

BSB Strategic Plan

2019-2022

The BSB regulates barristers and specialised legal services businesses in England and Wales, in the public interest

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Foreword by the Chair



I am pleased to introduce the Bar Standards Board's (BSB's) Strategic Plan for the period starting in April 2019 and ending in March 2022.

This Plan follows on from a strategic period which saw us introduce a number of new policy initiatives such as our reforms to the rules governing Bar training, to our disciplinary and enforcement processes, and our new transparency rules in response to the report of the Competition and Markets Authority. Our key priority must now be to ensure that those reforms are successfully implemented and evaluated so the next three years will involve fewer new policy initiatives, fewer consultations and fewer rule changes.

It will also be a period in which we will continue to focus much of our energy and resources on our **core regulatory activities**.

As the regulator of the Bar in England and Wales, these core activities include, amongst other things, overseeing the education and training requirements for becoming a barrister, monitoring the standards of conduct for barristers, and assuring the public that everyone we authorise to practise is competent to do so. We do this by supervising the practice of barristers and the specialist legal services businesses whom we regulate. We deal with any information we receive which

might indicate that those we regulate may not be following our rules and where necessary, we take appropriate regulatory action. This day-to-day work accounts for most of what we do.

We also want to examine some important areas, such as **how technology is changing legal practice and the justice system**, and the impact of other developments, including the **changes to legal aid**, on the achievement of our statutory objectives.

This Plan also emphasises our duty **to promote a strong and diverse profession**. Our work alongside the profession to make sure that the Bar fully represents the society it serves will continue. There has been much progress in this area in recent years, but more needs to be done, including in the areas of our work designed to eliminate all forms of discrimination and harassment at the Bar.

During this three-year strategic period, we are also committing **to reviewing the BSB Handbook** – the document which includes the Code of Conduct for barristers and the rules with which they must comply. We want to make sure that it remains fit for purpose, relevant and accessible.

All the above are reflected in our three strategic aims for 2019-22 which are:

- delivering risk-based, targeted and effective regulation;
- encouraging an independent, strong, diverse and effective legal profession; and
- advancing access to justice in a changing market.

You can read more about these aims and how we decided them in the remainder of this document.

We base all our regulatory activities – including how we agree our strategic priorities - on **risk**. We take an **evidence-based approach** to determining the priority risks and allocate our resources where we think they would be most effective in addressing them. So if you want to gain a deeper understanding of how we settled on the strategic priorities outlined in this Plan, you should read our latest [Risk Outlook](#) on the market for barristers' services which we published simultaneously with this Strategy.

We are committed to providing **value-for-money** to the profession which funds us in everything that we do. We practise sound financial management so that we limit our demands on the share of their Practising Certificate Fees that comes to us.

We seek to regulate in a way that is **transparent, accountable, proportionate, consistent** and **targeted**. I hope you agree that this Strategic Plan is a good foundation from which to do this over the next three years.



Baroness Blackstone,

Chair of the Bar Standards Board

1. Introduction

As the regulator of the Bar in England and Wales, our strategic aims for the 2019-22 period reflect the key risks that we have identified in the market for barristers' and advocacy services. These have played a significant role in helping us to prioritise our resources during the period of this Strategic Plan.

We sought views on these risk themes and our strategic aims during [a consultation](#) in late 2018. This Plan reflects the Board's consideration of the responses we received to the consultation.

This Strategic Plan should be read in conjunction with our [Risk Outlook](#) on the market for barristers' services, because the risk themes which we have identified in the Outlook are the basis on which we have prioritised our work for the 2019-22 strategic period.

The three risk themes in the Outlook are:

- working cultures and professional environment inhibit an independent, strong, diverse and effective profession;
- innovation and disruption in the legal services market offer threats and opportunities for the profession and for the public; and
- affordability and lack of legal knowledge threaten access to justice.

The Risk Outlook provides the evidence for why we believe these risk themes are so significant, and why we are focusing our regulatory attention on them in the period ahead.

You can read more about our approach to risk-based regulation including information about how we categorise and assess risks in section 3 of this Plan and [on our website](#).

Our strategic aims for 2019-22 are:

- delivering risk-based, targeted and effective regulation;
- encouraging an independent, strong, diverse and effective legal profession; and
- advancing access to justice in a changing market.

This Strategic Plan outlines the regulatory activities we propose to undertake to underpin these aims, and their expected outcomes. It also explains that we plan to focus much of our attention during 2019-22 on implementing and consolidating the policy work we have already undertaken. This includes our reforms to the rules governing education and training for the Bar, our responses to the Competition and Markets Authority's (CMA's) market study of legal services, and the introduction later this year of our new Independent Decision-making Body (IDB) which is part of our broader changes to modernise our regulatory decision-making.

