

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

**Consultation on the Bar Standards Board's strategic
programme for 2019-22**

October 2018

Executive summary

1. 2018-19 is the final year of our [current three-year Strategic Plan](#). In this consultation paper, we are seeking views on our analysis of the key regulatory risks currently facing the Bar and on our strategic priorities and aims for the next three-year period starting in April 2019.
2. As the risk-based regulator of the Bar in England and Wales, our proposed strategic aims reflect the key risks that we have identified in the market for barristers' and advocacy services. In this consultation paper, we ask for your views on the three main risk themes that we have identified. These will play a significant role in helping us to prioritise our resources during the period of our next Strategic Plan. The risk themes – which are explained on pages 6-9 in this consultation paper – 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.
3. After we have considered the responses we receive to this consultation, we plan to publish a final version of our new Strategic Plan before 1 April 2019. At the same time, we will also publish an updated Risk Outlook. The Risk Outlook will include the risk themes and will provide an overview of the market with an emphasis on those aspects where we are focusing our regulatory attention in the period ahead. Our last [Risk Outlook](#) was produced in 2016 and helped inform our strategy for 2016-19.
4. The proposed strategic aims for 2019-22 – which are explained on pages 13-17 in this consultation paper - 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.
5. This consultation paper outlines the regulatory activities we propose to undertake to underpin the above strategic 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 next year of our new Independent Decision-making Body (IDB) which is part of our broader changes to modernise our regulatory decision-making.
6. 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. This day-to-day regulatory work is broadly covered by our proposed strategic aim of delivering risk-based, targeted and effective regulation.

7. We undertake equality analyses on all our projects and programmes to reduce the risk of unlawful discrimination occurring and to explore ways of advancing equality and diversity. Equality analyses will be undertaken on the outcomes of this consultation.
8. The questions we ask in this consultation paper are:
 - Do you agree that the three proposed risk themes we have identified for the 2019 Risk Outlook are the right areas on which we should focus our regulatory attention over the next three years?
 - Do you have any additional information or evidence which we may have overlooked when identifying the three proposed risk themes, either about the three identified themes or about other risk areas? If so, please indicate what this is so that we can contact you if necessary.
 - Do you agree that the three proposed aims for the 2019-22 BSB Strategic Plan are the right ones? If not, what do you think our strategic aims should be?
 - Have you identified any adverse or positive equality impacts as a result of the priorities we have identified?
9. The closing date for responses to this consultation is **5pm on 10 December 2018**.

Background to the strategy and its development

10. The BSB and its regulatory framework will have fundamentally changed by the end of the 2016-19 strategy.
11. Our Governance Reform Programme has devolved regulatory decision-making to the Executive, cutting bureaucracy and improving our ability to be flexible.
12. 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 Regulatory Operations (Reg Ops) will be completed shortly and implemented during 2019.
13. 2016-19 has been a period of change for the BSB. The 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.
14. In arriving at the three strategic aims proposed in this consultation paper and the activities we propose to 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 proposed 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.
15. As you would expect, our proposed 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 to consider when forming your view on the appropriateness of 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.

Risk-based regulation

16. 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 the 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.

17. 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.
18. To achieve this, we are constantly monitoring the market for barristers' and advocacy 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.
19. 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 identifies important trends and developments in the way in which barristers' services are being delivered and consumed. These trends help us pinpoint the most important risk themes and this, in turn, helps us determine the areas which require most of our regulatory attention.
20. We plan to publish a new Risk Outlook before 1 April 2019. The risk themes that we will highlight in the new Risk Outlook have played a significant part in helping us determine our strategic aims and priorities for our 2019-22 Strategic Plan. This is why in this consultation paper, we seek your views on the proposed risk themes that we have identified for the 2019 Risk Outlook. In other words, we hope that you will not just focus on the strategic aims but also consider the risk themes.

Additional statutory duties

21. 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 considering our strategic aims.
22. 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](#).
23. We also have an oversight regulator, the Legal Services Board, which sets out the standards with which we must comply and which may also be based on other statutory obligations.

Proposed risk themes for the 2019 Risk Outlook

24. The proposed risk themes for the 2019 Risk Outlook are as follows:

Theme 1: Working cultures and professional environment inhibit an independent, strong, diverse and effective profession.

