

BAR STANDARDS BOARD

REGULATING BARRISTERS

Regulatory Returns – assessment of risk

1. In September 2020, we issued a Regulatory Return to a selection of around 350 chambers, BSB entities and sole practitioners. The Regulatory Return is a way for us to assess risk across the Bar and levels of compliance with our rules, and to gather evidence about the impact of our regulation or to support current or future policy projects.
2. Unlike some regulators, we do not issue annual returns. The last time we conducted a similar exercise was in 2015-16. We needed to refresh the information that we have about the profession and make sure that our current assessment of risk is accurate. The Return enables us to proactively identify risks and take appropriate action, and to encourage more effective risk management by those we regulate. The Return enables the BSB to target its resources at those chambers, entities, individuals or areas that would benefit from supervisory attention. Those managing risk effectively can expect a lower level of supervision. Some of the questions were also designed to enable the BSB to be forward-looking and to capture emerging trends or themes so that it focusses on the right priorities for the future.
3. We were also mindful that the pandemic will have impacted chambers, entities and sole practitioners in different ways. We were interested to understand more about that and some of the questions were directed at this. For example, whether new risks or opportunities have arisen from COVID-19, whether people have modified their governance or working practices or whether it has led to changes in how organisations and barristers use technology in their work.
4. In the Return, we asked a range of questions including views on the risks that the profession faces, information about the processes and controls in key areas of practice, and some questions on specific topics that are currently a priority in our strategic plan, such as dealing with allegations of harassment and assuring competence.
5. The selection was based on an impact assessment. We assessed and ranked the impact of every chambers, BSB entity and sole practitioner (at the time of selection there were approximately 1270 in total). Impact is defined as the extent of the negative consequences if any significant risks materialised. We evaluated the impact of each chambers/entity/sole practitioner in the following areas and assigned a score using the following criteria:

Criteria	Rationale
The percentage that declared areas of practice comprising aggregate of crime, immigration or family law	Areas of practice that involve the most vulnerable consumers are ranked highest impact. Crime and family work generate the highest proportion of complaints to the Legal Ombudsman. Our work in immigration services indicates that consumers are reluctant to complain.
Number of practising barristers	Larger practices will have inherently higher impact
Number of barristers declaring they do work in the Youth Courts	Area of practice that involves the most vulnerable consumers are ranked highest impact. Research shows that this is an area of poor standards of advocacy.
Number of public access registered barristers	Lay clients do not have the additional protection of a solicitor or other legal professional.
Average proportion of income from public access work	The larger the proportion of public access work that a chambers/entity conducts, the more likely that their controls will be robust and specialised for this purpose.
Number of barristers that declared they do work under the Money Laundering Regulations	The impact of non-compliance is high, given Government focus on this area as a consequence of the National Risk Assessment. Additional controls are required for work under the MLRs. We have committed to gathering evidence as part of the Regulatory Return.

6. When deciding which to include, we also considered supervisory, enforcement and authorisation history.
7. The Regulatory Returns were sent to the top 356 chambers/entities/sole practitioners who were assessed as the highest impact and risk, comprising:
 - 272 multi-tenant chambers
 - 67 sole practitioners
 - 17 BSB entities.
8. A total of 319 Returns were completed and two further chambers merged during the process. The rest were removed from the process because the chambers or entities had subsequently closed or merged with others, BSB entities had not traded since authorisation, sole practitioners had moved into employment or into other chambers, sole practitioners were incorrectly recorded as such in their Bar records, or sole practitioners had not been working for personal reasons.

Engagement with the profession

9. Most respondents put a great deal of thought into their responses and have provided a wealth of information. We recognise the significant investment of time that has been made to do so, at a hugely difficult time when the profession was coping with the impact of the pandemic, and this is reflected in some of the feedback we received. We are very grateful for this because it has given us a very good indication of the risks that the

profession is facing and how they are being managed, and good insight into expectations for the future. The information that has been provided has given us an up-to-date view of risk in the chambers, entities and sole practices that have the highest impact on the public, particularly on vulnerable consumers. This enables us to be effective as a risk-based regulator. It has also provided valuable information that is being used by project teams that are working on strategically important priority areas.

