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Association of Partnership Practitioners  
Association of Personal Injury Lawyers (APIL)

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Bar of the Wales & Chester Circuit  
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Better Regulation Task Force  
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Campaign for the Reform of the Office for the Supervision of Solicitors  
(CROSS)  
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Carpenters, Solicitors  
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Carter Lemon Camerons, Solicitors  
Citizens Advice  
Clifford Chance LLP, Solicitors  
COMBAR (Commercial Bar Association)  
Committee of Heads of University Law Schools (CHULS)  
Consumers' Association (Which?)  
Linda M Costelloe Baker, Scottish Legal Services Ombudsman

CCBE (Council of the Bars and Law Societies of the European Union)  
Council for Licensed Conveyancers (CLC)  
Council of the Inns of Court  
Coventry Law Centre  
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Family Law Bar Association  
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QC, Barbara Connolly, Timothy Walker, Brendan Roche, Jeffrey Jupp, Steven  
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FDA (First Division Association)  
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Henmans, Solicitors  
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Herrington & Carmichael, Solicitors  
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Immigration Advisory Service  
Independent Association of Advocates of South Africa  
In-House Lawyers' Group of The Law Society of Scotland  
Institute of Chartered Accountants England & Wales  
Institute of Chartered Secretaries and Administrators  
Institute of Indirect Taxation  
Institute of Legal Cashiers & Administrators  
ILEX (Institute of Legal Executives)  
Institute of Professional Willwriters  
Institute of Trade Mark Attorneys/ Chartered Institute of Patent Agents (joint response)  
International Underwriting Association  
Irwin Mitchell, Solicitors

Peter Jacks/Andrew Hodges, Fraser Brown, Solicitors (joint response)  
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C M Johnston  
Jomati Ltd  
Jack Jones  
Justices' Clerks' Society

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Kincardine & Deeside Faculty of Solicitors  
Stephen Kinsey, Wildbore & Gibbons  
Knights, Solicitors

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Sir Stephen Lander, Independent Commissioner to the Law Society  
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Berkshire, Buckinghamshire & Oxfordshire;  
Birmingham; Bournemouth & District;  
Bournemouth & District Trainee Solicitors & Young Solicitors Groups;  
Bristol; Buxton & High Peak;  
Cambridgeshire & District; Cardiff & District; City of London;  
City of Westminster and Holborn; Derby & District;  
Devon & Exeter; Dorset; Gwynedd; Hampshire; Hertfordshire; Kent;

Leeds; Lincolnshire; Mid Essex; Newcastle upon Tyne;  
Norfolk & Norwich; Northamptonshire;  
Southend-on-Sea & District; Stockport; Surrey;  
Tonbridge Tunbridge Wells & District; West Essex; West Wales;  
Westmorland; Wolverhampton; Worcestershire; Yorkshire.

Law Society of England and Wales Groups and Sections:-

Association of Women Solicitors  
Black Solicitors Network  
Commerce & Industry Group  
Group for Solicitors with Disabilities  
Hertfordshire Local Group, Solicitor Sole Practitioners Group  
Lay Members, Law Society Council  
David Merkel, Council member for Solicitors with Disabilities  
Probate Section  
Solicitor Sole Practitioners Group  
Solicitors in Local Government Group  
Trainee Solicitors' Group/ Young Solicitors Group (joint response)

Law Society of Scotland  
Law Society of Upper Canada  
Elizabeth Leah, Howell-Jones Partnership, Solicitors  
Legal Action Group (LAG)  
Legal Aid Practitioners Group (LAPG)  
Legal Marketing Services Ltd  
Legal Services Commission  
Legal Services Consultative Panel  
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Victoria Moore, Moore Academy  
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Motor Accident Solicitors Society (MASS)  
Sarah Mumford/Margaret Bromley, solicitors (joint response)

National Association of Paralegals  
National Consumer Council  
Nelsons, Solicitors  
North Eastern Circuit (Bar)  
Norton Rose, Solicitors  
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Clifford J Oakes  
Office of Fair Trading (OFT)  
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Oldham Law Association  
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Martin J Powell  
Principal Registry of the Family Division  
Tim Pyper, TLT, Solicitors

