

# Regulatory independence in legal services

Caroline Wallace  
Strategy Director

13 June 2018

“Independence is happiness”

Susan B Anthony

# Overview

---

- What's the point of independent regulation?
- How does this link to access to justice?
- England and Wales: how we do things here
- The LSB's work on independence

# Self-regulation (1)

---

- A collective attempt among suppliers to maintain certain reputational standards of conduct and performance, and thus maintain confidence in a sector

“Representative and regulatory interests are aligned and separation is undesirable. The ‘brand’ of the profession/professional body would suffer if the regulatory function failed to provide independent results.”

“...individuals are prepared to accept disciplinary arrangements as they will face a committee, which they know will understand the professional and what might have led to actions being taken.”

“The duty to the court distinguishes the legal profession from other professions in relation to regulation.”

# Self-regulation (2)

---

- An inherent conflict of interest?
- Clementi Report (leading to Legal Services Act 2007) found that combining regulation and representation in a single body:
  - Means public interest is not consistently placed first
  - Does not provide the right incentives for competition or innovation

# So .... independent regulation

---

- Increasingly the norm in the UK across the economy
- What the public expects – credibility and legitimacy
- Delivers confidence to:
  - Consumers – to use legal services
  - Legal services providers and investors (where permitted) – to grow, invest and innovate
  - Society – that regulation protects vital outcomes

# Independent of what?



HM Government





# What could this look like in practice?

---

- Independent regulatory decision making and action
- But accountable for impact, cost and delivery – this provides legitimacy
- A range of organisational structures and funding arrangements are possible
- One possibility:
  - accountable to Parliament
  - funded by a levy on those regulated

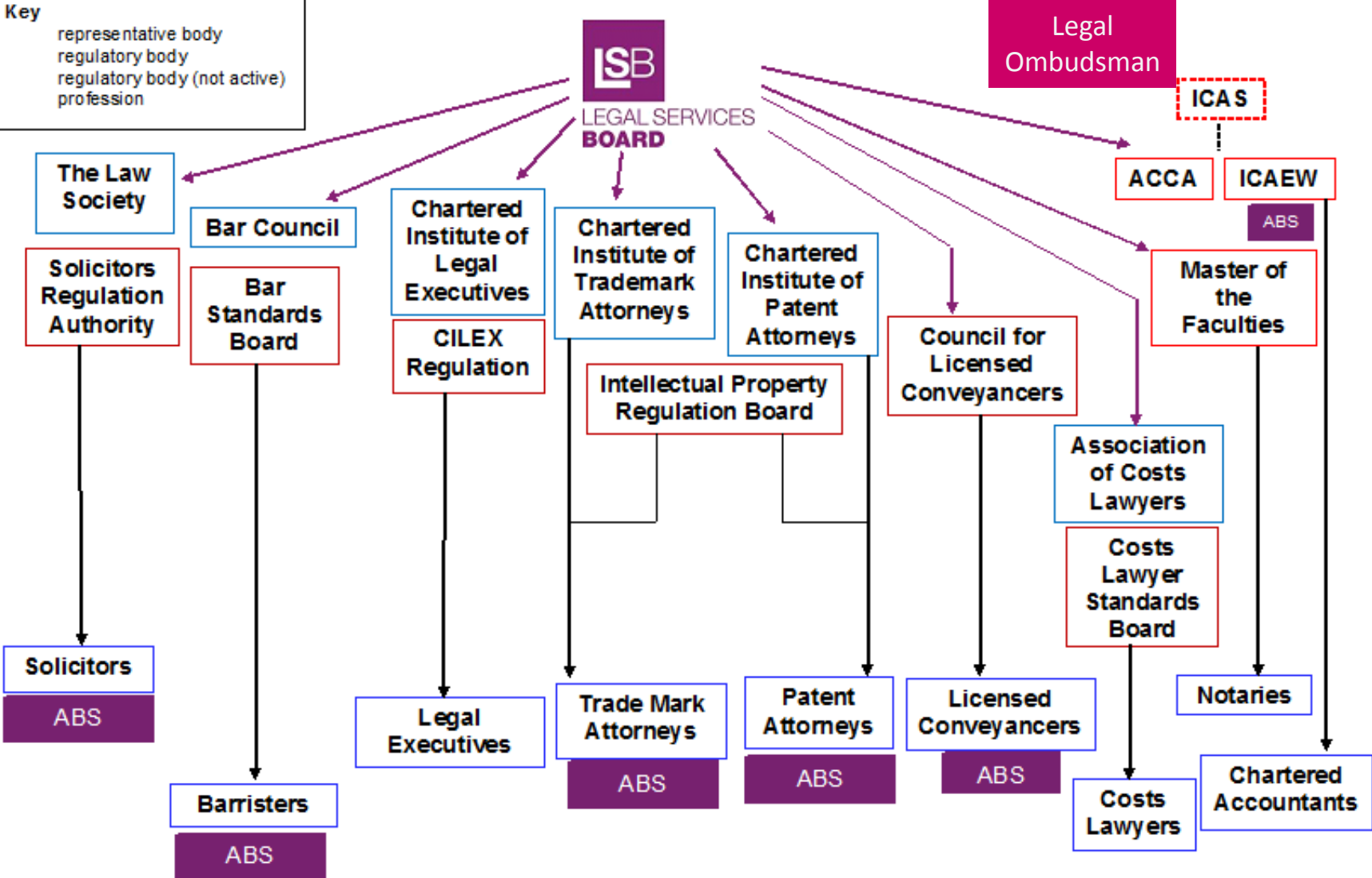
# How does this link to access to justice?