10. We have sought to engage individually with respondents wherever possible. In most cases, the only reason those we regulate come into direct contact with us is if we have received information that suggests that something is wrong. The assessment process for the Returns provides an opportunity for us to engage with the profession in a more constructive and proactive way, as part of a mature regulatory relationship. This is in line with the proposed strategy that we have consulted on, ie to:

- strengthen our ability to reach out and to engage with chambers and the profession so that we can identify and promote good practice in the way the profession operates to provide effective services, to sustain high professional standards, to develop barristers and to ensure diversity; and
- improve and deepen the intelligence we have and our research evidence bearing on professional competence, standards of service and the operation of the market for barristers' services.

11. All participants have been provided with a feedback survey. To date we have received 23 responses and we are encouraging more to give us their feedback. Some examples of feedback received so far include the following:

"I would like to thank the BSB for this process which assists to ensure policies and procedures are kept up to date and are used for the benefit of members, staff and clients."

"I am very pleased with the outcome of the BSB assessment of our return. It is very gratifying, as one of many who gives their time voluntarily to assist in the management of a Chambers, to know that our regulator considers that we are doing so in a competent and efficient manner."

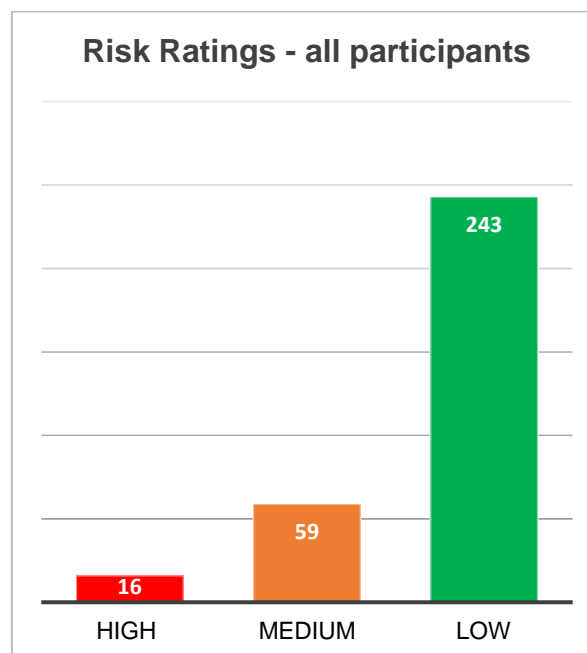
"Both our phone conversation and your detailed letter have been of considerable help in enabling Chambers to address issues where our compliance could be improved. In smaller sets of chambers, which do not have anything like the staff resources and depth of expertise in certain regards that larger sets do, it is particularly useful to be guided by the BSB both in meeting its actual obligations and also towards other aspects of best practice which we might reasonably seek to achieve."

"I think the process is important, necessary and helpful. I do not think it is too onerous and is an important requirement as Chambers benefits from a thorough regulatory review. Completing this once every five years is not overly demanding and plenty of time was allocated for it to be completed. The most difficult aspect (for me) was ascertaining what depth of information was required for each question. For some questions it was clear, but for others it would have been helpful to have more specific direction.... Overall,

