



Regulatory Developments

STATUS

1. The report is open, but the appendices are considered confidential and certain sensitive paragraphs are also redacted in blue.

EXECUTIVE SUMMARY

2. This paper highlights recent news stories and other developments in professional services regulation that may be of interest to the IRB. There is a summary of consultations and consultation feedback in the **Appendix**, however the main body of this report outlines particular items of topical interest.
3. This document discusses the following in more detail:
 - a) Competition in the audit market
 - b) Call for FRC to raise enforcement action threshold
 - c) FRC criticises quality of tier 2 and 3 audits
 - d) FRC consults on business plan and budget
 - e) FRC report on quality of local audit
 - f) Smarter Regulation call for evidence
 - g) LSB consultation on business plan
 - h) Justice Committee session for legal regulators
 - i) CILEX consultation on changing regulators
 - j) Consumers find multiplicity of legal regulators confusing
 - k) Justice Select Committee inquiry into probate delays
 - l) Responses to LSB consultation on first tier complaints
 - m) LSB research on ethics and the rule of law

RECOMMENDATIONS

4. The IRB is asked to consider whether any of these developments could be of relevance to ICAEW's own regulatory activities and whether it wishes PSD senior management to follow up any of the developments noted here. The appendix is for note, but the board may ask questions of staff where further information is required.
5. The IRB is asked to approve the classification of the paper as open and identify where redaction may be appropriate, as has been highlighted in green. Also agree to the non-disclosure of the appendices.

COMPETITION IN THE AUDIT MARKET

[Badenoch outlines FRC's new remit | ICAEW](#)

6. The FRC should reduce unnecessary red tape and consider its impact on the country's competitiveness and growth when formulating rules, the government says in a letter to the regulator's CEO. The Secretary of State for Business and Trade, Rt Hon Kemi Badenoch MP, wrote to FRC Chief Executive Richard Moriarty in late November 2023 updating the government's priorities for the FRC's work, also outlined in the Autumn Statement.
7. In the new remit letter, Badenoch stresses that the FRC has a crucial role to play in supporting the government's drive to ensure the UK upholds high standards of corporate governance, reporting and audit, and contributes to the ambition to make the UK the best place to start, grow and invest in a business.
8. "Maintaining the UK's leading reputation for trustworthy reporting remains vital; and we must also ensure that we maintain the UK's reputation as a great place to do business when considering the requirements and expectations placed on business," the letter says.
9. "Proportionality of any new requirements is essential and it is also important to look actively at where rules and guidance are no longer proportionate and can be removed or streamlined. I would ask that you report back in a year's time on the steps that the FRC has taken in promoting competitiveness and growth," Badenoch adds.
10. The letter also urges progress on a number of other important initiatives, including work to drive up the quality of audit, reviews of non-financial reporting rules with the aim to simplify and streamline current requirements, and enabling companies to report on sustainability in a consistent and proportionate basis by supporting the assessment of the IFRS Sustainability Disclosure Standards.
11. In a statement, Moriarty acknowledges the government's recognition of the progress made to modernise as a regulator: "I welcome the government's updated remit for the FRC, which reflects our important role in upholding high standards of corporate governance, reporting and audit across corporate Britain, whilst supporting the UK's economic growth and international competitiveness."
12. To support the government's vision of making the UK the best place in the world to start, grow and invest in a business, Moriarty says the FRC would ensure its growth duty is appropriately embedded across all its work.
13. "Our initial priority is to conclude our review of the UK Corporate Governance Code followed by a fundamental review of the UK Stewardship Code. Our focus is to ensure these globally respected Codes achieve good governance and stewardship outcomes, are proportionate and any unnecessary or disproportionate requirements are removed or streamlined."

14. As highlighted in the previous regulatory update paper, draft reporting regulations were scrapped in October by the Department for Business and Trade, after it described them as “burdensome”. They had included the requirement for companies to produce a new strategic report, a resilience statement and a directors’ report that includes an audit and assurance policy statement, a policy on material fraud and distributable dividends.