RAC Legal Services  
Freda Raphael

Mrs Christine Reay, solicitor  
Mrs K Robinson  
ROCAS (Reform of Complaints Against Solicitors)  
Royal Bank of Scotland Group  
Royal Faculty of Procurators in Glasgow  
Royal Institution of Chartered Surveyors  
Royal Pharmaceutical Society of Great Britain  
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John Scampion CBE, Immigration Services Commissioner  
Scotland Against Crooked Lawyers  
Colin Scott, London School of Economics  
Scriveners Company  
Shepherd & Wedderburn, Solicitors, Scotland

Geoffrey A Shindler, solicitor  
Shoosmiths, Solicitors  
Simon Smith  
Society of Legal Scholars  
Society of Scrivener Notaries  
Society of Trust and Estate Practitioners (STEP)  
Society of Will Writers & Estate Planning Practitioners  
Society of Writers to Her Majesty's Signet (W S Society, Scotland)  
SSARMCA (Soldier, Sailor, Airmen, Royal Marines Commando Association)  
Solicitors Association of Higher Court Advocates (SAHCA)  
Solicitors Disciplinary Tribunal  
Solicitors Family Law Association (SFLA)  
SIFA (Solicitors Independent Financial Advice)

Solicitors *Pro Bono* Group  
Edward Solomons, solicitor  
Anthony Speaight QC  
Penelope and Geoffrey Stansfield  
Alan Street

Taylor Vinters, Solicitors  
Mrs Jane E Taylor/ Mrs Betty M Hine (joint response)  
J M Taylor  
John M Taylor  
William S Taylor  
Technology and Construction Bar Association  
Thompsons, Solicitors  
Paddy Tipping, Member of Parliament for Sherwood  
Trade Marks Patents and Designs Federation (TMPDF)  
Alan Turle, Richards & Morgan, Solicitors

UK200Group  
Union Internacional del Notariado Latino, Mexico (Francisco S Arias,  
President)  
Unione Internazionale del Notariato Latino, Italy (Dr Emanuele Ferrari,  
Secretary for Europe & Asia)

Walker Morris Online, Solicitors  
Matthew Ward, Lancashire Paralegal Associates Ltd  
Wards, Solicitors  
Tom Williams  
Mrs Penelope Wilson  
David Wolfe  
Wollastons, Solicitors

2 respondents requested confidentiality for their names, which consequently  
are withheld

**SLAUGHTER AND MAY ADVICE**

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**The Application of EU and Other International Norms to the Regulation of the Legal Profession**

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**INTRODUCTION**

1. In its response to the consultation paper issued by the Review of the Regulatory Framework for the Legal Services in England and Wales the Bar Council concluded at paragraph B6.10 of its paper:

“Although the Consultation Paper proposes that a new Legal Services Authority would be an independent statutory body, we do not believe that this would be sufficient to comply with internationally recognised norms respecting the independence of the legal profession. UN Basic Principle 26 and other international standards for lawyers, as well as prevailing expectations within the European Union, emphasise the importance of the involvement of the profession in regulating its own members.”

We are asked to advise whether that conclusion is sustainable. For the reasons set out below, we believe that it is not. We believe that both Model A and Model B+ are compatible with Community law, international norms and the European Convention on Human Rights.

2. We are also asked to consider the likely impact of the judgments in *Wouters* and *Arduino* on the assumption that the promotion of competition was one of the objectives which could underpin the regulatory regime

**GROUND FOR CHALLENGING STATUTES**

3. Whatever system of regulation is ultimately adopted, it will have to be introduced by statute because the current regulatory framework is largely statutory and would have to be repealed.
4. Under English law primary legislation can only be challenged in UK courts on two grounds: (1) because it infringes European Community law which has supremacy; or (2) because it offends against the Human Rights Act. Unlike subordinate legislation there is no form of judicial review on grounds of irrationality, illegality or procedural impropriety.

