

BAR  
STANDARDS  
BOARD

REGULATING BARRISTERS

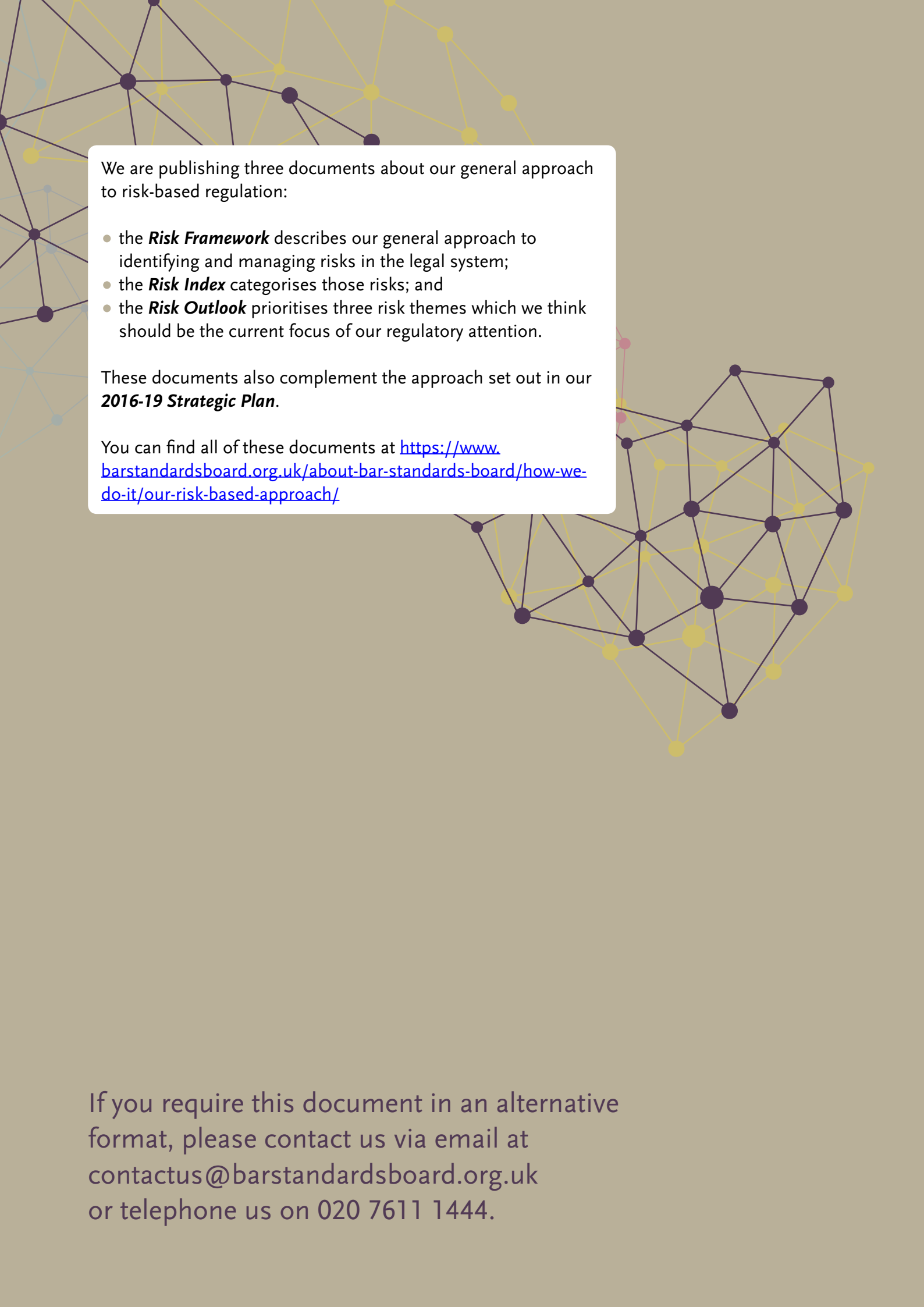
# RISK

INDEX

A catalogue of risks  
to our regulatory  
objectives

APRIL 2016



A background network diagram with nodes and connecting lines in purple, yellow, and blue. A white text box is overlaid on the left side of the page.

We are publishing three documents about our general approach to risk-based regulation:

- the **Risk Framework** describes our general approach to identifying and managing risks in the legal system;
- the **Risk Index** categorises those risks; and
- the **Risk Outlook** prioritises three risk themes which we think should be the current focus of our regulatory attention.

These documents also complement the approach set out in our **2016-19 Strategic Plan**.

You can find all of these documents at <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-risk-based-approach/>

If you require this document in an alternative format, please contact us via email at [contactus@barstandardsboard.org.uk](mailto:contactus@barstandardsboard.org.uk) or telephone us on 020 7611 1444.

# Regulatory Risk Index

## About this document

We publish this catalogue of regulatory risks so that those we regulate, and everyone else with an interest in our approach, can better understand the rationale behind our activities.