FRC publish annual review of competition in the audit market

[FRC publishes annual review of competition in the audit market](#)

15. On 14 December 2023 the FRC published an updated overview of competition in the UK's audit market for public interest entities (PIE). While the report shows a small increase in market share for challenger audit firms, the audit market remains highly concentrated. The Big Four accounting firms continue to dominate, earning 98% of FTSE 350 audit fees in 2022, resulting in limited choices for businesses and ongoing concerns about resilience.
16. The FRC comments that over the past year, and with a focus on addressing concerns in the quality of PIE audits among smaller firms, it has pursued a range of initiatives targeting different aspects of market competition. These include publishing a standard for audit committees in relation to their role on the external audit, launching the FRC’s Scalebox to assist smaller firms’ entry in the PIE audit market, and exploring barriers to growth for smaller audit firms.
17. Looking ahead, the report highlights the FRC’s intention to conduct market studies (in-depth investigations) that can generate proposals to improve the way the market functions with particular regard to better choice and resilience. The FRC says this will allow it to explore issues relating to the audit market in more detail, generating more granular information about areas of concern and suggested actions to address them.
18. Mark Babbington, FRC Executive Director of Regulatory Standards commented: "A resilient, competitive audit market focused on quality is essential to rebuild trust and confidence in corporate Britain. While there have been some positive steps, 98 percent market share for the big four leaves little room for challengers to emerge while maintaining high standards of audit quality. The FRC will continue to collaborate across the whole system to develop the conditions for an audit market that balances quality, innovation, resilience and true choice."

Press reaction to FRC audit market competition report

The Times: Watchdog vows to increase competition for auditors

19. The Times ran a story highlighting the FRC’s pledge to address the lack of competition in the industry next year amid concerns that the Big Four firms continue to dominate the market. The FRC’s report on competition in the audit market identified “ongoing concerns” about the resilience of the sector as these four firms earned 98 per cent of the audit fees from FTSE 350 companies in 2022. It also reported that only two companies switched from a Big Four auditor to a smaller rival last year, compared with four in 2021.
20. The article also draws attention to the fact that the Big Four still earn more income from consultancy services than audit clients. The FRC’s report said that separating audit and

non-audit operations would ensure that auditors' personal awards would depend only on whether they produced high-quality audits. "We are also seeking to ensure that audit remains an attractive and reputable profession that is valued both within and outside the audit firms."

The Telegraph: The Tories have failed to address one of the biggest scandals in the City

Over-mighty auditors must be reined in by tough legislation and stiff sanctions.

<https://www.telegraph.co.uk/business/2023/12/17/tories-failed-address-biggest-city-london-scandals/>

21. Writing in the [Telegraph](#), Liam Halligan has written about the FRC's annual review of competition in the audit market. Pointing out that it received little media attention because it was released on the same day as the Bank of England's latest interest rate decision, he pointed out that the Big Four still dominate the process of verifying and signing-off the accounts of the FTSE 350 companies, and despite the FRC's claims that a competitive audit market is essential to rebuild trust and confidence in corporate Britain, there is little sign of the reforms needed to bring about such change.

CALL FOR FRC TO RAISE ENFORCEMENT ACTION THRESHOLD

[UK accounting watchdog urged to raise threshold for enforcement action \(ft.com\)](#)

22. The Financial Times featured comments from Michael Izza calling for a higher threshold for bringing enforcement action against auditors. Michael was quoted as saying that the Financial Reporting Council ('FRC') should soften its approach to make the profession more attractive. "Prior to 2017, if the FRC brought a case against an auditor, the threshold test that they were looking to meet was 'misconduct'. That was lowered to non-compliance with the relevant auditing standards," he told the Financial Times. "That is now the lowest threshold of any professional in the UK. And it is our view that threshold is now too low. It probably shouldn't go back to 'misconduct', but there's somewhere in between that would be a more sensible area."

23. Michael's comments come after Kemi Badenoch, the business secretary, gave the FRC a new remit in November to promote economic "competitiveness", as part of wider efforts by the government to cut red tape on businesses. Michael said: "It all comes back to the FRC's competition role. If you want good people to come in, if you want good firms, you've got to give them a profession where they feel their view is valued."