Our day-to-day work to regulate the Bar will continue during 2019-22. This includes supervising barristers' chambers, assessing barristers' professional conduct and taking appropriate disciplinary action against barristers who breach the Code of Conduct set out in the BSB Handbook, complying with statutory equality and diversity responsibilities, and a range of tasks associated with overseeing the qualification of new barristers.

You can read a full list of our planned high-level regulatory activities within section 5 of this document. Highlights from these planned activities include:

- implementation and evaluation of the Future Bar Training reforms;
- a proportionate and targeted review of the BSB Handbook to ensure that it remains fit for purpose, relevant and accessible;
- implementing our equality and diversity action plans, working in partnership with others;
- understanding the well-being of the profession and the way in which it influences our approach to regulation;
- research and evidence gathering on the changing shape of the legal services market and of the delivery of services by barristers (and in particular the impact of legal aid reform and technology); and then, refining our regulatory approach to meet the risks and opportunities identified; and
- contributing to public legal education so that the public have better access to information about the legal sector, barristers and the services that they provide.

For each year of this Strategic Plan, we will publish an annual Business Plan to outline in more detail which activities we will undertake and when. The 2019-20 Business Plan is available [on our website](#).

2. Background to the strategy and its development

The BSB has changed since we published our last Strategic Plan in 2016.

Our Governance Reform Programme has devolved regulatory decision-making to the Executive, cutting bureaucracy and improving our ability to be flexible.

Other regulatory reforms such as changes to our supervision activities, oversight of Continuing Professional Development (CPD), and implementation of both entity and alternative business structure (ABS) regulation have already been integrated into our business as usual activity. Further programmes of reform such as Future Bar Training (FBT) and Modernising regulatory Decision Making will be completed shortly and implemented during 2019.

2016-19 was a period of change for the BSB. This next strategic period is an opportunity to consolidate these changes and evaluate the impact of our regulatory interventions, whilst continuing to evolve and to improve our regulation within the resources we have available.

In arriving at the three strategic aims and the activities which we will undertake to

meet them, we have been mindful of the need to restrict ourselves to areas which are within our clear regulatory control or direct influence. For example, “advancing access to justice in a changing market”, is a very broad but vital aim which is also shared by many other organisations including the other legal regulators. For these reasons, our work in this area will focus only on aspects that we can influence as the regulator of the Bar in the hope that if we are successful in our sphere of influence, this will play a part in improving access to justice more broadly.

Our strategic aims and the scope of our planned regulatory activities to bring them about have been set against the budget we are likely to have available to us during the three years of this Strategic Plan. This is an important point of context when considering our aims, because, as always, we aim to restrict any increases in the amount of funding we raise from Practising Certificate Fees (PCFs) to the minimum necessary to discharge our responsibilities and to do our work properly.

3. Risk-based regulation

The overriding aims of the BSB – and therefore the guiding force for our Strategic Plans - are set by the Regulatory Objectives laid down in the Legal Services Act 2007. We share these Regulatory Objectives with the other legal services regulators. They are:

- 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 citizens' legal rights and duties; and
- promoting and maintaining adherence to the professional principles.

The professional principles are that:

- authorised persons should act with independence and integrity;
- authorised persons should maintain proper standards of work;
- authorised persons should act in the best interests of their clients;
- persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court,

by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and

- that the affairs of clients should be kept confidential.

The Legal Services Act requires us to regulate in a way that is transparent, accountable, proportionate, consistent and targeted. We also have a statutory responsibility under the Regulators' Code to base our regulatory activities on risk, taking an evidence-based approach to determining the priority risks, and allocating our resources where we think they would be most effective in addressing those priority risks.

To achieve this, we are constantly monitoring the market for barristers' services. We identify all the potential risks that could prevent the Regulatory Objectives from being met and focus our attention on those risks that we think pose the biggest threats to the public interest. We then take action either to try and prevent those risks from occurring in the first place, or to reduce their impact, or to deal with any risks that have already occurred.

Our Regulatory Risk Framework describes how we approach the delivery of our Regulatory Objectives. We have then categorised those things which can go wrong in the delivery of these services in our Regulatory Risk Index. We also publish a Regulatory Risk Outlook which presents evidence for the risk themes we consider will be most significant in the coming years, which in turn, helps us determine the areas which require most of our regulatory attention.

4. Additional statutory duties

In addition to the Regulatory Objectives in the Legal Services Act 2007, the BSB is subject to a number of other statutory duties which must be taken into account when we prioritise our strategic aims.