25. It is important that the Bar is diverse and that its practices are non-discriminatory, culturally aware and sensitive. If this is not the case, some in society may not have confidence in the legal system's ability to provide justice for them. Barristers also face many work demands that could affect their general wellbeing. This could further encourage anti-social or inappropriate workplace behaviours, potentially affecting not just barristers, but the public they serve as well.

26. While the diversity of barristers is improving, the statistics indicate that there is some way to go before the Bar is fully representative of the public it serves.¹ For example, the percentage of Black, Asian and Minority Ethnic (BAME) barristers across the profession as a whole is broadly representative of the general population according to the 2011 census (12.7 per cent compared to 14 per cent of the UK population). However, BAME barristers form a smaller percentage of the more senior levels of the Bar, with the percentage of BAME Queen's Counsel standing at 7.2 per cent. This suggests there may be an issue around the progression of BAME practitioners at the Bar. While women make up 37.0 per cent of the practising Bar, they also make up a smaller percentage of the senior levels of the profession, with 14.8 per cent of Queen's Counsel being women.

27. Available evidence suggests that certain groups within the profession face disadvantages when compared to their peers. BSB research suggests BAME students and students from lower socio-economic status backgrounds face additional barriers in gaining access to the profession.² Research undertaken by the BSB suggests BAME graduates of the BPTC are roughly half as likely to obtain pupillage as white graduates with similar prior educational attainment – similarly, graduates with no parent with a degree are around two thirds as likely as graduates with at least one parent with a degree to obtain pupillage.³ Other groups can face disadvantage during the course of their careers – for example, research suggests that women in the profession feel they face discrimination relating to the allocation of work, and on returning from maternity leave.⁴

28. Surveys of the Bar suggest that the profession generally involves working long hours, facing considerable pressure, and that many barristers have difficulty balancing their work and home lives. A 2013 survey showed that the average hours worked by full-time practising barristers is 52 hours per week⁵ as compared

¹ Bar Standards Board (2018) *Diversity at the Bar*

² Bar Standards Board (2017) *Barriers to Training for the Bar*

³ Bar Standards Board (2017) *Differential Attainment at BPTC and Pupillage*

⁴ Bar Standards Board (2016) *Women at the Bar*

⁵ Bar Council and Bar Standards Board (2013) *Barristers' Working Lives: A second biennial survey of the Bar*

to 43 hours for all full-time employees in the UK.⁶ More recent evidence found that only 45 per cent of barristers felt able to balance their home and working lives, and only 26 per cent said they were not under too much work pressure (compared to 33 per cent in 2013).⁷

29. There is also evidence of barristers experiencing high levels of bullying and harassment. Recent research⁸ indicated that 34 per cent of BAME barristers said they had personally experienced bullying, discrimination or harassment in the last two years, compared to 19 per cent of white barristers; 33 per cent of women report personal experiences of bullying, discrimination or harassment compared with 12 per cent for men, and barristers with a disability were more than twice as likely to report personal experiences of bullying, discrimination or harassment as non-disabled barristers (37 per cent compared to 19 per cent). For all groups, there had been a rise in the proportion who had experienced discrimination and harassment from the 2013 version of the survey. Research into the experiences of LGBT practitioners at the Bar found that one third had experienced some form of bullying or harassment on account of their sexuality.⁹

Theme 2: Innovation and disruption in the legal services market offer threats and opportunities for the profession and for the public

30. The legal services market is facing a period of considerable change and adjustment, with the pace of change and extent of concurrent changes having the potential to cause significant disruption within the market. Should service providers be unable to adjust to changing realities, our Regulatory Objectives could be put at risk. The introduction of significant technological reform of court proceedings will lead to changes in working practices that may lead to a number of risks to the delivery of barristers' services. Greater expectation around technical competence could also place additional burdens on the Bar, particularly if clients are unable to access the required technology.