24. The article makes reference to the record fines that have been levied on audit firms in recent years including in relation to the Carillion collapse. As has been highlighted in a previous regulatory update paper, the FRC levied fines of £40.5mn for misconduct and breaches of standards in the year to March 2023, slightly below the record £46.5mn in 2021-22. Michael also highlighted the public sanctioning of individual audit partners, a practice that he said could "effectively end someone's career". He added: "If there is a deficiency, and let's say at one extreme it's incompetence or outright deception, people

should have the book thrown at them. But if the issue is one of judgment . . . you should be more forgiving of that.”

25. There are signs that the new chief executive of the FRC, Richard Moriarty, will take a more moderate approach to Sir John Thompson, who Moriarty succeeded in October. Michael did acknowledge however that the FRC under Sir John’s leadership deserved “a lot of credit” for the way it had “raised [its] game post-Carillion, and clearly the regime is more punitive than it was historically”.
26. The FRC’s response to Michael’s comments was that it had taken measures to “significantly raise audit quality standards in recent years”, adding: “We believe that this progress demonstrates the merit, balance and proportionality of our current enforcement approach, which includes addressing matters through constructive engagement as well as through investigations, in addition to our ongoing work as an improvement regulator.”

FRC CRITICISES QUALITY OF TIER 2 AND 3 AUDIT WORK

Tier 2 and Tier 3 Audit firms ([frc.org.uk](https://www.frc.org.uk))

27. The FRC has published its annual inspection findings for Tier 2 and Tier 3 audit firms, alongside the actions these firms must prioritise to deliver high quality audit and contribute to a more resilient audit market.
28. As part of the FRC’s 2022-2023 inspection programme of Tier 2 and Tier 3 firms, which audit PIEs, the FRC inspected 13 audits at 11 of these firms. Only 38% of audits reviewed required no more than limited improvements, 24% required more than limited improvements and a further 38% required significant improvements. While these results represent only a small risk-based sample, the FRC comments that the number of audits requiring significant improvement is unacceptable. The FRC continues to identify deficiencies in the audit of judgements and estimates, and going concern, both of which require audit teams to demonstrate robust professional scepticism.
29. The FRC comments that Tier 2 and Tier 3 firms must prioritise audit quality improvements and respond swiftly. This includes investing in their audit methodology, human resources and audit quality functions, learning from things that went wrong or went well, and seeking to embed a culture that recognises and prioritises audit quality. To improve resilience and competition in the PIE audit market, the FRC wants these firms to be able to increase the number and complexity of the PIEs they audit and is taking actions to support them to grow in a way that is consistent with the delivery of high-quality audit.
30. Examples of forward-looking supervision actions being taken by the FRC include:
 - Establishing the Audit Firm Scalebox to help firms develop and maintain high standards of audit quality as they enter and grow in the PIE audit market. The FRC comments that this has already provided valuable feedback to firms on what good looks like and extended its approach as an improvements regulator.

- The new PIE Auditor Registration regime, which allows the FRC to impose conditions or undertakings on firms where quality concerns exist. Such conditions or undertakings have now been placed on over 30% of PIE audit firms.
- Examples of common conditions imposed include requiring: (1) FRC approval before accepting new PIE audits so that the growth of a firm's PIE audit portfolio can be responsibly managed; (2) improvements to aspects of a firm's system of quality management; and (3) additional quality reviews to be conducted.
- Delivery of assertive supervision messages in the FRC's private annual supervisor letters and regular engagement with firms' leadership.

Press response to quality of Tier 2 and Tier 3 audits

The Times: Regulator hits out over 'unacceptable' work standards by small auditors

31. The Times highlighted the inspection finding that work being delivered by Britain's smaller auditors is "unacceptable, with barely a third of the audits the FRC checked over the past year deemed up to scratch. Industry watchers pointed out that the FRC purposely checked firms' trickier audits. The regulator accepted that its findings were based on a "small, risk-based sample" of work, but insisted that the results "continue to indicate an urgent need for improvements in audit quality in this sector of the market".
32. The article points out that although they are much smaller than the Big Four, tier two and three firms remain an important part of the country's financial system because they sign off the accounts for 17 per cent of PIE companies. However, at £19 million, tier-two and three firms' share of audit fees from PIE audits is less than 2 per cent, reflecting the larger auditors' dominance of the FTSE 100 and FTSE 250, where the annual audit fee from a single client can run into the tens of millions.
33. The article quotes an FRC spokesperson who says "The FRC wants these firms to be able to increase the number and complexity of the PIEs they audit and is taking actions to support them to grow in a way that is consistent with the delivery of high-quality audits.