---

- Effective independent regulation is ‘**market making**’ and facilitates greater uptake of legal services:
  - Consumers have confidence to purchase expert services
  - Regulation does not impose unnecessary restrictions or costs which can inflate the price of legal services and creating barriers to new entrants
  - Regulation allows competition and innovation to better meet needs of consumers

# England & Wales: in practice

**Key**  
 representative body  
 regulatory body  
 regulatory body (not active)  
 profession

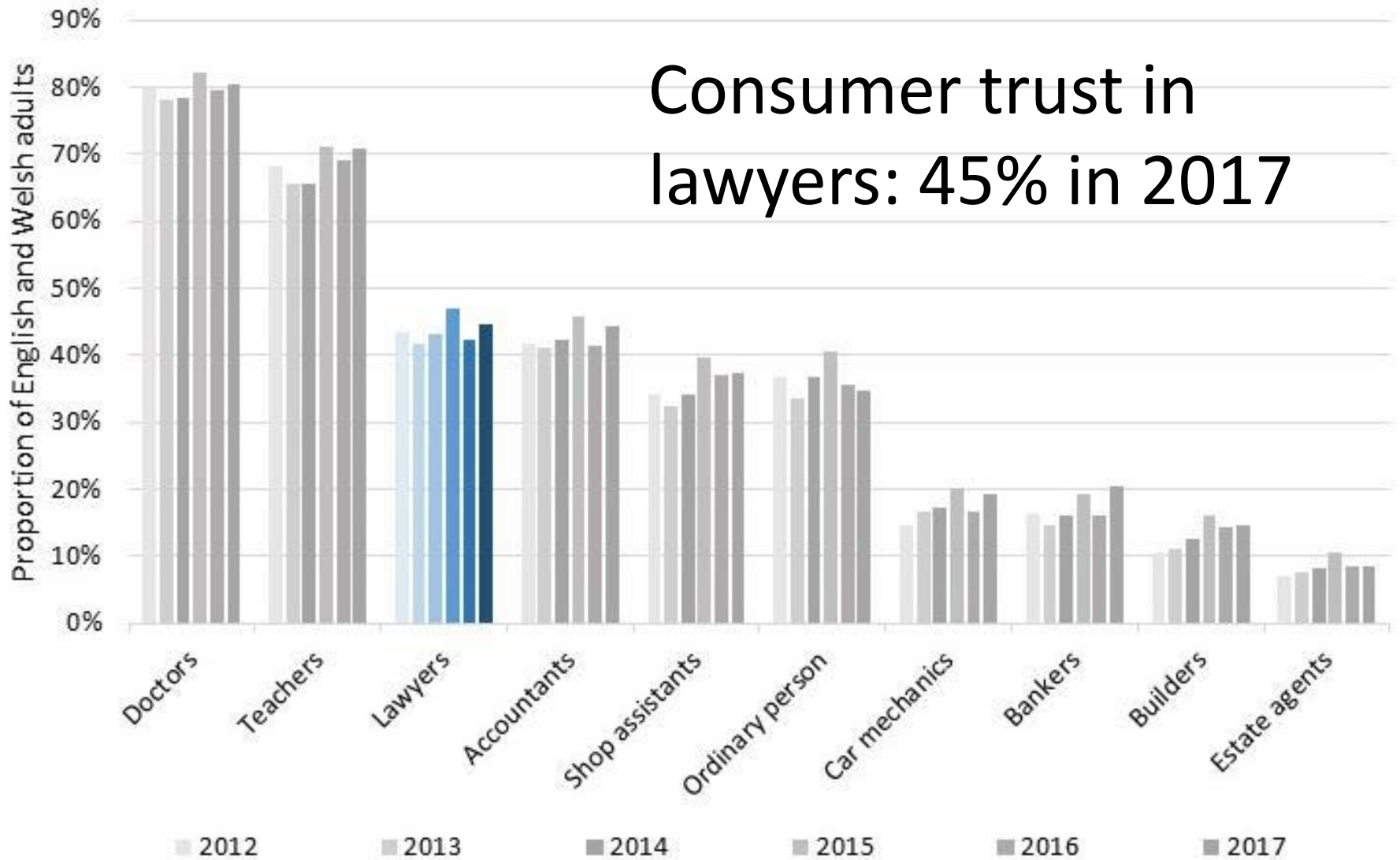


# England & Wales: work in progress (1)

---

