

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Regulatory Risk Index

2022

The Bar Standards Board (BSB) is a risk-based regulator. This means we focus on the risks that pose the greatest threat to our regulatory objectives. There are eight regulatory objectives and meeting these is central to the work of the BSB.

What is the Regulatory Risk Index?

The Regulatory Risk Index sets out problems we have identified that could result in poor outcomes for consumers and the wider public. These problems can prevent us from fully delivering our regulatory objectives and are known as regulatory risks.

There are nine regulatory risks in the Index. Each has within it several indicators that we will monitor to inform our assessment of that risk. Each is also linked to at least one regulatory objective, as detailed in the annex to this Index.

How is the Regulatory Risk Index used and maintained?

The Regulatory Risk Index is at the heart of the BSB and its work. We use the Index to ensure we are aware of regulatory risks and allocate our resources to initiatives that address the greatest risk to our regulatory objectives.

Identifying and organising risks however is a complex task. We must ensure we understand developments in the market, identify problems as they emerge and then organise our resources around them in an appropriate and effective way.

The Regulatory Risk Index therefore is a living document. We regularly review and update it, ensuring it remains fit for purpose.

We publish this index of risks to enable us to be transparent and to allow those with an interest in our work to better understand our approach. We will seek to publish updates to this Index periodically, or when significant changes are made.

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

Risk number	General Risk	Description	Examples of indicators
1	Failure to provide a proper standard of service to clients	The risk that a member of the regulated community fails to provide a proper standard of client care or quality of work to clients	<p>Failure to provide a proper standard of client care</p> <p>Failure to provide clients with clear information about price, service and redress</p> <p>Failure to handle complaints appropriately</p> <p>Failure to maintain client confidentiality</p> <p>Well-being concerns, including mental health and financial pressures, have an adverse effect on the quality of services provided to clients</p>
2	Unethical conduct	The risk that the conduct of a member of the regulated community falls below the ethical standards expected of them	<p>General</p> <p>Acts in a dishonest way</p> <p>Acts in a way that demonstrates a lack of integrity</p> <p>Discriminates, harasses, bullies or victimises consumers, employees, members of chambers, pupils and others</p> <p>Fails to co-operate or comply with relevant regulators or ombudsmen</p> <p>Is involved in financial crime or impropriety, such as money laundering, terrorist funding, or unlawful activities in relation to fees</p>
3	Lack of professional competence	The risk that a member of the regulated community lacks the levels of competence expected of them or is otherwise unfit to provide a proper standard of client care or quality of work	<p>Barristers' legal competence (legal knowledge: knowledge of the law and legal skills: courtroom advocacy)</p> <p>Barristers' non-legal competence (practical (soft) skills)</p> <p>Lacks the necessary competence to manage financial or administrative matters appropriately</p> <p>Well-being concerns, including mental health and financial pressures, have an adverse effect on retention & progression</p> <p>Fails to act in accordance with the practising certificate requirements in the Handbook or the Authority to Practise requirements in the Legal Services Act 2007</p> <p>The risk arising from barristers' not taking-up technology affecting their ability to perform professionally</p>
4	Failures in Practice Management (including administration of a practice and workplace culture)	The risk that ineffective or inadequate practice management gives rise to regulatory concerns	<p>A practice is de-stabilised by organisational, financial or governance events</p> <p>Operational systems and controls are ineffective or do not meet relevant regulatory or legal requirements</p> <p>Unauthorised use, loss, damage, disclosure or modification of information</p> <p>Supply chain problems impact client services</p> <p>Recruitment practices are unlawful or are contrary to regulatory requirements</p>