31. The Courts and Tribunals Service is involved in an extensive period of modernisation and reform, involving large numbers of court closures and an increasing move towards "digital courts". Between May 2010 and July 2015, 146 courts were closed, and in 2016 the government announced the planned closure of a further 86.¹⁰ Parliament has raised concerns that the limited consultation and timescale pressures may lead to unintended impacts on users.¹¹

32. Research suggests that greater use of technology within the courts has already created some barriers to the quality of advocacy, in particular potential difficulties involved in retrieving and managing information on digital systems, and the impact of the widespread use of electronic devices, such as laptops, tablets and mobile phones, upon the ways in which advocates communicate in the

⁶ BBC News (2011) *UK employees work longer hours than most EU neighbours*, available at: <http://www.bbc.co.uk/news/business-16082186>

⁷ Bar Council (2018) *Barristers Working Lives 2017*

⁸ Bar Council (2018) *Barristers Working Lives 2017 – Harassment and Bullying Report*

⁹ Mason, M & Vaughan, S (2017) *Sexuality at the Bar*

¹⁰ House of Commons Library (2018) *Court Closures and Reform*

¹¹ [Public Accounts Committee report, July 2018, summary.](#)

courtroom.¹² There are also “digital inclusion” challenges that arise for consumers with greater use of technology in the justice system – for example, research suggests that over 50 per cent of current Litigants in Person could “find the use or even ownership of computers challenging”.¹³

33. Data security is a particular area of risk as use of technology increases among the Bar and in the courts system - solicitors have already fallen victim to a range of IT threats and cyber-attacks¹⁴ and the Bar could become equally vulnerable too. BSB supervision of Chambers has found that “dedicated IT resources and specialist information risk management expertise are rarely found within chambers themselves”.¹⁵ Some further examples of technological innovation include Artificial Intelligence (AI), and blockchain (the linking of a growing list of records using cryptography). The BSB needs to gain insight in these areas and will need to build good relationships with subject matter experts in the first instance.
34. A lack of flexibility in terms of how barristers’ services are delivered may make it more difficult for the Bar to adapt to a changing market and respond to changing consumer needs. 2017 research indicated that over the next five years, only 5 per cent of barristers’ organisations planned to change fee structures, 7 per cent their governance structure, and 8 per cent the way they receive instructions.¹⁶
35. Allied to this risk, is the need to understand the impact on consumers and the justice system of having to deal with a vast amount of digital evidence and the ethical issues that arise for barristers in relation, amongst other things, to disclosure.

Theme 3: Affordability and lack of legal knowledge threaten access to justice

36. Our statutory Regulatory Objectives clearly set out our responsibility, along with other legal regulators, to improve access to justice, to protect the interests of consumers and to encourage an independent, strong, diverse and effective legal profession. The right of the public to obtain an appropriate remedy through the justice system if they have not been treated fairly is fundamental to maintaining a democratic society. Affordability, legal complexity, individual vulnerability, legal aid reduction and a lack of general understanding of the role of legal services can all potentially prevent access to justice.
37. Affordability, and perceptions of affordability, pose several risks to access to justice. Research suggests that 63 per cent of the public do not believe professional legal advice is an affordable option for ordinary people.¹⁷ Survey evidence also indicates that the majority of members of the public who have legal problems do not seek professional help due to concerns about cost.¹⁸ Other

¹² Bar Standards Board (2018) *Judicial Perceptions of Criminal Advocacy*

¹³ Lord Justice Briggs (2015) *Civil Courts Structure Review: Interim Report*

¹⁴ Solicitors Regulation Authority (2014) *Spiders in the Web – the risks of online crime to legal business*

¹⁵ Bar Standards Board (2015) *Report on High Impact Supervision Returns*

¹⁶ Bar Standards Board (2017) *Provision of Legal Services by Barristers*

¹⁷ Hodge, Jones & Allen (2015) *UK Perceptions of the Legal and Justice System*

¹⁸ LSB (2016) Legal Needs Survey

research by the LSB suggests that “*perceived high costs is [one of the] main barriers to accessing legal services for small businesses*”.¹⁹

38. There is a general lack of legal “literacy” and understanding among the public. It is difficult for inexperienced, often vulnerable, consumers to know to whom to turn for advice and/or representation. This can worsen any legal problems they face²⁰ and affect their willingness to engage with legal services in the first place.²¹ Research has shown that when faced with legal problems, 31 per cent of respondents felt they did not understand their rights at all, and just 11 per cent were able to correctly identify problems as being legal in nature.²²
39. Some legal consumers will be facing particular vulnerabilities, which could relate to a wide range of situations or individual characteristics, and can face additional barriers to accessing legal services. Past research has suggested that (for example) consumers with mental health issues,²³ learning disabilities,²⁴ hearing impairment,²⁵ or young defendants or witnesses²⁶ have support needs that are often poorly addressed by legal service providers and the justice system.
40. Evidence suggests that since the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) there has been a significant increase in the numbers of Litigants in Person (LiPs).²⁷ The BSB has also seen a 64 per cent increase in the number of complaints from LiPs (from 47 in 2016/17 to 77 in 2017/18). Most of these complaints were closed at the preliminary assessment stage (90 per cent), mainly because they did not reveal any breaches of the Handbook and stemmed from the complainants not fully understanding how the court system operates or the role of barristers. Research also highlights the particular impact of legal aid cuts on disadvantaged and marginalised groups, primarily in the areas of family, immigration and welfare benefits law.²⁸ In family cases, for example, the number of private family law cases in which both parties were represented fell from a half to a quarter, and LiPs face stress, responsibility and loneliness and are likely to receive worse outcomes than those with representation.²⁹
41. In June 2018 we also published research commissioned jointly with the Solicitors Regulation Authority and carried out by the Institute for Criminal Policy Research