- Not all regulatory bodies are structurally separate from representative bodies
- LSB must make Internal Governance Rules (IGR) to ensure the independent exercise of regulatory functions.
- Legislative reform to deliver full independence unlikely for the time being

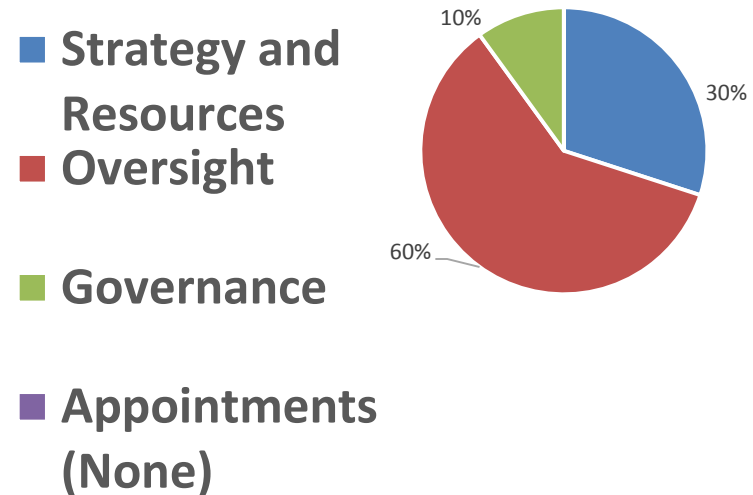
# England & Wales: work in progress (1)



# England & Wales: work in progress (2)

---

- ~ 30 regulator-rep body disagreements about independence since 2014



- LSB has carried out two investigations into breaches of the IGR
  - Breaches found in both cases
  - Resolved through informal undertakings and (in latest case) public censure
- LSB is reviewing its IGR