The Index sets out the things that we have identified in the market that could result in poor outcomes for the public and consumers. Where these problems arise in the market, they get in the way of us delivering our regulatory objectives and are therefore known as regulatory risks.

Our Index helps us to structure our regulatory priorities. These priorities inform our strategy and our corporate objectives.

We also consider other types of risk – for example, the things we may do (or not do) as a regulator which can get in the way of us delivering these corporate objectives. We refer to these as corporate risks and they are not the subject of this Regulatory Risk Index. We also manage separately any significant risks that could impact upon delivery of our strategy.

## The Legal Services Act Regulatory Objectives

- 1 Protecting and promoting the public interest
- 2 Supporting the constitutional principle of the rule of law
- 3 Improving access to justice
- 4 Protecting and promoting the interests of consumers
- 5 Promoting competition in the provision of services
- 6 Encouraging an independent, strong, diverse and effective legal profession
- 7 Increasing public understanding of the citizen's legal rights and duties
- 8 Promoting and maintaining adherence to the professional principles:
  - independence and integrity
  - proper standards of work
  - acting in a client's best interests
  - duty to the court: acting independently in the interests of justice
  - confidentiality of client affairs

# How we use the Risk Index

Some of the risks in our Index focus on the causes of what may go wrong. Others focus on the consequence, impact, or on specific events that are reported to us.

By starting to understand where issues are occurring and the relationships between different risks, we can work to understand and treat the cause of the problem rather than just the symptoms.

If you want to read more about the way in which we use the Index to inform our decision making as a regulator, our **Regulatory Risk Framework** is a good place to start ([see our website](#)).

## Keeping our Index relevant

The legal services market is continuously changing, and we will regularly update our Index to reflect this.

If you think there are issues that the Bar Standards Board should be focused on that are not reflected in this Index, we would like to hear from you and we will consider whether they should be added into this list.

Once a risk joins our Index, we will start to systematically capture information to better understand it and we will consider it as we set our priorities for regulatory activity.

The information has been produced by the Regulatory Risk team and approved by our Board.

Contact us on [contactus@barstandardsboard.org.uk](mailto:contactus@barstandardsboard.org.uk) if you have comments or suggestions for our next update to the Index.



# Regulatory Risk Index – individual risks by category

We have identified five categories of risk to our regulatory objectives. These categories cover the risks present within the legal services market.

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The pages which follow set out the risks within each of these categories in turn.

- 1: Client service and delivery
- 2: Ethical conduct
- 3: Competence to practise
- 4: Management and administration
- 5: Market risks

## Risk Category 1: Client Service and Delivery

These risks relate to the potential for things to go wrong for clients.

Ref	Risk	Description
1.1	Failure to provide a proper standard of service	The risk that a barrister / chambers / entity fails to provide a proper standard of client care or quality of work to clients
1.2	Failure to give clear information about fees	The risk that clients are not given clear information about fees
1.3	Inadequate complaint handling	The risk that a barrister / chambers / entity fails to deal properly with client complaints
1.4	Breach of confidentiality	The risk that client information is accessed by unauthorised individuals
1.5	Disorderly closure	The risk arising from a sole practitioner / chambers / entity failing to close their practice in a proper and orderly manner

## Risk Category 2: Ethical Conduct

These risks relate predominantly to the conduct of barristers or other regulated individuals (such as managers, heads of legal practice, heads of finance and administration) and entities or chambers.

Ref	Risk	Description
2.1	Dishonesty	The risk that a barrister / other regulated individual / entity acts in a dishonest way
2.2	Failure to act with integrity	The risk that a barrister / other regulated individual / chambers / entity acts in a way that demonstrates a lack of integrity
2.3	Lack of independence	The risks presented by the need to balance competing professional commitments (commercial, client, regulatory and legal) with the duty to act independently in the interests of justice
2.4	Misleading	The risk that a barrister / chambers / entity acts in a deliberate or reckless way which is misleading to a court, client, or third party
2.5	Conflict of interests	The risk that a barrister / entity acts regardless of a conflict of interests
2.6	Discrimination, victimisation, harassment or bullying	The risk that a barrister / other regulated individual / chambers / entity discriminates, harasses, victimises or bullies consumers, employees, members of chambers, pupils and others
2.7	Failure to co-operate or comply	The risk that a barrister / other regulated individual / chambers / entity fails to co-operate or comply with relevant regulators or ombudsmen
2.8	Financial impropriety	The risk that a barrister / other regulatory individual / chambers / entity is knowingly or unknowingly involved in financial crime or impropriety, such as money laundering or terrorist funding

## Risk Category 3: Competence to Practise

These risks relate to the suitability of an individual to deliver legal services, including their competence, fitness and relevant regulatory permissions. The category also reflects potential issues within the training market which could impact upon barrister competence.

