

Note: the timings quoted are indicative only and the meeting may extend beyond the anticipated finish.



REGULATING BARRISTERS

Meeting of the Bar Standards Board
Thursday 22 March 2018, 5.00 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

			Page
1.	Welcome and introductions (5.00 pm)	Chair	
2.	Apologies	Chair	
3.	Members' interests and hospitality	Chair	
4.	Approval of Part 1 (public) minutes		
	• 22 February 2018 (*)	Annex A	3-5
5.	Matters Arising (*)		
6.	a) Action points and progress	Annex B	7-9
	b) Forward agenda	Annex C	11-12
7.	BSB Business Plan for 2018-19 (5.05 pm)	BSB 018 (18)	13-46
8.	Vulnerability good practice guide (5.15 pm)	BSB 019 (18)	47-123
9.	Chair's Report on Visits and Meetings: March 2018 (*)	BSB 020 (18)	125
10.	Director General's Report (5.35 pm)	BSB 021 (18)	127-137
11.	Any other business		
12.	Dates of next meetings		
	• Thursday 26 April 2018 (Away Day)		
	• Thursday 17 May 2018 (2pm – joint with LeO – nominees only; 5 pm – provisional special Board meeting on Future Bar Training – all members)		
	• Thursday 24 May 2018 (full Board meeting)		
13.	Private Session		

John Picken
Governance Officer
JPicken@barstandardsboard.org.uk
15 March 2018

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*

BSB 220318

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting**

Thursday 22 February 2018, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

- Present:** Naomi Ellenbogen QC (Vice Chair)
Alison Allden OBE
Justine Davidge (items 6-13)
Judith Farbey QC
Steven Haines
Zoe McLeod
Andrew Mitchell QC
Nicola Sawford
Kathryn Stone OBE
Stephen Thornton CBE
- Bar Council in attendance:** Richard Atkins QC (Vice Chair, Bar Council) – via Starleaf (items 7-13)
Malcolm Cree (Chief Executive, Bar Council)
Andrew Walker QC (Chair, Bar Council)
- BSB Executive in attendance:** Joseph Bailey (Senior Policy Officer)
Vanessa Davies (Director General)
Rebecca Forbes (Governance Manager)
Oliver Hanmer (Director of Regulatory Assurance)
Sara Jagger (Director of Professional Conduct)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Strategy and Policy)
John Picken (Governance Officer)
Wilf White (Director of Communications and Public Engagement)
- Press:** Neil Rose (Legal Futures)
Max Walters (Law Society Gazette)

Item 1 – Welcome

1. Naomi Ellenbogen QC welcomed members to the meeting.

Item 2 – Apologies

- Baroness Tessa Blackstone (Chair)
- Aidan Christie QC
- Lara Fielden
- Adam Solomon
- Anu Thompson
- Lorinda Long (Treasurer, Bar Council)
- James Wakefield (COIC)
- Mark Hatcher (Special Adviser to the Chair of the Bar Council)

Item 3 – Members' interests and hospitality

2. Stephen Thornton made a declaration in respect of a lunch received from Lincoln's Inn on 1 February 2018.

Item 4 – Approval of Part 1 (public) minutes (Annex A)

3. The Board approved the Part 1 (public) minutes of the meeting held on Thursday 25 January 2018.

Item 5 – Matters Arising

4. None.

Item 6a – Action points and progress (Annex B)

5. The Board noted the updates to the action list.

Item 6b – Forward Agenda (Annex C)

6. The Board noted the forward agenda list.

Item 7 – Response to policy consultation on new transparency requirements

BSB 010 (18)