## COMMUNITY LAW

5. The Bar Council refers to a number of provisions of Community Law and a resolution of the European Parliament. It argues that the Establishment Directive (Dir. 98/5/EC) is predicated on the legal profession in the Member States being self-regulating. That, however, falls a long way short of saying that the Directive requires self-regulation. We can find nothing whatever in the Directive that establishes such a requirement, let alone one which would result in any of the proposed models in the consultation paper infringing Community law.
6. Reference is also made to the CCBE Code of Conduct. This only applies to lawyers in respect of their European cross-border activities, if any. It is made binding by virtue of the Solicitors' Practice Rules and the Bar Council's Code of Conduct. The CCBE Code of Conduct contains a number of general principles including a requirement that lawyers remain independent. It does not, however, make any prescription as to how conduct should be regulated or disciplinary rules enforced. On the contrary, paragraph 1.2.2 stipulates expressly that traditions vary as between Member States:

“The particular rules of each Bar or Law Society arise from its own traditions. They are adapted to the organisation and sphere of activity of the profession in the Member State concerned and to its judicial and administrative procedures *and to its national legislation*” (emphasis added)

7. Finally reference is made to a resolution of the European Parliament of 11 December 2003 which stated:

“... the importance of ethical conduct, of the maintenance of confidentiality with clients and of a high level of specialised knowledge necessitates the organisation of self-regulation systems such as those run today by professional bodies and orders ...”

That has no binding force and it is far from clear why the conclusion flows from the premise.

8. Indeed, recent case law of the Court of Justice if anything confirms that Member States retain the power to regulate the legal profession to a very considerable degree, even down to setting fee rates. In Case C-35/99 *Arduino* the Court confirmed that the Italian system for regulating the legal profession was not an agreement between undertakings – which would fall within the purview of Article 81 which prohibits

agreements which appreciably restrict competition – but a state measure, given that the Government retained substantial decision-making power and controls. Although the Italian Government was bound under Article 3(1)(g) of the Treaty not to introduce measures which would distort competition, it was entitled to take proportionate measures for regulating the profession in the public interest, including setting fee levels for the Italian Bar. There was no suggestion that Government intervention of this kind infringed Community principles. Commissioner Monti, commenting on that judgment in a speech to the Bundesanwaltskammer in March 2003, said:

“The Arduino judgment clarifies that Member States have the right to regulate a profession. This is no surprise as in the absence of harmonisation at European level, Member States have the primary responsibility for defining the framework in which professions operate. It went on to say that *Member States can associate professional bodies in this task as long as they retain the decision-making powers and establish sufficient control mechanisms. They must not abdicate their powers to professional bodies without clear instruction and control.*”  
(emphasis added)

### **COMMUNITY PRACTICE**

9. The legal position - that Member States may play a substantial, direct role in regulating the legal profession - is confirmed by the practice. We have reviewed the position in France, Germany, Italy and Spain with local lawyers and in each case the state has very substantial, direct involvement in the regulation of the profession. The results of our review are summarised here.
10. In Germany, the profession is governed by statute, principally the Bundesrechtsanwaltsordnung (“BRO”) and the Berufsordnung für Rechtsanwälte. This is far from being merely an enabling regime. Part III of the BRO sets out in detail the rules of ethics and conduct of lawyers, as well as the manner in which they may organise themselves and practise. Disciplinary procedures are admittedly delegated to the profession, but can ultimately come before the federal courts.
11. In France law 71-1130 and decree 91-1197 set out in some detail the principles applicable to the legal profession, including most of the rules on professional conduct, the conditions for entering the profession, the powers of the various bar councils, the regulation of fees and incompatible occupations. Whilst local bar councils are empowered to adopt their own internal rules, these must be compatible with the law and decree. The administration of the rules laid down by legislation is

largely in the hands of the bar councils, subject to control by the Court of Appeal.