The BSB (as the independent body through which the General Council of the Bar carries out its regulatory functions) is a public body for the purposes of the Equality Act 2010 and is bound by, and

committed to, meeting the requirements of the general, and specific, public sector equality duties. You can read more about how we respond to these duties in our Equality and Diversity Strategy 2017-19.

We also have an oversight regulator, the Legal Services Board, which sets out the standards with which we must comply.

5. Our Strategic Aims – 2019-22

The aims for our 2019-22 Strategic Plan are:

Aim 1 – Delivering risk-based, targeted and effective regulation.

This aim is premised on the considerable changes which the BSB has made to its regulatory approach in the current strategic period. It recognises there must be a period of consolidation, allowing regulatory reforms and new business processes to bed-in, and to have the impact of those reforms monitored and evaluated. The focus here is thus on the efficient delivery of our core regulatory activities and the management of our corporate performance and governance.

This aim includes several high-priority objectives that are essential to good regulation such as evaluation activities for our major regulatory interventions, a review of our approach to supervision and an update to chambers' risk-ratings. We will also continue, under this aim, to review and refine our regulatory approach and governance to ensure that our regulation is accessible, proportionate and targeted, and our ways of working are such that we deliver high-quality, agile regulation. This will include a review of the BSB Handbook and its role in providing proportionate regulation for barristers.

Activities

Broad activity areas under this aim will include:

- core regulatory activity including enforcement and authorisation;

- implementation and evaluation of the Future Bar Training reforms and the Authorisation Framework under which training providers will be authorised by the BSB;
- a proportionate and targeted review of the BSB Handbook to ensure that it remains fit for purpose, relevant and accessible;
- improving the way in which we communicate with the public;
- a refresh of the risk profile of chambers used to determine the level of supervision each one requires; and
- completion of our governance reform programme, and the delivery of our corporate services function.

Outcomes

In the light of these activities, at the end of the three-year strategy we expect to have:

- an agile and proportionate approach to how we regulate so that we can continue to maintain good levels of performance against the standards we set for ourselves;
- an updated approach to supervising barristers - and the chambers and practices within which they operate - that encourages them to meet the regulatory and ethical standards we expect of them and limits our regulation to where the evidence we have collected indicates it is most needed;

- implemented changes to the system for educating and training barristers and put in place an Authorisation Framework that enables us to accredit and supervise training providers and the limited number of training pathways permitted within the new Bar training rules to qualify as a barrister;
- have a BSB Handbook that is both accessible and proportionate whilst providing clarity to barristers about what we expect of them; and
- a governance structure that reflects good practice, knows how the organisation is performing and provides rigorous and evidence-based management and challenge.

Aim 2 – Encouraging an independent, strong, diverse and effective legal profession

The Bar is not yet fully representative of the wider population. We have made progress over the last three years towards understanding the diversity of the barrister profession but there is more work to be done. There is compelling evidence that discrimination and harassment are a problem for many in practice.¹ There is growing understanding of the potential impact that the culture of the Bar may have on opportunities for barristers to develop and make progress in their careers.

Through this strategic aim we will continue to improve our understanding of the factors that influence diversity within the profession and the role that we, as the regulator, can play to help improve diversity. We will also seek to understand the impact that the pressures of practice at the Bar have had on professional standards and competence. In particular, we will want to make sure that our regulatory arrangements that have an impact on wellbeing and culture at the Bar are both supportive and proportionate and do not stand in the way of professional accountability and responsibility or duplicate the work of others, such as the Bar Council.

Activities

Broad activity areas under this aim will include:

- implementing our equality and diversity action plans, working in partnership with others;
- understanding the well-being of the profession and the way in which it influences our approach to regulation; and

¹ See the most recent Barristers Working Lives publication by the Bar Council

- a more nuanced approach to regulation in the light of this understanding and in our supervision of chambers, including for example piloting new approaches to handling incidents of harassment (including sexual harassment).

Outcomes

In the light of these activities, we will at the end of the three-year strategy expect to:

- understand the factors that influence diversity at entry to, and within, the profession and have put in place regulation which helps support diversity at the Bar and removes barriers to entry and progression;
- have in place our new approach to regulating incidents of harassment;
- have evidence of the level of compliance with regulatory requirements relating to equality and diversity and have in place targeted regulatory action to address areas of high-risk and non-compliance;
- be seen as a regulator that influences, directly or indirectly, change in the diversity of the profession and which has constructive relationships across the sector to support us in that aim;
- have established regulatory arrangements that enable us to respond positively and proportionately to the demands of the changing culture and diversity of the profession; and
- have in place staff that are trained and skilled, and regulatory arrangements that enable us, to respond positively and proportionately to the demands of the changing culture and diversity of the profession.

