance Officer for Legal Practice
CPD	Continuing professional development
HOFA	Head of Finance and Administration
HOLP	Head of Legal Practice
ICAEW	Institute of Chartered Accountants in England and Wales
IPReg	Intellectual Property Regulation Board
IPS	ILEX Professional Standards
LSB	Legal Services Board
MoF	Master of Faculties
PII	Professional Indemnity Insurance
PCF	practising certificate fee
SMEs	Small and Medium Sized Enterprises
SRA	Solicitors Regulation Authority