12. The regulation of the legal profession in Italy combines statutory and self regulatory elements: the main rules are set forth in legislative instruments, whereas the enactment of more detailed provisions, their enforcement and, more generally, the supervision on the profession is largely left to self-regulation. Legislative instruments set out the rules governing the legal profession, including the conditions for exercising the profession, some general principles on professional conduct and the sanctions for their breaches, the election and powers of the local and national bar councils and the regulation of fees and incompatible occupations. On the other hand, the bar councils (which are elected by the profession) are empowered to apply and enforce many of such statutory provisions, and have laid down a code of conduct drawn from the general principles set forth by law; in particular, disciplinary procedures are delegated to the bar councils, but can ultimately come before the Court of Cassation through appeals based on points of law, jurisdiction objections or abuse of powers.
13. In Spain, it is only very recently that provisions have been adopted regulating the legal profession, namely by Royal Decree 658/2001 of 2 June 2001. These were proposed by the National Bar Council but adopted by the government. The Royal Decree covers the conditions for admission to the profession, the governing bodies of the profession and disciplinary regulations. Disciplinary matters are enforced by the Bar Council but subject to the control of the courts.

## **HUMAN RIGHTS**

14. There is no express right to be a non-state-regulated lawyer provided for by the European Convention on Human Rights. However the independence of lawyers is generally regarded as a fundamental principle and one that would be likely to be upheld by the European Court of Human Rights. State involvement and regulation of the legal profession seems to have been accepted to some degree and therefore it is really the detail of the system which would determine whether human rights were violated. Provided that the regulatory body was demonstrably independent of government and the system provided robust safeguards to prevent executive interference with the regulatory body's functions so that lawyers were objectively free to carry on their profession regardless of governmental influence, we do not foresee any viable human rights challenge.

## OTHER INTERNATIONAL PRINCIPLES

15. The Bar Council relies on a number of other principles in the 1990 UN Basic Principles on the Role of Lawyers, in particular:

Recital 10:

“professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from ... improper restrictions and infringements ... and cooperating with governmental and other institutions in furthering the ends of justice and public interest”.

Basic Principles:

- “24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.
26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognised international standards and norms.
28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court and shall be subject to an independent judicial review.”
16. First, none of these principles is binding or fetters the UK Government in terms of the primary legislation it can introduce. Secondly, Principle 24 is concerned with the right of free association: it does not prescribe self-regulation. Thirdly, principle 28 relates to disciplinary proceedings and the need for the authority hearing such proceedings to be independent: it does not prescribe self-regulation. Fourthly, principle 26 clearly envisages (as is the case in Germany and France) that codes of professional conduct may be “established ... by legislation.” The Bar Council is unable to point to any “recognised international standards or norms” that require a regulatory body to comprise primarily the profession for fear that the independence of the profession is

jeopardised. The CCBE Code of Conduct insists on the independence of lawyers, but is not prescriptive as to how this should be achieved. Nor is there any reason in principle why a regulatory body which did not comprise mainly the profession should jeopardise the independence of lawyers from government, provided it is independent, enforces objective standards of conduct and is required to uphold the independence of lawyers. This can be done just as easily by legislation as by the legal profession, as principle 26 clearly recognises.

### **COMPETITION ISSUES**

17. We are asked to consider, on the assumption that the promotion of competition was one of the objectives which could underpin the regulatory regime, what impact the judgments of the European Court of Justice in Case C-309/99 *Wouters* and Case C-35/99 *Arduino* might have on the implementation of that objective.
18. In those two cases the Court distinguished between cases where rules of professional conduct were to be considered as State measures and where they were to be considered as decisions of associations of undertakings. In the former case (the rules for setting legal fees in Italy considered in *Arduino*), the Court found that they were State measures and consequently that the competition rules for undertakings (Articles 81 and 82 of the EC Treaty) did not apply. This was on the basis that the State laid down the general principles and retained substantial decision-making powers and powers of control. In the latter case (the rules of the Dutch Bar considered in *Wouters*), the Court found that the rules were subject to the competition rules applicable to undertakings.
19. The distinction is not clear-cut, as can be seen by comparing the two sets of facts in the two cases. If the competition aspect of the regulatory regime adopted is covered by the principles set out by *Wouters*, the competition principle would apply automatically by virtue of the application of Article 81 or the Chapter I prohibition of the Competition Act 1998 to the relevant rules. If, however, the competition aspect of the regime is covered by the principles of *Arduino*, it would be perfectly possible to enshrine the objective of the promotion of effective competition by requiring the rules to be scrutinised by the Office of Fair Trading prior to their adoption with that objective in mind.