7. Joseph Bailey summarised the response received to our recent consultation on price, service and redress transparency requirements. These stem from recommendations of the Competition and Markets Authority (CMA) following its market study of legal services. A revised timeline for programme implementation is suggested at Annex B of the paper.
8. The next steps include further talks with the Specialist Bar Associations (SBAs) and the Bar Council. This will focus on the practicalities of implementation. The Chair of the Bar Council welcomed this move.
9. Members commented as follows:
- just one response came from a consumer body (the Legal Services Consumer Panel). It would help to know if others were contacted;
 - some proposals in the covering report need further consideration. We need to be more flexible and less prescriptive in tone (in particular paragraphs 25, 27, 32, 37 and 52);
 - it would help to know:
 - if the CMA is now better informed about the nature of the barrister profession and how the costs for services can vary;
 - the extent to which it could impose compliance.
10. In response, the following comments were made:
- we did contact consumer groups, and have done so in the past (initially with some success). However, sustaining this engagement has proved difficult because they do not regard barrister services as a priority area;
 - the text of the document can be amended to give greater room for manoeuvre;
 - the CMA is aware of the challenges that arise from its recommendations - some of its staff attended a liaison meeting with barristers on the report;
 - the CMA could, ultimately, enforce compliance but this is unlikely providing we can demonstrate reasonable progress towards greater levels of transparency.
11. **AGREED**
- a) to endorse the way forward in implementing new price, service and redress transparency requirements as set out in the paper.
 - b) to publish the consultation report (Annex A) on the BSB website, subject to the inclusion of amendments identified at the meeting.
 - c) to note the updated timescale for the next steps (Annex B).

EM / JB

Item 8 – Quarterly report of the Planning, Resources and Performance Committee (PRP)

BSB 011 (18)

12. Steven Haines summarised the PRP Committee report and invited comments. He confirmed that the Finance Committee had approved the BSB's budget including a request for extra FBT programme funds (one-off, non-recurrent). This was subject to a commitment from the BSB to seek savings of £88k over the year to cover extra staff costs brought about by adjustments to our baseline figures.
13. In response to questions, Vanessa Davies commented that:
- the year-end forecast variance for non-PCF income is a lot less than the current figure due to budget phasing;
 - the colour coding for the final variance column is inconsistent with the earlier two. It suggests we shall be overspent by year-end but this is incorrect. In fact, we expect to have a net budget surplus.
14. Members confirmed that they were satisfied with the level of detail included in the report and that subsequent papers could follow a similar format.
15. **AGREED**
to note the report and the assurances provided by the PRP Committee.

**DBu to
note**

**OH to
note**

Item 9 – Chair's Report on Visits and Meetings: February 2018

BSB 012 (18)

16. The Board noted the report.

Item 10 – Director General's Report

BSB 013 (18)

17. Vanessa Davies highlighted the following:
- the staff turnover figures have significantly reduced;
 - the staff conference included discussion on strategic planning and output from this will be considered at the Board's April Away Day.
18. She also thanked those members who were able to attend the Race Equality event on 7 February 2018. A report from this will be produced in due course together with a video that will be added to the BSB's website.

Item 11 – Any Other Business

19. None.

Item 12 – Date of next meeting

20. Thursday 22 March 2018.

Item 13 – Private Session

21. The following motion, proposed by the Chair and duly seconded, was agreed. That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 25 January 2018
 - (2) Matters arising: Board Diversity
 - (3) Action points and progress – Part 2
 - (4) Governance, Risk & Audit Update
 - (5) Regulatory Operations Programme – Consultation on Modernising Regulatory decision making
 - (6) Professional Indemnity Insurance
 - (7) Any other private business
22. The meeting finished at 5.35 pm.

**BSB – List of Part 1 Actions
22 March 2018**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
11a (22/02/18)	amend the policy consultation response on transparency requirements as identified at the meeting and publish on the website	Ewen Macleod / Joseph Bailey	immediate	23/02/18	Completed – published on website
25a (23/11/17) – Standard of Proof	make an application to the Legal Services Board to change the BSB's regulatory arrangements to apply the civil standard of proof to professional misconduct allegations	Sara Jagger	a s a p and before autumn 2018	17/01/18	Ongoing – application to be drafted and submitted by end May 2018
25c (23/11/17) – Standard of Proof	ensure the summary of responses document to the Standard of Proof consultation is revised to make clear how differing strands of opinion are reflected in the response from the same, individual stakeholder	Sara Jagger	before end Dec 17	14/02/18 17/01/18	Completed Ongoing – revisions have been made. Consultation response to be posted on website by end January 2018
21b (28 Sep 17) – E&D data: sexual orientation and religion / belief	draft a consultation paper on the disclosure of sexual orientation and religion and belief data by chambers and entities and present to the Board	Amit Popat	before end Jan 18	13/03/18 13/02/18 16/01/18 18/10/17	Completed - Paper on March agenda In hand – we have been awaiting feedback from faith-based organisations and LGBT groups before finalising the consultation, which has taken longer than planned. This will be concluded by March. In hand – shifted to February agenda due to volume of other E&D related papers in January In hand – consultation will be prepared for Board approval in January