FRC CONSULTS ON BUSINESS PLAN AND BUDGET

FRC Launches Consultation on Draft Plan and Budget for 2024-25

[FRC Launches Consultation on Draft Plan and Budget for 2024-25](#)

34. The FRC has launched a consultation on its plan and budget for 2024-25 which sets out its priorities and resources for next year. As the FRC continues its work to restore public trust and confidence in audit, corporate reporting and governance, while embedding its [remit to support UK economic growth and competitiveness](#), the draft plan sets out how it intends to deliver on its strategic priorities.
35. Given the delay to legislation which would have given the FRC a broader remit and new statutory powers, and a desire to avoid unnecessary increases in charges to levy payers, the FRC has decided to pause previously planned headcount growth for 2024-25.

Headcount will remain flat compared to 2023-24 levels and previous plans for a 16% increase next year. The draft plan also includes provision for the opening of a new FRC office in Birmingham city centre in late 2023-24. This forms part of the FRC's commitment to building its presence outside London and supporting the government's Places for Growth programme.

36. Overall, the 2024-25 combined budgeted cost of £72.0m for the FRC and the UKEB will be higher than the previous year (£66.3m) but 5% lower than was previously expected. The percentage change in the budget year on year broadly reflects the rate of inflation over the period. The consultation on the [FRC's draft plan and budget](#) and the [UKEB's draft strategy](#) is open until 26 January 2024.



FRC REPORT ON QUALITY OF LOCAL AUDIT

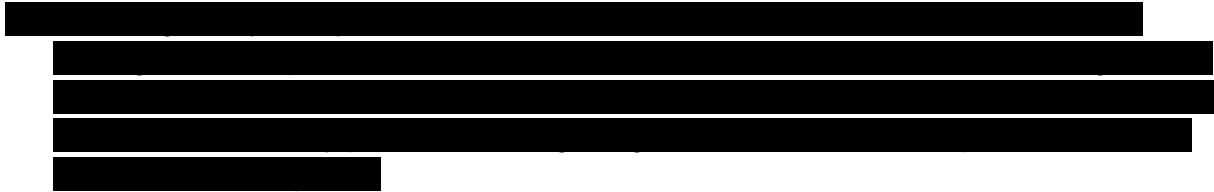
[FRC publishes report on the quality of major local audits amid delays in local government](#)

38. The FRC has published its annual report on the quality of major local audits, while highlighting its disappointment with the unacceptable delays in financial reporting and audit in the local government sector. The report noted that with over 900 incomplete local government audits in England at the end of September 2023, the FRC's ability to inspect higher risk audits had been severely restricted.
39. The FRC inspected just 10 audits this year - 6 NHS and only 4 in local government - compared to its usual 20. With most local government audits incomplete, often for multiple years, the FRC said it had to significantly reduce inspections to allow audit firms to focus resources on clearing the backlog. To support the measures being developed to clear the backlog, the FRC announced its plans to perform no routine inspections of local government audits for financial years up to 2022/23, unless clear public interest demands it. The FRC will resume inspections once the system has been reset, which hopefully will follow the implementation of the package of measures currently being developed by Government.
40. While the audits available for the FRC to inspect currently were found to be "good" or required "limited improvements", the FRC warned its assessment of audit quality may reduce when it is able to inspect the audits of higher profile and higher risk local government bodies. "It's very disappointing that our ability to inspect higher profile and higher risk audits has been so severely restricted by the backlog.
41. "Timeliness is an important part of audit quality and as incoming shadow system leader, a key priority for the FRC has been supporting the Department for Levelling Up, Housing and Communities to develop their package of measures to clear the backlog and restore timely completion of audits."