Slaughter and May



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December 2004

Sir David Clementi  
Review of the Regulatory Framework for Legal Services in England and Wales  
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Dear Sir David

**Report on our work for the Review of the Regulatory Framework for Legal Services in England and Wales**

We are delighted to present this report which summarises our work for the Review.

You were appointed to undertake an independent review of the regulation of legal services in England and Wales.

In order to assess the various options, you needed to assess not only the qualitative advantages and disadvantages of each but also the financial implications of each.

You appointed us to help you assess the costs of the current regulatory framework; as well as the possible costs under each alternative model. We performed this assignment in accordance with the detailed scope of work we agreed with you. Our report is set out as follows:-

| Section |                         |
|---------|-------------------------|
| 1       | Scope of our work       |
| 2       | Limitations of our work |
| 3       | Summary of our findings |

Yours sincerely

Ernst & Young LLP

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## **Section 1: Scope of our work**

We were engaged by the Review Team to undertake financial data collection and analysis to aid the Team in their assessment of the various model options put forward in the Review's Consultation Paper dated March 2004. Our aim was to enable the Team to have a clearer view on the financial implications of each model.

Our work was organised into two phases, as discussed below. We agreed our approach, methodology and key assumptions for each of the phases with the Review Team.

### **Phase 1 – Cost of current regulatory framework**

The objective of Phase 1 was to collect financial information from each of the regulatory bodies on their costs of conducting regulatory activities.

In order to do this we agreed a template with the Review Team to analyse costs by regulatory function (regulatory rule-making, setting entry standards, monitoring, enforcement, complaints and discipline), by cost category (direct and indirect) and by cost type (such as employment, property). We also included key cost drivers (for example, numbers of employees, enquiries and complaints).

We sent the template to 20 institutions, identified by the Review Team as currently carrying out regulation, to complete. We asked for information from each institution for their last two financial years. We, typically with a member of the Review Team, then met with representatives of each of these institutions to obtain further understanding of the costs incurred by them in regulation, and the basis on which they completed the template.

We also asked the institutions for information on the time given voluntarily by their members to discharge regulatory functions. This gives rise to an opportunity cost that is not captured within the historic cost data which therefore understate the total cost of regulation.

The historic cost data do not fully capture senior judicial and ministerial time, and therefore understate the total cost of regulation in this respect, too.

We have relied upon the information provided to us by the institutions in the meetings and through the completed templates. We have not sought to audit or otherwise externally verify the data. Consequently, we express no opinion thereon.

## **Phase 2 – Cost of alternative models of regulation**

The objective of Phase 2 was to estimate, using the data obtained in Phase 1, the ongoing cash costs (excluding opportunity or set-up costs) of each of the Review Team’s possible alternative regulatory models.

We initially developed a high level estimate of the costs of the theoretical models and constructs, including those described in the Review’s Consultation Paper as an initial costing, based directly on the data available from the Phase 1 templates. This was a “top-down” approach, re-allocating existing costs to the bodies proposed under each model according to their function.

At the request of the Review Team, we excluded from our assessment the impact of the models on the costs of the front-line bodies’ representative functions, which are outside the regulatory framework.

As work progressed we focused, at the request of the Review Team, on two particular models – Model A and Model B+. Within each model we separated the costs of the regulatory functions dealt with in Chapter B (entry standards and training, rule making, monitoring and enforcement) from those dealt with in Chapter C (complaints and discipline). The issue we were asked to consider within Chapter B was the costs of Model A and Model B+. The issue we were asked to consider within Chapter C was the cost of a single consumer complaints body against the current system. Our cost estimates for these models underwent a series of iterations following discussions with the Review Team as to how these options might work in practice.