**BSB – List of Part 1 Actions
22 March 2018**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
23b (27 Jul 17) – ATE insurance	draft an MoU with CILEx and the FCA on regulatory arrangements for ATE insurance	Ewen Macleod / Joseph Bailey	before 26 Oct 2017	14/03/18	In hand – being taken forward by regulatory assurance as part of wider information sharing work around money laundering
				14/02/18	In hand – rather than draft an additional MoU, the preference of the FCA would be for the BSB to join the Shared Intelligence Service (an enquiry service on individuals and firms that all participating bodies use to locate information held by other regulators). The Regulatory Assurance Department is exploring the value of subscribing to the service
				15/11/17	In hand – initial positive meeting held with the FCA. Currently exploring whether an additional MoU is necessary
				18/10/17	In hand – awaiting response from the FCA
				20/09/17	In hand – a joint approach has been made with CILEX regulation to the FCA
15b (27 Oct 16) – definition of “employed barrister (non- authorised body)”	draft a rule change to amend the scope of in-house employed practice subject to further information discussions with stakeholders and the establishment of a Task Completion Group to agree associated guidance	Ewen Macleod	by end Jan 17	14/03/18	Ongoing – we are now progressing this with the LSB again, having put it off due to other priorities at the end of 2017
				15/11/17	Ongoing – updated application about to be shared with the LSB
				20/09/17	Ongoing – application being finalised
				09/06/17	Ongoing – additional guidance being produced to support final application to the LSB

BSB – List of Part 1 Actions
22 March 2018
(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
				16/05/17	Ongoing – currently updating application in the light of LSB comments
				15/03/17	Ongoing – draft application due to be submitted to LSB by end March
				15/02/17	Ongoing – awaiting meeting with BACFI
				17/01/17	In hand – have had useful discussion with the Bar Council on drafting practicalities. To share with BACFI before finalising.

Forward Agendas**Thursday 26 Apr 2018 (Board Away Day)**

- FBT consultation response: Tranche 2 Pupillage policy issues
- Public legal education
- Strategic Plan 2019-22
- Board training

Thursday 17 May 2018 (2 pm) (Board to Board meeting with LeO)

- Presentation on BSB Regulatory Operations

Thursday 17 May 2018 (5 pm) - provisional

- additional single item agenda on Future Bar Training (*Board meeting to occur only if required*)

Thursday 24 May 2018

- PRP Quarterly Report
- Combined Corporate and Regulatory Risk Register
- FBT consultation response: Tranche 3 Authorisation Framework policy issues
- Statutory Interventions
- Entity Regulation Policy Review Activity Update

Thursday 28 Jun 2018

- FBT: approval of rule change consultation

Thursday 19 Jul 2018

- BSB Annual Report 2017-18
- CMA: rule change consultation on new transparency requirements
- Regulatory Operations Consultation results and approval of rules
- Annual Enforcement Report

Thursday 27 Sep 2018

- PRP Quarterly Report
- Schedule of Board meetings Jan 2019-20
- Budget Bid for 2019-20
- Corporate Risk Register
- FBT: approval of new rules and LSB application

Thursday 11 Oct 2018 (Board to Board meeting with LSB)**Thursday 25 Oct 18**

- Regulatory Operations update

Thursday 22 Nov 18

- PRP Quarterly Report
- Combined Corporate and Regulatory Risk Register
- Regulatory Operations update
- E&T Committee Annual Report

Thursday 13 Dec 2018 (Board Away Day)**Thursday 31 Jan 19**

- Regulatory Operations update
- CMA: response to rule change consultation on new transparency requirements

Thursday 28 Feb 19

- PRP Quarterly Report
- Corporate Risk Register
- Draft Business Plan for 2019-20
- Regulatory Operations update