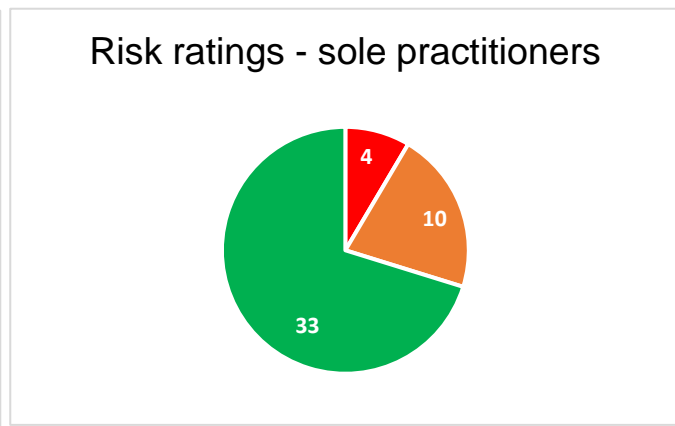
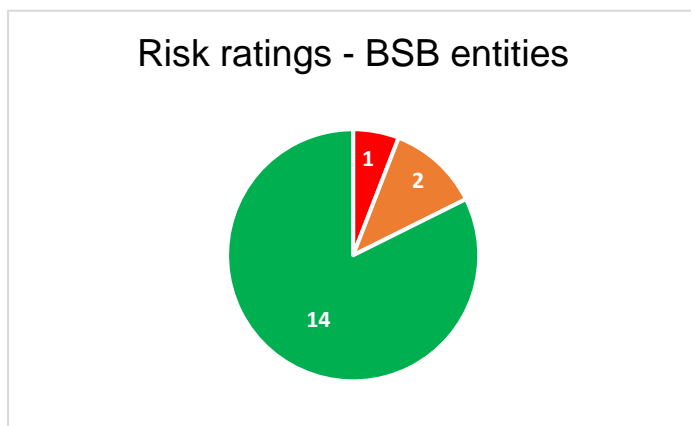
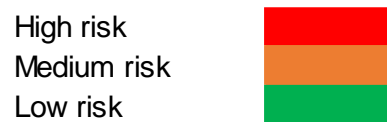
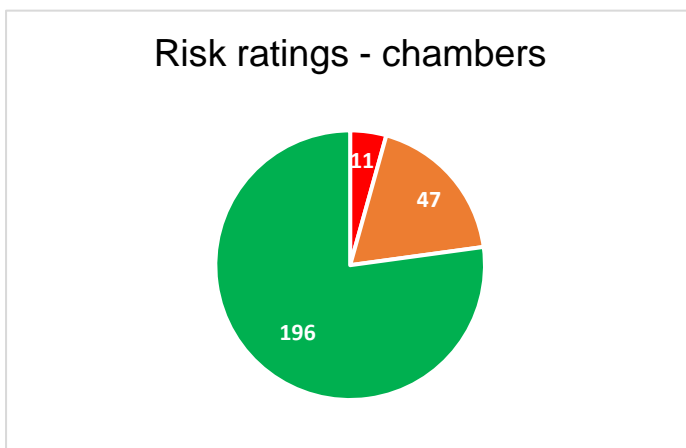
I think this process is good, makes a Chambers think about what it is doing, useful to have external eyes on regulatory compliance, and I found the supervision during the process to be exceptionally good. There has been much complaining from some chambers and LPMA representatives at the scale of work required and relevance. I do not agree with these complaints. If a chambers is running well, the information is readily available and simply needs to be adapted for the responses. A once every five years requirement is not excessive and those complaining need to understand that firstly as an industry we are required to be regulated and secondly, this is a very good way of ensuring all chambers are of the necessary standard. It is a positive and supportive process, which is good for a chambers as it gives confidence to clients that we are properly and effectively regulated and appropriately scrutinised.”

Results from the risk assessment of Returns

12. The Return provided an opportunity for those selected to explain how effectively potential risks are being managed within their organisations or entities, how they ensure compliance with the BSB Handbook, and how high standards of practice are maintained. Guidance was provided for each question, explaining why the question was being asked and explaining the type of information that we wanted respondents to address. We carried out a risk assessment based on the responses provided and contacted the relevant chambers, entity or sole practitioner, either to provide the outcome of the assessment or, where relevant, to seek clarification in certain areas or to obtain further information where a response to one or more questions was not sufficiently detailed.
13. As we anticipated, the vast majority have been assessed as low or medium risk. The graph below shows the results.