SMARTER REGULATION CALL FOR EVIDENCE

[Government's Smarter Regulation review echoes ICAEW concerns | ICAEW](#)

42. The Department for Business and Trade has published a 12-week call for evidence as part of their review to look at whether regulators are working efficiently and delivering on reforms needed to help grow the economy and protect consumers. In particular, the review – which excludes financial services and local authorities – will seek the views of businesses, consumers and regulators to identify areas in need of improvement that will have a positive impact on economic growth, as well as improving the outcomes for consumers and our environment. The review says there are around 90 regulators in the UK covering most sectors between them, costing around £5bn a year, and that 39% of small businesses say red tape holds them back.
43. Business groups argue that regulators are overly risk averse and focus too heavily on process at the expense of delivering the best outcomes. Meanwhile, regulators' powers and accountability have not moved in tandem, the government says, partly because of the increased decision-making power of some UK regulators post-Brexit.
44. The call for evidence, due to close on 7 January 2024 (now extended to 17 January), is seeking experiences of those the regulators regulate or interact with, and views on aspects of the regime including regulatory agility, proportionality, predictability and consistency of approach. It will also consider whether further reforms to the existing stock of regulation on the UK statute book are needed.
45. ICAEW is supporting the DBT call for evidence to ensure UK regulators are accountable, effective and responsive to the needs of the sectors they regulate. Potential reform of the UK's regulatory regime has been welcomed by ICAEW for tackling many of the questions raised in its own Better Regulation project launched earlier this year.
46. Charles Worth, Head of Business Law at ICAEW, said the benefits of good regulation should not be underestimated: "Our regulatory infrastructure needs to be designed for the long term. There is room to question some of the perspectives in the consultation, but its underlying objective of improving the UK's regulatory landscape is surely in the public interest and the lessons learned from this consultation should be valuable for future governments of any political persuasion."
47. ICAEW shares the government's wish for the UK to have a world-leading regulatory system; an ICAEW briefing outlines how the UK's regulatory regime is meant to work to demystify what is often seen as a rather daunting and impenetrable subject. "We already know from our work on better regulation that there is room for improvement," Worth adds, "for example, regulators that do not have clear statutory objectives, rules that are unnecessarily complex and requirements or regulatory approaches that impose disproportionate burdens on business. The mechanisms designed to help Parliament ensure that the regime is working as it intends are not as strong as they could be."
48. ICAEW's response to the consultation will draw heavily on feedback from its members through consultation with committees and volunteers. Members are also invited to provide comments via ICAEW's better regulation hub.



LSB CONSULTATION ON BUSINESS PLAN

[Legal Services Board consults on plan to strengthen regulatory oversight and consumer-focused regulation - The Legal Services Board](#)

50. The LSB has launched a [consultation](#) on its [draft business plan and budget for 2024/25](#) focused on ensuring regulation continues to play its part in delivering a legal services market that better meets society's needs.
51. The LSB's plan includes strengthening its direct oversight of regulators' performance, in response to stakeholder feedback. The LSB proposes to bolster its resilience to conduct regulatory reviews and investigations, as well as support the regulators in carrying out their duties and obligations under the Legal Services Act effectively. The LSB is also anticipating a significant call on resources in the next financial year in response to live events, namely to consider the delegation application from CILEX and to initiate an independent investigation into the events leading up to the SRA's intervention into Axiom Ince.
52. In the last year, the LSB took action to ensure people and small businesses can access legal services they can trust by putting in place new rules on consumer empowerment and ongoing competence. The LSB is committed to ensuring the regulators deliver against the outcomes and deadlines it has set, and is stepping up its monitoring of regulators to ensure this.
53. The LSB also plans to boost its market surveillance and horizon scanning capability next year. This will help the LSB develop an enhanced understanding of consumer risk and detriment across the sector. This will support regulators in better identifying and anticipating issues in the market earlier and acting to ensure regulation protects consumers.
54. Other areas of focus for 2024/25 that are underway in 2023/24 include:
 - Ensuring regulation supports high standards of professional, ethical conduct across the sector, including supporting the new regulatory objective to promote the prevention and detection of economic crime
 - Collaborative work with regulators and others in the sector to address equality, diversity and inclusion gaps in the professions.
 - Ensuring regulators' approaches to disciplinary and enforcement build public confidence and uphold standards.
 - Considering the role of regulation in ensuring safe uses of artificial intelligence (AI) that benefit legal services users as part of our work on technology and innovation.

- Considering the role of regulation in improving access to justice.
- Making the case for a strategic approach to consumer vulnerability and user design in legal services.