¹⁹ Legal Services Board (2016) *Cost of Services*, Available at:

<https://research.legalservicesboard.org.uk/analysis/demand/cost-of-services/>

²⁰ Denvir et al. (2013) *When legal rights are not a reality: do individuals know their rights and how can we tell*

²¹ Legal Services Board (2012) *Understanding consumer needs from legal information sources*

²² Legal Services Commission (2013) *Summary Findings of Wave 2 of the English and Welsh Civil and Social Justice Panel Survey*

²³ JUSTICE (2017) *Mental health and fair trial*

²⁴ Legal Services Consumer Panel (2013) *What happens when people with learning disabilities need advice about the law?*

²⁵ Kyle et al. (2012) *Legal Choices – Silent Process*

²⁶ Institute for Criminal Policy Research for the BSB (2015) *Youth Proceedings Advocacy Review*

²⁷ House of Commons Library (2016) *Litigants in person: the rise of the self-represented litigant in civil and family cases*

²⁸ Amnesty International (2016) *Cuts that Hurt - The impact of legal aid cuts in England on access to justice*

²⁹ Citizens Advice (2016) *Standing alone: going to the family court without a lawyer*

(ICPR) which looked at judicial perceptions of the quality of criminal advocacy.³⁰ More than half of the judges interviewed expressed concerns that declining levels of remuneration in criminal advocacy, and associated low levels of morale within the profession, are having a negative impact on the quality of advocacy. There was also concern that such issues can mean that the most able advocates leave criminal practice in favour of more lucrative work in the civil arena.

42. Interestingly, the BSB has also seen an increase in complaints in relation to civil and family law which could be a reflection of legal aid cuts. These are the areas most severely affected by the cuts and the areas that give rise to the greatest numbers of complaints from LiPs. However, this can only be a speculative assumption, as we do not have the detailed information to make a firm deduction.
43. The Bar Standards Board has no locus in advising Government as to the levels or availability of legal aid but our statutory objectives include improving access to justice, protecting and promoting the interests of consumers and encouraging an independent, strong, diverse and effective legal profession. We will therefore continue to keep a close watch as to the impact which cuts in legal aid may be having upon these Regulatory Objectives and we will consider what regulatory action may be necessary. In particular, we will seek to work with other bodies who share our Regulatory Objectives so that together we can uphold those objectives more effectively than on our own.

Consultation Questions about the proposed risk themes:

Q1: Do you agree that the three proposed risk themes we have identified for the 2019 Risk Outlook are the right areas on which we should focus our regulatory attention over the next three years?

Q2: Do you have any additional information or evidence which we may have overlooked when identifying the three proposed risk themes, either about the three identified themes or about other risk areas? If so, please indicate what this is so that we can contact you if necessary.

³⁰ Institute for Criminal Policy Research (2018) *Judicial Perceptions of the Quality of Criminal Advocacy*
https://www.barstandardsboard.org.uk/media/1939251/judicial_perceptions_of_criminal_advocacy_final_report_june_2018.pdf

Relationship between risk themes and strategic aims

44. The three proposed risk themes overlap to some extent. For example, The Courts and Tribunals Service's move towards "digital courts" is clearly an example of innovation (theme 2) but the move might have either a positive or negative impact on access to justice (theme 3).
45. As explained previously, the identification of the three proposed risk themes has led us to identify what we think the strategic aims and priorities for our 2019-22 Strategic Plan should be.
46. The three proposed strategic aims are:
- Strategic Aim 1: delivering risk-based, targeted and effective regulation.
 - Strategic Aim 2: encouraging an independent, strong, diverse and effective legal profession; and
 - Strategic Aim 3: advancing access to justice in a changing market.
47. These aims are described in more detail below along with an indication of which regulatory activities we propose to undertake in order to meet each aim and the anticipated outcomes. The three strategic aims also overlap.