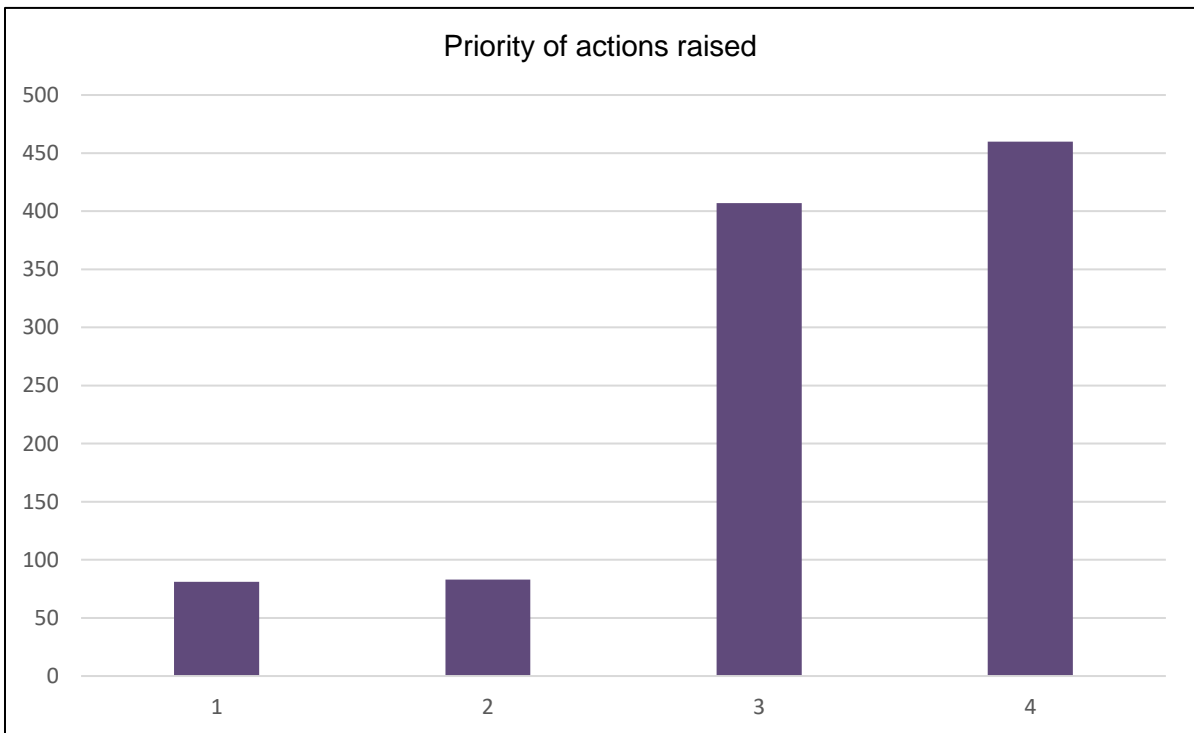
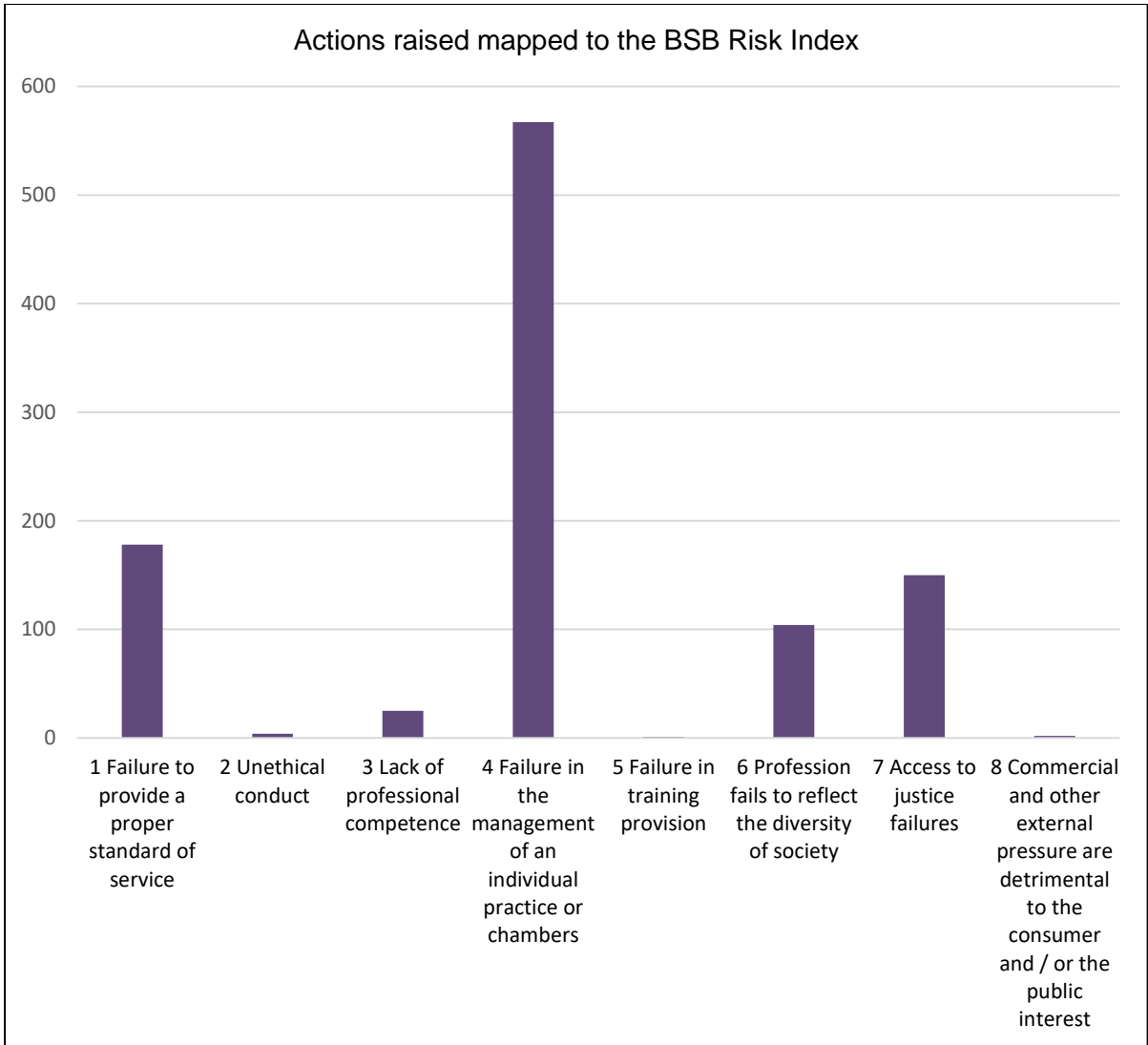
14. Most BSB entities are single person entities or very small (with no more than a handful of people). We were interested to determine whether small entities and sole practitioners were likely to be assessed as higher risk, given the more limited resources to support practice administration and the fact that barristers practising alone do not benefit from the advantages stemming from the collegiality of multi-tenant chambers. This does not appear to be the case with only a slightly higher proportion of BSB entities and sole practitioners assessed as high risk.