Thursday 28 Mar 19

- Business Plan for 2019-20

BSB Business Plan for 2018-19**Status**

1. For scrutiny and agreement.

Executive Summary

2. As this is the final year of the current strategy, the emphasis is very much on consolidating and finalising the work of the last two years. The business plan highlights our achievements in 17/18 and how we will be building on this work in the coming year.
3. Our response to the CMA, our work on Future Bar Training and the Regulatory Operations Programme are the three headline project items for the 2018/19 business plan.
4. The financial resources are the same as were submitted to and agreed by the Bar Council's Finance Committee on 21 February 2017. The summary is as follows:
 - a. The expenditure budget is £5,472k compared to a budget of £5,211k in 2017/18.
 - b. The income budget is £1,169k, compared to a budget of £887k in 2017/18 (Forecast of £1,280k for 17/18)
5. The business plan was presented to the PRP Committee in draft who agreed the detail of the plan and suggested some drafting amendments. Annex 1 is the designed 'final draft' following on from the consideration at the PRP meeting.

Recommendations

6. The Board is asked to:
 - a. **scrutinise and comment** on the business plan draft;
 - b. **offer any drafting suggestions;**
 - c. **agree the plan;** and
 - d. **note** that the plan will be published at the end of March.

Background

7. In the development of the business plan, the SMT has undertaken a detailed planning exercise, aiming to ensure:
 - Prioritisation of work, including understanding of which items could be re-sequenced during the year if necessary. We therefore have scenario plans were PCF or other income sources to be significantly reduced.
 - Consensus on scope of proposed activities, including scrutiny of whether an activity is necessary at all and reprioritisation / resequencing of some possibilities as insufficiently high priority for inclusion in this year.
 - Appropriate balancing between business as usual, new initiatives and those obligations that have been externally imposed on the organisation.
 - Realistic phasing of programme and project milestones given resourcing levels.

Risks and Uncertainties

8. As well as the corporate risks that the SMT and GRA Committee keep under review, there are the following risks and uncertainties to the proposed programme of work:
 - a. **PCF Collection** – If PCF income is below the budgeted figure, we will have to reprioritise our work programme. PRP will be involved in the re-prioritisation process should this arise.
 - b. **Non-PCF Income** – The implementation of the FBT Programme may result in fluctuations in non-PCF income, specifically the Bar Professional Training Course (BPTC) & Bar Course Aptitude Test (BCAT). Based on historic trend the current budget is prudent and the executive will keep income under review.

Annexes

Annex 1 – Public Business Plan 2018-19

Lead responsibility:

Steve Haines, Chair, PRP Committee
Andrew Lamberti, Communications Manager
Dan Burraway, Corporate Support Manager

Business Plan

2018-19

The Bar Standards Board regulates barristers and specialised legal services businesses in England and Wales in the public interest



Our values

INTEGRITY

We operate to the highest ethical standards

We are honest, open, and inspire trust

We consider the social and environmental impact of our actions

EXCELLENCE

We are committed to quality

We are creative, innovative, and lead change

We are responsive, accessible, and accountable for our actions

FAIRNESS

We act responsibly, proportionately, and in the public interest

We promote equality of opportunity and equal access to justice for all

We value inclusion and diversity

RESPECT

We respect and support others

We value expertise, learning, and knowledge-sharing

We foster a collaborative and developmental working environment

VALUE FOR MONEY

We are cost-effective and accountable for our use of resources

We work efficiently with an entrepreneurial and commercial mind-set

We strive for clarity, simplicity, and straightforwardness

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Foreword by the Chair and Director General

Welcome to the third and final annual Business Plan of our three-year strategy for the years 2016 to 2019. Our Business Plan should be read in conjunction with our 2016-19 Strategic Plan and our Risk Outlook.