55. The draft business plan details the LSB’s budget for 2024/25. The oversight regulator is consulting on a budget of £5.329M. This represents a 13.9% increase on last year’s budget, or 7.2% when adjusted to inflation. This equates to under £28 per authorised person per year.



JUSTICE COMMITTEE SESSION FOR LEGAL REGULATORS

[MPs urged to support review of Legal Services Board](#)

[New Bar chair calls on Ministry of Justice to review LSB - Legal Futures](#)

[MP accuses CILEX of trying to destroy solicitor profession with SRA switch | Law Gazette](#)

57. A House of Commons Justice Select Committee (Committee) evidence session on legal regulation invited witnesses from the Bar Council, Bar Standards Board (BSB), the Chartered Institute of Legal Executives (CILEX) and CILEx Regulation (CRL) to discuss the Legal Services Act 2007 (LSA) and the Legal Services Board (LSB).

58. The Committee heard concerns that the LSB may be ‘going beyond its remit. CILEx Regulation and the Bar Council highlighted that when the LSA was passed the LSB was subject to triennial reviews, however, there has been no review of the LSB since 2017.

59. The Bar Council Chair commented; “We think every regulator – every confident, transparent regulator – ought actually to welcome external review of its activities every now and again.’ The Bar Council had previously asked both the LSB and the Ministry of Justice to review the LSB without success. The BSB’s chair Kathryn Stone declined to express a view on this but the CRL Chair suggested this was a ‘legitimate question’ given LSB’s rising budget.

60. CRL highlighted three areas of contention, the first was the LSB’s support for a single regulator for legal services, the second was the internal governance rules (IGRs) set by the LSB to ensure the independence of regulators that are also representative bodies. This was because they felt the IGRs ‘drive too strong a wedge between the approved regulator and the body to whom it delegates its functions.’

61. The Bar Council also criticised the LSB’s “tendency to correctly identify problem issues” – such as SLAPPs and non-disclosure agreements – and then take the lead because it saw “a regulatory problem”. The Bar Council’s view was that strategic lawsuits against public participation (SLAPPs), for example, needed a legislative solution.

62. While CRL chair Jonathan Rees commented that he felt that the LSB's work on equality, diversity and inclusion, vulnerable consumers, and technology 'was really good' he opined that the LSB's proposed 14% fee increase would mean reducing two members of staff. CILEX chair, Professor Chris Bones also agreed about the need for a review and said the LSA should also be reviewed, arguing for regulation by activity rather than profession.
63. Conservative MP James Daly, a solicitor and member of the Committee was widely reported for his strong criticism of the proposed regulatory takeover of CILEX during the session. He accused CILEX of instigating the 'deliberate destruction of the solicitors' profession' by changing the title of legal executives to chartered lawyer'.

CILEX CONSULTATION ON CHANGING REGULATORS

[Solicitors Regulation Authority hailed as 'most sophisticated, mature' regulator by chief of the Legal Services Board | Law Gazette](#)
[Consolidation of legal regulators "may be a good thing" - Legal Futures](#)

64. Further views on the proposed changes to the regulation of CILEX members were also reported in the press following the conclusion of the Solicitors' Regulatory Authority (SRA) and CILEX consultations in November 2023.
65. Responses included the Legal Services Consumer Panel (LSCP) chair Sarah Chambers who said that the LSCP did not have enough evidence to express an opinion. However, the LSCP had raised "numerous concerns about the thinness of resources of some of the smaller regulators and the difficulties this poses for delivering basic regulatory functions and for commissioning consumer research.' Chambers commented that consolidation "may be a good thing" given the failure of regulators to collaborate properly to date and that 'regulators with limited resources will increasingly struggle to meet these demands, and in turn struggle to respond to consumers' needs.'
66. Meanwhile, the Law Society [reiterated](#) its opposition to the CILEX proposal on its website and in its [response](#) to the SRA's consultation, which highlights its view that it is 'seriously misguided.' CRL has previously [responded](#) that its board does not consider that CILEX has the proper legal authority to make these changes.