We supplemented our top-down approach with a (still high level) bottom-up costing for a Legal Services Board (LSB) and an Office for Legal Complaints (OLC), based on the Review Team's estimation of the LSB's and the OLC's structure and number of staff. However, we recognise that the actual costs of either a Legal Services Authority (LSA) as part of Model A or LSB as part of Model B+ would be substantially dependent on decisions taken by its Board as to how it discharges its regulatory functions.

## **Section 2: Limitations of our work**

### **Reliability of financial information collated from regulatory institutions**

The level of financial management information held by the institutions as a basis for completing the Phase 1 template varied widely. The institutions have not previously been required separately to identify the costs of regulation along the lines of the regulatory functions set by the Review Team. The institutions, therefore, developed methodologies of substantially varying degrees of sophistication, according to the information they had available. Generally, each of the methodologies involved allocating costs on the basis of estimates of the proportion of time spent by the institution or its employees on regulatory activities.

During Phase 1 we encountered a number of definitional issues:

- the classification of certain activities as regulatory or non-regulatory; and
- the allocation of costs to the specific categories of regulatory activity.

We sought to manage these issues by issuing guidance notes with the template, and through the meetings held with the bodies. However, it is possible that there is nonetheless still some inconsistency in the manner in which institutions categorised their costs.

## **Reliability of the cost estimates of alternative regulatory models**

The Review Team's work has been high level and accordingly we have not developed detailed budgets for the regulatory bodies under the proposed alternative operating models.

We have developed our cost estimates on the basis of an understanding of the current costs of conducting various regulatory activities. As such the reliability of our estimates is dependent upon the reliability of the direct and indirect costings provided by the regulatory institutions and upon a number of assumptions set out below.

### **Working assumptions**

- The underlying nature and volume of activities performed under the new model would not be substantially different from those performed under the current regulatory framework, i.e. we assume steady state operation.
- Under Model A, the direct costs currently incurred by the regulatory bodies represent a reasonable basis for estimating the costs of the regulatory functions consolidated together within a Legal Services Authority, but that there will be a 10% saving of indirect costs achieved through economies of scale in managing the infrastructure.
- Under Model B+, the costs of the front-line bodies will remain at their present level, except that additional costs have been included arising from the requirement to separate regulatory and representative functions.
- Where front-line bodies do lose regulatory functions, as well as losing the direct costs associated with those functions, over time they will also be able to eliminate allocated indirect costs. Where they are unable to do so, these costs would have to be borne by the representational functions of the front-line bodies.

By way of illustration, if, as is proposed in Chapter C, complaints were to be moved from the front-line bodies to a single Office for Legal

Complaints, the failure to eliminate 15% of the allocated indirect costs would add £2 million to the costs of the front-line bodies' representational functions.

- For the Legal Services Board and Office of Legal Complaints, for which we have conducted bottom-up costing, our work was informed by some benchmarking, based on the operating assumptions made by the Review Team and set out in the footnotes to tables 2 and 3 in the next section.
- In respect of voluntary time:
  - Analysis of the historic costs of the current regulatory system excludes the cost of the significant time given on a voluntary basis by members of the professional bodies. This assumption is also made in respect of the alternative models considered in the tables in the Summary.
  - In costing the alternative models, we have to consider whether there will be a financial cost associated with the activity currently being performed voluntarily. The professional bodies provided us with estimates of the time involved, and two provided us with an estimate of the charge-out rate at which this time might be costed. The majority of the cost relates to governing bodies and committees.
  - In respect of Chapter B costs, under Model A, we assume that whilst there would be less practitioner involvement in different levels of governance than under the previous model, there would be some ongoing involvement through advisory panels, the members of which are paid an annual fee. Some of the voluntary time would be replaced by senior management of the Legal Services Authority and this time is costed. Under Model B+, we assume that, as the majority of activity remains with the front-line regulators, there will be no significant change from