In the past year we have:

- continued apace with our Future Bar Training (FBT) programme, including consulting on updating some of the rules governing pupillage and the role of the Inns of Court in the training and qualification of barristers to make the qualification process for becoming a barrister more flexible, accessible and affordable whilst at the same time maintaining standards of entry;
- responded to the Competition and Markets Authority's (CMA's) recommendations and consulted on proposals to introduce new transparency standards for the Bar so that consumers can make more informed decisions about using barristers' services;
- decided, following a consultation, to change to the civil standard of proof in professional misconduct proceedings for barristers to bring the Bar in line with most other professions;
- begun to implement a new regulatory approach for barristers undertaking Youth Court work so that we can work closely with these barristers to help improve advocacy standards for young people; and
- published new guidance for the public and for professionals on immigration and asylum related legal issues to help people with these issues to navigate the legal system more easily.

We also undertook a range of other regulatory and policy work throughout the year including our day-to-day core work as a regulator acting in the public interest. This day-to-day regulatory work is the mainstay of what we do and accounts for most of our time and for most of our resources. Our Annual Report for 2017-18 will describe these activities in more detail.

As with all of our work, the important developments listed above are made to benefit those who use the services of barristers and the justice system as a whole. For example, our decision to require any barristers practising in the Youth Courts to register with us will enable us to provide more effective supervision of these barristers and to promote the specialist skills required when representing young people. We hope this will ensure consistent standards of advocacy being received by this particularly vulnerable group within the justice system.

This approach to regulation typifies the risk-based, proportionate way in which we aim to conduct all of our work. We will always make our decisions in the public interest, and we also want to support barristers and those we regulate to face the future with confidence. These thoughts were central to our decision in 2017 to adopt a new approach in the future to assuring the public of the quality of advocacy. We will be developing the detail of that approach in the coming year.

We will continue to fulfil our statutory responsibilities and uphold our Regulatory Objectives in the public interest. In particular, with stakeholders, we will:

- continue to implement reforms to training for, and entry to, the Bar as part of the Future Bar Training programme;
- consult on the necessary rule changes to enable the Bar to respond to the CMA recommendations regarding service and price transparency;
- subject to consultation, continue our recent governance reforms by establishing a new Independent Decision-Making Body for enforcement and authorisation decisions, and adopting a new approach to how we handle information that comes in to the BSB; and
- publish an updated Risk Index and Risk Outlook for the market for barristers' services.

We will also implement specific Action Plans to improve access to, and progression for, female, and Black, Asian and Minority Ethnic (BAME) barristers.

By the end of 2018-19, we will have considered in collaboration with our key stakeholders how best to take forward our current strategy and approach beyond 2019. This will take into account our latest assessment of the main risks to meeting our Regulatory Objectives, and will be expressed in the form of a new Strategic Plan starting in the year 2019-20, underpinned by a new Risk Outlook.

In the meantime during 2018-19, we will continue to focus on three risk themes identified as part of our current Strategic Plan. These are:

- meeting consumer needs;
- improving diversity and enhancing equality; and
- responding to commercial pressures on legal services providers.

This Business Plan describes what we will be doing to carry out our core regulatory activities and how we will address these three challenges during 2018-19. As we did during the last two years, we will be organising our work into three key programmes (see page 10).

We will continue to consult you about our policy proposals. We invite you to follow our progress via our website (www.barstandardsboard.org.uk), and to engage with us as we continue our work (contactus@barstandardsboard.org.uk)



Baroness Blackstone



Dr Vanessa Davies

About this document

Two years ago, we published a suite of important documents to assist in understanding our work in regulating the Bar in England and Wales. They can all be found [on our website](#).

Our [Strategic Plan](#) sets out the long-term direction for us as an organisation, in light of the external environment and our priority areas.

This is underpinned by:

- annual [Business Plans](#) which set out our programme of work for each year and the resources we require to support our activities. (This is our Business Plan for 2018-19.)
- specific **strategies, policies, regulations** and **guidance** which set out in detail our approach to particular aspects of regulatory and corporate activity.

Our [Regulatory Risk Framework](#) describes how we approach risk-based regulation.

We start by seeking to understand the external environment which impacts upon our work, those whom we regulate and the consumers of legal services.

We categorise those things which can go wrong in the delivery of legal services in our Regulatory [Risk Index](#). This is a living document which helps us systematically and consistently to identify and respond to potential issues in the market for barristers' services.

We publish a [Risk Outlook](#) report which sets out our priority risk themes.