CONSUMERS FIND MULTIPLICITY OF LEGAL REGULATORS CONFUSING

[Research: Consumers find multiplicity of legal regulators confusing - Legal Futures](#)
[SRA | Consumer views on CILEX proposals | Solicitors Regulation Authority](#)

68. New consumer research commissioned by the SRA to support its proposals to adopt regulation of CILEX members found a majority of consumers were in favour of similar standards for solicitors and chartered legal executives.
69. Following an explanation of how the legal market was regulated, 92% of respondents said having different regulators was confusing, of whom 37% found it “extremely” confusing. It was not much lower among those who said they had a good understanding of legal matters.
70. When respondents were asked which of the eight legal regulators they were aware of, a third knew the SRA but only 4% knew CILEX. More than half (52%) had heard of the ICAEW, 27% the BSB and 18% the Council for Licensed Conveyancers.
71. Consumers also thought that different regulators for different parts of the legal profession was confusing, and a large proportion were not aware of how the legal market in England and Wales is regulated. Just over a third correctly indicated that some legal services are regulated and 9% correctly identified that there are between six and 10 legal regulators.
72. Just over half of respondents also reported low legal confidence which means they do not have a good knowledge and understanding of legal processes and of the steps to take to resolve a legal issue. Awareness was generally higher among respondents who had recently used a lawyer.

JUSTICE SELECT COMMITTEE INQUIRY INTO PROBATE DELAYS

[MPs launch inquiry into lengthening probate delays - Legal Futures](#)

73. HM Courts & Tribunal Service (HMCTS) launched its reformed probate service and new digital service in July 2018 to update and modernise its performance. However, with delays at the Probate Registry at their highest rate since 2019, the House of Commons Justice Select Committee has launched an inquiry into the Probate Registry's performance. The Committee said reports cited cases of probate taking more than 11 months and practitioners advising clients that probate would take at least nine months. HMCTS's latest figures, for September, said it was taking 15.4 weeks from submission to issue of the grant of probate, compared to 9.3 weeks a year earlier.
74. Sir Bob Neill, the Select Committee's Conservative chair, said: 'Concerns over probate have risen sharply over the last five years, with the waiting time for probate almost doubling in the last financial year alone. It is right the justice committee examine the reasons behind this, the consequences and takes evidence on the issues of capacity and resourcing. The Committee will collect evidence on capacity, resources and delays across the probate service. They will also explore the impact of digitisation, centralisation, and innovation, including the effectiveness of the online probate portal. [The call for evidence](#) closes on 22 January 2024.

76. Separately, HMCTS has also published an access to justice assessment for its probate service, a tool it uses to identify, fix and monitor access to justice barriers. The survey highlights views from individual users of the service and found 'higher-than-expected contact (complaints, emails and calls), as well as lower than expected levels of user satisfaction'. It found no evidence of differences in case timeliness or outcome by age, disability, or sex; however, it noted potential access to justice barriers include:

- cases from ethnic minority users take longer and are stopped more than white users
- older users rely on the paper service more which takes longer
- reasonable adjustments are under used and under recorded.

77. HMCTS' report provides some recommendations to tackle these issues including updating their guidance to improve their service. Interestingly, their user research found that some users felt that the professional legal support they had did not offer good value for money, while others wished they had chosen professional legal support because the process was complex, difficult to understand and time consuming.

RESPONSES TO LSB CONSULTATION ON FIRST TIER COMPLAINTS

Law firms "may avoid high-risk work" under new complaints rules - Legal Futures

78. The legal press has reported that the Law Society, Bar Council and BSB raised concerns about the LSB's proposed changes to first tier complaint requirements in their response to the consultation in August. The LSB said that it hoped the new guidance and statement of policy, would lead to a "step-change improvement".

79. The Law Society said it "broadly" supported the policy aim of improving processes in the approach and resolution of first-tier service complaints. However, it was concerned that law firms were 'already subject to substantial regulatory obligations with few dispensations granted to smaller firms. They suggested that the changes increased the burden in terms of resource and costs and some law firms may avoid carrying out work in 'high-risk sectors' under the new regime.

80. The Law Society said it was particularly concerned that a law firm's complaints procedure must be "communicated to 'each client' in a format or formats tailored to a particular client's needs". They described the evidence base for the LSB's position as "unclear", given that last year Legal Services Consumer Panel tracker survey found that satisfaction with legal services was running at 85%, while SRA research revealed that a greater number of complaints were being resolved at the first-tier stage than in previous years.