Ref	Risk	Description
3.1	Inadequate training and preparation for practice	The risk that training is not available or is not of sufficient quality to prepare barristers to be competent in delivering the services required of them
3.2	Lack of legal competence	The risk that a barrister lacks the necessary legal competence to perform their role
3.3	Lack of cultural competence and people skills	The risk that barristers or other individuals engaged in provision of services demonstrate lack of social and cultural insight, inter-personal communication skills or empathy
3.4	Lack of financial or administrative competence	The risk that a barrister / other regulated individual / chambers / entity lacks the necessary competence to manage financial or administrative matters appropriately
3.5	Fitness to practise	The risk that a barrister / other regulated individual is not fit to deliver legal services as a result of a physical, mental or other condition affecting welfare
3.6	Authority to practise	The risk that a barrister / entity fails to act within regulatory or statutory requirements

## Risk Category 4: Management and Administration

These risks relate to potential problems in the workplace, particularly in relation to the management, governance, controls and culture in which barristers or other regulated persons are working. These apply whether part of a regulated entity, within chambers or in an employed context.

Ref	Risk	Description
4.1	Viability	The risk that a sole practitioner / chambers / entity / organisation is de-stabilised by organisational, financial or governance events
4.2	Ineffective systems and controls	The risk that the operational systems and controls, risk management and governance of a sole practitioner / chambers / entity / organisation are ineffective or do not meet relevant legal requirements
4.3	Information & cyber security	The risk that computers, programmes or information are damaged, or subject to unauthorised access
4.4	Poor recruitment, retention and promotion practices	The risk that recruitment and promotion practices are unfair or do not support a competent and professional workforce
4.5	Inadequate supervision of workforce	The risk that the workforce is inadequately supervised, resulting in a lack of quality assurance, limited feedback or unfair allocation of work
4.6	Supply chain risks	The risk arising from the service, performance, ethical conduct or compliance of third party outsourcers, suppliers, or training providers
4.7	Workplace culture	The risk that an unhealthy workplace culture encourages or enables poor behaviours impacting upon dignity, respect or well-being, quality of service or ethical standards





## Risk Category 5: Market Risks

These risks describe markers of health of the barrister market itself. These factors may go on to impact individual barristers, chambers or entities and could result in other risks from the other categories.

Ref	Risk	Description
5.1	Failure to meet consumer demand	The risk that the legal services market does not understand or adequately provide for consumer needs
5.2	Lack of public awareness of legal rights and duties	The risk that members of the public are not sufficiently aware of or do not adequately understand their legal rights and duties
5.3	Poor public perception of legal services	The risk associated with a decline in public confidence in legal services
5.4	Affordability or value concerns	The risk that legal services are unaffordable, are perceived to be unaffordable or perceived not to represent sufficient value for money
5.5	Lack of accessible, quality market information to inform consumer choice	The risk that consumers do not have timely access to reliable information by which to identify their legal needs and choose an appropriate provider to meet those needs
5.6	Lack of diverse and representative profession	The risk arising from failure adequately to reflect diversity of the public within the regulated community
5.7	Excessive barriers to supply of legal services	The risk that cost or other obstacles prevent good quality barristers and entities from entering or remaining in the market
5.8	Competitive concerns	The risk of anti-competitive practices occurring within the legal services market, such as collusion, price fixing or unlawful price discrimination

# External factors

**The legal services market is constantly affected by a range of external factors. Some of these may be anticipated from some distance and the impacts may be well understood. Others may appear at short notice or have an unpredictable impact on the market and its regulatory risks. These changes tend to be specific to a particular time and set of circumstances.**

With this in mind, we need to constantly review the wider environment to identify changes that could affect the market. Changes that are significant will be monitored and escalated where necessary. Rather than placing these factors into our Index, we consider them separately. This gives us the flexibility to consider factors at an appropriate level of granularity for our regulatory activities and prevents an excessive number of updates to this Index which covers the day to day regulatory concerns we face.

When identifying external factors, we will consider developments across the following areas:

- political changes
- economic context, financial considerations
- social and cultural factors, including globalisation
- technological developments
- legal changes
- other environmental concerns
- impact of the media or other key influencers on the market
- developments by other regulators or in the sections of the market they regulate within England and Wales
- the regulation of legal professionals in other jurisdictions





## What next?

If you have a shared interest in any of these issues and want to discuss further, or you have suggestions for risks that you think ought to be reflected in this list, please do get in touch using [contactus@barstandardsboard.org.uk](mailto:contactus@barstandardsboard.org.uk)

To learn more about how this Index is used in practice by the Bar Standards Board, read our ***Regulatory Risk Framework***.

To read more about our latest priority risk themes, see our ***Risk Outlook***.

Both of these publications are available [on our website](#).



## Contact us

If you have questions about our risk-based approach, or would like to provide us with information about any specific risk concerns that you have, please do get in touch with us.

Write to us:

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London WC1V 7HZ

Phone us: 020 7611 1444

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