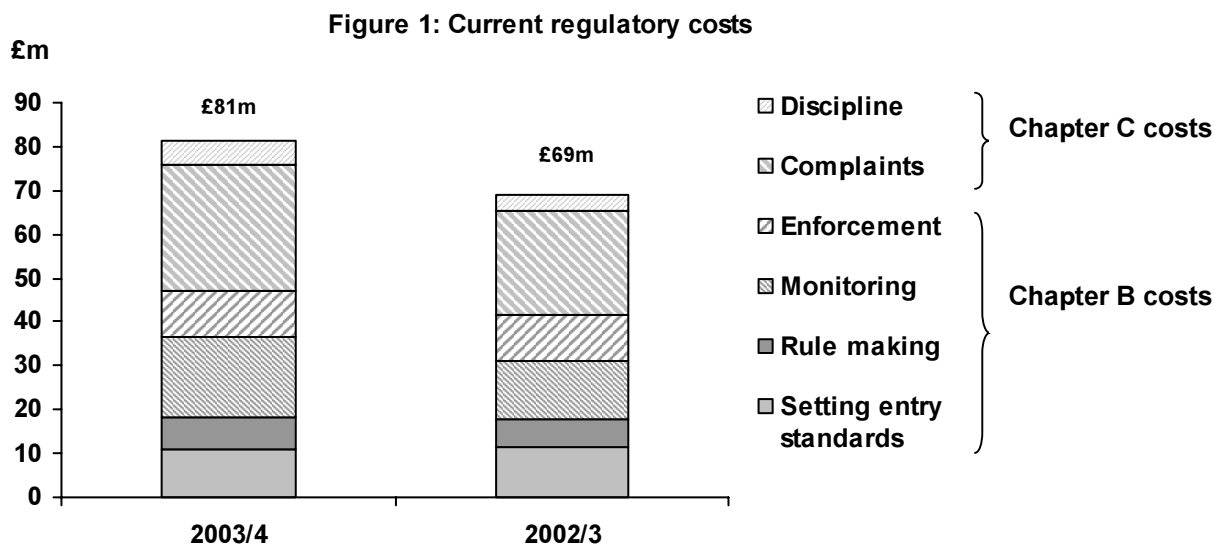
current arrangements. In either alternative model, we have not included time which continues to be given voluntarily within our cost estimates.

- In respect of Chapter C costs relating to complaints and discipline, assuming Model B+ is adopted for other regulatory functions, we assume that within a single complaints body complaints would be dealt with by full time employees of the Office of Legal Complaints (OLC). Therefore the element of voluntary time given by professionals in respect of complaints would be significantly reduced.
- Analysis of the historic costs also excludes senior judicial (other than the Master of the Rolls) and ministerial time, which cannot be reasonably costed. Under Model B+, we assume that this expertise would be delivered by senior staff and the board members of the LSB, who are included in the bottom-up costing.

## Section 3: Summary of our findings

### Costs of the current regulatory system

The aggregate of the costs reported to us by the institutions was £81m for 2003/4 and £69m for 2002/3 (an increase of 17% year-on-year). An analysis of costs by regulatory function is set out in figure 1 below. Of the £81m in 2003/4, £46m represents Chapter B costs and £35m represents Chapter C costs. Five bodies carrying out regulatory functions account for 90% of the costs. These are the Law Society, the Bar Council, the Office of the Immigration Services Commissioner, the Council for Licensed Conveyancers and the Legal Services Ombudsman. 56% of total costs are direct and 44% are indirect overhead costs.



We noted that complaints handling is the largest regulatory function accounting for c.35% (£29m) of total costs. The Law Society's complaints functions account for £23m of this cost (including £11m allocated overhead costs) and over 90% of complaints volume.

In addition to these historic costs, our work identified a significant amount of time given by legal professionals at zero cost or on an expenses only basis. The opportunity cost of this time is estimated to be in the range £7.5m -

£9.5m (assuming rates of £125 per hour to £250 per hour for that time for which we were not provided with an estimate of cost). The majority is accounted for by the Bar Council and the Law Society.

### **Estimated costs of alternative regulatory models**

We were asked by the Review Team to focus our work on the decisions to be taken in Chapter B and Chapter C. These are set out in the tables 2, 3 and 4 on the following pages. These high-level costings are in 2003/4 prices and are subject to the limitations stated in section 2.