81. The BSB said it appreciated the focus the LSB had given to fostering changes in first-tier complaints processes for consumers, to ensure they were empowered. However, both the BSB and Bar Council raised concerns about the new data collection requirements for barristers and chambers.

82. The BSB commented that the proposed 12-month implementation period would “cause potential challenges, particularly around the expectations to collect and publish data. They said they would need time to “carefully consider the data that should be collected”, design and develop IT systems and issue training and guidance for BSB staff and for the profession. Additionally, Chambers would also need “time and resources to organise themselves to collect data in new formats, and to make that data available to the BSB.
83. The Bar Council were concerned that keeping records of first-tier complaints and any measures taken ‘may create an unnecessary administrative burden’ for self-employed barristers, with ‘relatively limited benefits for lessons to be learned’. Furthermore, a requirement to share information on the right to make a complaint with clients at the conclusion of matter could be challenging because self-employed barristers might ‘repeatedly be instructed and/or reinstructed for self-contained pieces of work’ in a case with no fixed timescale.

LSB RESEARCH ON ETHICS AND THE RULE OF LAW

[Some lawyers' conduct poses "significant risk to the rule of law" - Legal Futures](#)

84. The regulatory policy team attended the launch of a report by academics, Professors, Richard Moorhead and Steven Vaughan of Exeter University hosted by the LSB. The report, ‘*What does it mean for lawyers to uphold the rule of law?*’ was commissioned as part of an LSB project looking at how regulators can clarify, support and incentivise ethical practice that upholds the rule of law.
85. Primarily focusing on lawyers engaged in contentious or criminal work, NDAs and SLAPPs, it explores the professional commitment of lawyers to uphold and promote respect of the rule of law and resolve disputes in the interests of justice. It highlights concerns that lawyers can sometimes be ‘too inclined’ to act unethically or use a ‘mistaken’ adherence to an overly narrow view of the rule of law to justify questionable conduct. Such a view leads lawyers to conclude that, because something is in their client’s interests or is not forbidden by a law or rule, it is not unethical. The report cites examples of conduct that can undermine a lawyer’s commitment to the rule of law including:
- discriminating against potential clients
 - representing likely wrongdoers in a way that supports their continued wrongdoing
 - abusing or taking unfair advantage of other parties, e.g. SLAPPs
 - repeated silencing of claimants, e.g., through the misuse of non-disclosure agreements (NDAs).
 - facilitating ‘creative compliance with the law’
86. The report’s authors noted that many of the examples involve ‘divided loyalties: on one hand, obligations to a particular client; and, on the other, duties to the collective (to the court, to the administration of justice, to the wider public interest)’ The report noted that the meaning of the rule of law itself was not settled and highlighted that this is not defined by many regulators and not mentioned at all by the ICAEW on its website.
87. The report put forward seven elements of a legal and professional commitment to uphold the rule of law, such as helping to challenge inappropriate and arbitrary uses of power,

supporting citizens with their legal rights, and protecting them from state and other coercion, and applying their expertise to help clients understand and navigate the law.

88. The LSB commented that it, and the regulators it oversees have a statutory duty to support the rule of law, as well as to promote the public interest and promote and maintain adherence to the professional principles. Matthew Hill said: “The LSB is committed to ensuring regulation supports ethical decision-making and addresses any existing regulatory infrastructure weaknesses.’ This review gives us a greater understanding of the importance of the rule of law in underpinning rules and guidance for the profession and builds on our evidence base for how the profession can target negative behaviours that can erode public trust and confidence.’

RECORD SRA FINE FOR AML FAILURES

89. On 11 January 2024, the Solicitors Disciplinary Tribunal handed down a record fine (£500,000) on Clyde & Co for failures by the firm in respect of compliance with the Money Laundering Regulations for the due diligence it carried out on a Liberian shipping client. The former partner was also fined and there was a significant costs order imposed.

[Solicitors Disciplinary Tribunal impose £500,000 fine on firm over due diligence failure | Law Gazette](#)



APPENDICES

	Appendix Name	For consideration or for reference	No of pages
Appendix A	Review of consultations and feedback January	Reference	6
Appendix B	Review of consultations and feedback November and prior	Reference	5

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