This aim addresses in particular the first theme identified in the new Risk Outlook: “Working cultures and professional environment inhibit an independent, strong, diverse and effective profession”.

Aim 3 – advancing access to justice in a changing market

Promoting access to justice is an important area for the BSB as a public interest body and is one of our statutory Regulatory Objectives. But the BSB is only one (small) player in a complex policy environment and has a remit with specific boundaries as a regulator. There is considerable evidence that shows that poor public understanding of legal rights and duties is already a significant barrier to access to justice, as is the high cost of services. This has been compounded by recent reductions in legal aid funding and eligibility. The extent of change in the legal services market (both how services are sought and delivered) is likely to cause significant disruption throughout the three-year period.

Through this strategic aim we will develop our understanding of the way in which technology and other innovations are changing the way in which legal services are provided and the administration of justice is delivered, and how that affects the public and barristers. We will seek to understand more about the standards and competences expected of barristers to meet the changing expectations of consumers and the court system and the role that we should play as a regulator. This includes, for example, understanding the risks to professional competence and ethics that arise from a more digital administration of justice and, in particular, the challenges that disclosure of digital evidence and new online courts impose. Whilst the BSB does not see its role as promoting innovation we must ensure that our rules and regulatory approach are flexible and adequate to both protect the public interest and enable innovation to take place in the market.

Activities

Broad activity areas under this aim will include:

- research and evidence gathering (undertaken where possible, collaboratively with other regulators or interested groups) on the changing shape of the legal services market and of the delivery of services by barristers (and in particular the impact of legal aid reform and technology); refining our regulatory approach to meet the risks and opportunities identified;
- contributing to public legal education to enable the public to have better access to information about the legal sector, barristers and the services that they provide;
- assuring the standards of practice of barristers (generally and against the backdrop of changing consumer needs);
- understanding the role of unregistered barristers and barrister intermediaries in meeting consumer needs (and therefore the role that the BSB should play in regulating them);
- evaluating the impact of our regulatory response to the CMA report;
- assessing the consequences of Brexit for the regulation of barristers in England and Wales; and
- assessing whether our regulatory arrangements, based on evidence gathered, stand in the way of innovation and, if so, what our regulatory approach should be.

Outcomes

In the light of these activities, at the end of the three-year strategy we expect to have:

- through our assurance of competence and quality, robust evidence that our regulatory interventions are properly targeted and that externally driven measures and

controls help barristers to maintain their professional competence;

- through targeted research, understand the impact of changes to legal aid funding and published our research on the consequences of those changes on the Regulatory Objectives.
- developed our understanding of how the profession has innovated in the delivery of legal services, especially in relation to technological change, and what this means for how we regulate. Unnecessary regulatory barriers to innovation that have been identified will have been removed (or be in the process of being removed);
- improved the information that is provided to the public about barristers and the services that they provide
- improved our understanding of unregistered barristers and barrister intermediaries and the way in which they provide legal services to consumers, what risks arise as a result and what a proportionate regulatory response looks like;
- assessed whether our response to the CMA report has had the desired impact in improving transparency for consumers and taken steps to make changes in the light of that assessment; and
- as far as possible, understood the impact of any Brexit decision on the way in which we regulate barristers in England and Wales.

This aim addresses two of the themes identified in the new Risk Outlook:

- affordability and lack of legal knowledge threaten access to justice; and
- innovation and disruption in the legal services market offer threats and opportunities for the profession and for the public.

6. Further reading

To obtain a fuller picture of who we are, what we do, and the context in which this Strategic Plan was produced, please visit the following pages on our website:

- Risk-based regulation is an integral part of how we regulate the Bar and how we develop our strategy. You should read our [Risk Outlook](#), our [Risk Framework](#) and our [Risk Index](#) to understand more about this aspect of our work and to gain a better understanding of how we arrived at the strategic aims described in this Plan.
- Our governance structures are designed to oversee how we implement the work described in this strategy. You can [read more about our governance on our website](#).
- More information about our work around [equality and diversity can be found on our website](#).
- [Our organisational values](#) describe the way in which we conduct all our work including the activities described in this Plan.
- Alongside this strategy, we have published a [Communications and Public Engagement Strategy for 2019-22](#).
- And finally, as previously stated, you can read more detailed information our tactical activity plans in our annual business plans. You can read our 2019-20 Business Plan [on our website](#). It also contains information about our budget for 2019-20.

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