Given the conclusions of the Review, summarised in the Foreword, the cost of the proposed complete regulatory system, comprising front-line bodies, an oversight Board (LSB) and an Office for Legal Complaints (OLC) would amount to approximately £79.5 million. This compares with the cost of the current system of approximately £81m. The key drivers of the difference are:

- The additional cost of a Legal Services Board, which is offset by:
  - Savings from the rationalisation of existing oversight functions; and
  - Savings from a single complaints body, compared to the current system.
- These are suggested by the bottom up costing of the OLC as arising through the rationalisation of numerous complaints functions into one body, and savings in indirect costs.

**Table 1: Complete regulatory system**

|   |               |
|---|---------------|
| <b><i>Current cost</i></b>  | £81m          |
| <b><i>Combined cost of proposed model</i></b>                     |               |
| Chapter B functions (New oversight body and front-line functions) | £50.5m        |
| Office for Legal Complaints                                       | £23m          |
| Discipline  | £6m           |
| <b>Total</b>  | <b>£79.5m</b> |

## Chapter B costs

**Table 2: Chapter B functions**

| Body   | Notes   | Estimated annual costs |
|--|---|------------------------|
| <b>Model A</b>   |   |                        |
| Legal Services Authority<br>(excluding complaints and disciplinary functions)                  | (1)   | £45m                   |
| Replacement cost of work previously done voluntarily   | (2)   | £2m                    |
| Total  |   | £47m                   |
| <b>Model B+</b>  |   |                        |
| Legal Services Board   | (3)   | £4.5m                  |
| Professional bodies' regulatory functions<br>(excluding complaints and disciplinary functions) | (4)   | £46m                   |
| Total  |   | £50.5m                 |
| <b>Notes and assumptions</b>   |   |                        |
| (1)  | All of the current direct costs of regulatory activities would continue to be incurred by the LSA, without taking account of any potential efficiency savings.<br><br>Assumed saving of 10% of current indirect costs, as a result of realising some economies of scale in managing the infrastructure.<br><br>Includes the cost of a Chief Executive and Board with non-executive directors. |                        |
| (2)  | As explained in Section 2, some time may continue to be given voluntarily and this time is not included here. Some may be replaced by senior management time or by advisory panels, the members of which receive a fee. The figure represents an estimate of this cost.   |                        |
| (3)  | Based on assumed headcount for the Legal Services Board of 55 staff and 14 Board members.   |                        |
| (4)  | Based on the current costs of carrying out these functions. Also includes the possible costs to professional bodies of segregating the governance of their regulatory and representative functions.   |                        |

## Chapter C costs

**Table 3: Complaints**

|                                 | Notes  | Estimated annual costs |
|---------------------------------|--|------------------------|
| <b>Current costs</b>            |  |                        |
| Oversight functions (LSO, LSCC) |  | £3m                    |
| Front-line functions            |  | £26m                   |
| Total                           |  | £29m                   |
| <b>Costs of proposed model</b>  |  |                        |
| Office for Legal Complaints     | (1)  | £23m                   |
| <b>Notes and assumptions</b>    |  |                        |
| (1)                             | The LSO and LSCC would no longer be required under this model but parts of their roles have been included in the cost of the complaints body, represented by senior advisory time. |                        |
|                                 | Based on assumed headcount for the Office for Legal Complaints of 360 staff and 9 board members.   |                        |

**Table 4: Discipline**

|                              | Notes  | Estimated annual costs |
|------------------------------|--|------------------------|
| <b>Current costs</b>         |  |                        |
| Discipline                   | (2)  | £6m                    |
| <b>Notes and assumptions</b> |  |                        |
| (2)                          | Discipline remaining with professional bodies. Based on the current costs of carrying out these functions. |                        |

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*Editorial notes: wherever 'he' appears in the text, both 'he' and 'she' should be read. Where quotations are included in the text and a reference is not given, the text is taken from the relevant response to the Consultation Paper. References to 'the General Council of the Bar', 'the Bar Council' and 'the Law Society' are to those bodies in England and Wales.*

This Report and the Consultation Paper are also available on the Review website at:-

[www.legal-services-review.org.uk](http://www.legal-services-review.org.uk)

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