Risk number	General Risk	Description	Examples of indicators
			<p>Retention & progression: poor practises result in the failure to retain good quality barristers</p> <p>Pupillage - Poor supervision of pupils</p> <p>Lack of mentoring or support for others; limited feedback, little or no engagement with colleagues</p> <p>Unfair work allocation</p> <p>Policies and procedures are insufficient to respond to bullying, discrimination or harassment</p> <p>The loss of physical chambers/increase in remote working, could adversely affect the support infrastructure chambers provides for effective pupillage</p> <p>Failure to close a practice in a proper and orderly manner</p>
5	Failure in training provision	Training is not available or is not of sufficiently high standard to prepare barristers for practice	<p>Vocational component of Bar training – not of sufficiently high standard to prepare barristers for practice</p> <p>Vocational component of Bar training – fails to provide flexible, affordable and accessible training options</p> <p>Pupillage – not of sufficiently high standard to prepare barristers for practice</p> <p>Pupillage – fails to provide flexible, affordable and accessible training options</p> <p>CPD – lack of availability of CPD training</p> <p>Training and CPD – failure to reflect the changing needs of barristers in response to innovation, technology and new ways of working</p> <p>Training – the effect on the range and breadth of training options for students if training providers are adversely affected by changes in market forces</p> <p>Future arrangements for computer-based testing by Bar course training providers</p>
6	Profession fails to reflect the diversity of society	Low levels of public confidence due to a profession that is not representative of wider society	<p>Recruitment – failure to adequately recruit diverse barristers and properly reflect the diversity of the public served by the regulated community</p> <p>Retention – socio economic disadvantage preventing women, pupils and barristers from ethnic minority backgrounds from remaining in the market</p>

Risk number	General Risk	Description	Examples of indicators
			<p>Progression – socio economic disadvantage preventing women, pupils and barristers from ethnic minority backgrounds from progressing in the market</p> <p>The culture of the Bar is not inclusive and negatively affects the wellbeing of students, pupils and barristers</p> <p>Publicly-funded areas of the Bar cease to be viable or sustainable</p> <p>Well-being concerns, including mental health and financial pressures, have an adverse effect on our aim of encouraging a diverse legal profession</p>
7	Access to justice failures	Consumers do not have access to, or do not have confidence in, the profession	<p>Consumers failure to identify their legal problems</p> <p>Consumers failure to navigate the legal service market to access the help and support they need</p> <p>Poor public perception of the regulated profession</p> <p>Consumers cannot afford help with their legal problems</p> <p>The supply of barristers fails to meet consumer need</p> <p>Digital inclusion challenges</p> <p>The use of unregulated third parties puts consumers at financial risk</p>
8	The market is uncompetitive or does not work well	The market is not competitive or does not work well for consumers and the public interest	<p>Lack of flexibility in BSB regulation to recognise and enable technological benefits</p> <p>The profession does not adopt LawTech that could advance the regulatory objectives</p> <p>The profession does not adopt LegalTech that could advance the regulatory objectives</p> <p>Anti-competitive practices</p>
9	Professional Standards	The regulated profession does not meet the specified professional principles in the Legal Services Act	<p>Maintenance of legal knowledge and skills</p> <p>Maintenance of practical knowledge and skills</p> <p>Ability to make effective use of technology</p> <p>Continuing professional development reflects legal and practical skill needs</p> <p>Well-being supports effective delivery of a professional service</p>

Annex – Risks Mapped to Regulatory Objectives

General Risk		Failure to provide a proper standard of service to clients	Unethical Conduct	Lack of professional competence	Failures in Practice Management	Failure in training provision	Profession fails to reflect the diversity of society	Access to justice failures	The market is uncompetitive or does not work well	Professional Standards
Regulatory Objectives	Protecting and promoting the public interest	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Supporting the constitutional principle of the rule of law	✓	✓	✓		✓				✓
	Improving access to justice	✓		✓	✓		✓	✓	✓	
	Protecting and promoting the interests of consumers	✓	✓	✓	✓		✓	✓	✓	✓
	Promoting competition in the provision of services	✓		✓	✓			✓	✓	
	Encouraging an independent, strong, diverse and effective legal profession	✓	✓	✓	✓	✓	✓	✓		✓
	Increasing public understanding of the citizen's legal rights and duties	✓						✓	✓	
	Promoting and maintaining adherence to the professional principles	✓	✓	✓	✓	✓				✓