BSB Strategic Aims – 2019-22

48. The proposed aims for our 2019-22 Strategic Plan are:

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

49. This aim is premised on the considerable change the BSB and its regulatory approach have undergone 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 efficient delivery of our core regulatory activities and the management of our corporate performance and governance.

50. 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

51. Broad activity areas under this aim would include:

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

Outcomes

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

- i. 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;
- ii. an updated approach to supervising barristers - and the chambers and practices within which they operate - that encourages them to meet the standards we expect of them and limits our regulation to where the evidence we have collected indicates it is most needed;

- iii. 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;
- iv. have a BSB Handbook that is both accessible and proportionate whilst providing clarity to barristers about what we expect of them; and
- v. 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

53. The Bar is not yet fully representative of the wider population. We have made satisfactory progress over the last three years towards understanding the diversity of the barrister profession but there is more work to be done, including in relation to several of the protected characteristics and their impact on diversity at the Bar. There is compelling evidence that discrimination and harassment are a problem for many in practice³¹. 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.

54. 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

55. Broad activity areas under this aim would include:

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

³¹ See the most recent Barristers Working Lives publication by the Bar Council

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

- i. 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;
- ii. 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;
- iii. 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;
- iv. 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
- v. 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.

57. 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.

58. 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 latter 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.

59. 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 digitised 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

60. Broad activity areas under this aim would include:

- i. research and evidence gathering (undertaken where possible, collaboratively with other regulators or interested groups) on the changing shape of the legal services market and delivery of services by barristers; refining our regulatory approach to meet the risks and opportunities identified;
- ii. assuring the standards of practice of barristers (generally and against the backdrop of changing consumer needs);
- iii. 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);
- iv. evaluating the impact of our regulatory response to the CMA report;
- v. assessing the consequences of Brexit for the regulation of barristers in England and Wales; and
- vi. 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

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

- i. 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;
- ii. 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);
- iii. 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;
- iv. 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
- v. as far as possible, understood the impact of any Brexit decision on the way in which we regulate barristers in England and Wales.

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

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

Consultation questions about our proposed Strategic Aims:

Q3: Do you agree that the three proposed aims for the 2019-22 BSB Strategic Plan are correct? If not, what do you think our strategic aims should be?

Equality Impact Assessment

63. We undertake equality analyses on all our projects and programmes to reduce the risk of unlawful discrimination occurring and to explore ways of advancing equality and diversity. Equality analyses will be undertaken on the outcomes of this consultation.

Consultation questions about equality impacts:

Q4. Have you identified any adverse or positive equality impacts as a result of the priorities we have identified?

What happens next?

64. When we have considered the responses we receive to this consultation, we will publish a final version of our 2019 Risk Outlook and our 2019-22 Strategic Plan before 1 April 2019 when the new strategic period starts.

65. The final version of the new Strategic Plan will set our agenda and priorities for the next three years. At the start of each year, we will publish a detailed annual Business Plan. The Business Plans will set out the activities we will undertake during that year.

66. At the end of each year, we will publish an Annual Report to describe the progress we have made against our aims and objectives for that year. The publication of these Annual Reports will act as a commentary on how we are doing in relation to our strategic aims.

More about this consultation

67. We hope to hear from as many of our stakeholders as possible about this consultation. In particular, we would like to hear from:

- legal consumers and organisations which represent their interests;
- barristers and legal services business which we regulate, and their representative bodies;
- other legal regulators; and
- government and other organisations involved in the legal services market.

68. Please respond to this consultation by considering the three questions posed. You may submit your response by email to:

contactus@barstandardsboard.org.uk

or by post to:

The Bar Standards Board
89-93 High Holborn
London
WC1V 7HZ

If you have a disability and need to access this consultation in an alternative format, such as larger print or audio, please let us know. Please also let us know if there is anything else we can do to facilitate feedback other than via written responses.

69. Alternatively, if you would like to discuss any aspects of your response – especially if you have any evidence that might inform our Risk Outlook – please call us on 020 7611 1444.

70. The closing date for this consultation is 5pm on 10 December 2018.