15. Where we identified anything specific which gave cause for concern, we agreed actions, aiming to work collaboratively with the organisation or individual to make sure that controls are strengthened. In total, 1,031 actions were set, which we mapped against the categories in the BSB [Risk Index](#). Given the focus of the questions, we would expect the majority of actions to fall in the category “management of an individual practice or chambers”, which has been the case.

16. Actions were prioritised according to risk, with priority 1 actions being the most urgent, reflecting the areas of highest risk. The implementation of those rated priority 1 to 3 are followed up by the Supervision Team. Priority 4 actions represent other areas where controls could be strengthened; the Supervision Team does not monitor the

implementation of these actions, but they should be followed up by the relevant organisation or individual.



17. Once the actions have been implemented satisfactorily, the risk rating is usually adjusted, but any that remain as higher risk will remain under focus. The rating and any specific actions outstanding will also be taken into consideration when assessing any future reports of concerns that are made to the BSB.
18. When we conducted this exercise in 2015-16, we asked similar questions about how people manage risk, what key risks they have identified and how they are managing them. At that time, we often had to explain what we meant by risk and risk management. There was a notable improvement in this area, with many more chambers understanding the concept of risk management and able to articulate how they manage risk. The pandemic has certainly focussed minds on effective financial risk management, as well as on managing wellbeing of staff and barristers. People spoke of embedding good practice developed in response to the challenges of this period.

Plans for publication – sharing themes about risk and good practice

19. In addition to providing individual feedback to all those who completed the Return, we have already used a great deal of information in the Returns. You can read more about this on our [website](#).
20. We will be publishing a series of thematic reports providing more granular information on the headline areas highlighted above – both risks identified and examples of good practice. These will cover areas such as risk management; complaints handling; data protection and information risk management; equality, diversity and inclusion; the role played by chambers and entities in ensuring barrister competence; and the changing use of technology and innovation in the profession. We believe that this approach provides information in a more digestible and accessible way. A particular theme that has recurred in the course of discussions with chambers, that we aim to address, is a desire for more clarity about our expectations of what standards smaller chambers should be aiming for, ensuring that we are acting proportionately as a regulator, and also more guidance about what they can realistically and practically contribute to objectives such as improved diversity and inclusion.

17 October 2022