In planning our approaches to dealing with our priority themes and other regulatory risks and issues we will take into account the challenges, constraints and opportunities we face as an organisation. We use dedicated **corporate and project risk management** to ensure the efficient and effective delivery of our regulatory role and other corporate responsibilities.

Our Strategy for 2016-19

Our strategy sets out the way in which we will regulate barristers and entities for the three years. It also sets out how we will respond to potential proposals for change in the regulatory landscape and its underpinning legislation. We have organised our work over this period into three programmes:

- Regulating in the public interest
- Supporting barristers and those the BSB regulates to face the future
- Ensuring a strong and sustainable regulator.

You can read more about our strategy [on our website](#).

What the BSB does: our core work

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

We are responsible for:

- setting the education and training requirements for becoming a barrister;
- setting continuing training requirements to ensure that barristers' skills are maintained throughout their careers;
- setting standards of conduct for barristers;
- authorising organisations that specialise in advocacy, litigation, and specialist legal advice;
- monitoring the service provided by barristers and entities to assure quality; and
- handling complaints against barristers and the legal services businesses that we regulate and taking disciplinary or other action where appropriate.

The work that we do is governed in particular by the Legal Services Act 2007 (the Act) as well as a number of other statutes.

Along with the other legal service regulators identified in the Act, our objectives are the same as the Regulatory Objectives laid down in the Act. These 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.

Most of our time and our budget is taken up by the day-to-day work required when regulating barristers rather than on our policy development work, for example, dealing with applications for waivers from practising requirements, monitoring Continuing Professional Development (CPD), investigating reports about barristers' conduct, and taking enforcement action where necessary.

You can find out more about how we undertake our work to regulate legal services in relation to the Regulatory Objectives [on our website](#).

Strategy and Policy

We are a risk- and evidence-based regulator. Risk-based regulation means that we are constantly monitoring the market for barristers' services. We identify the potential risks that could prevent our Regulatory Objectives from being met. When we have done this, we focus our attention on the biggest risks and then take action to try to prevent them from occurring, or to reduce their impact.

You can read more about our **risk-based approach to regulation** and find out about the risk areas upon which we are focusing most of our attention during our current strategy on [our website](#).

In accordance with our research strategy, we gather evidence about what is happening in the market and the impact that our actions are having – we do this by conducting research (either by ourselves or with others) and by collaborating with stakeholders who have an interest in our work. This can involve inviting external people or organisations to participate in workshops or project groups in addition to inviting comments, via consultations, on all of our proposals. Where necessary, we use this knowledge to set or revise standards and introduce rules and guidance for barristers and entities. These rules are contained in the BSB Handbook. We develop policy on the educational pathways into the profession. In addition we develop policy on conduct of practice in areas such as chambers' complaints handling and direct public access to barristers. Another area of particular concern is equality and diversity, where we set a number of objectives in our Equality Strategy. This is available [on our website](#) and the key actions have been incorporated into this Business Plan.

Regulatory Assurance

Our aim is to assure, maintain and enhance standards across the profession through the development of measures for assessing the adherence to the standards set out in the BSB Handbook of both individual barristers and the chambers and entities in which they practise. This includes a risk-based approach to the supervision of chambers, the authorisation of new entities and the regulation of Continuing Professional Development (CPD).

We oversee the Academic, Vocational, and Pupillage stages of training that must be completed in order to qualify as a barrister.

We also decide on individual applications from people wishing to qualify and/or practise as barristers but who would like to be exempted from some or all of the normal training requirements.

Enforcement

The Professional Conduct Department investigates concerns about the professional conduct of barristers and others whom we regulate and, where appropriate based on an assessment of risk, takes action against those who may have breached the Core Duties or other provisions of our Handbook.

We apply a four stage process when considering complaints and reports to ensure that we deal with them fairly and efficiently. This process is described in detail [on our website](#).

When a complaint leads to a disciplinary tribunal these are arranged by an independent organisation called the [Bar Tribunals and Adjudication Service \(BTAS\)](#)

Key Facts

Communications and Public Engagement

The Communications and Public Engagement Department is responsible for all of our internal and external communications including our publications, website, social media activity and media relations. It helps our other teams to engage with the profession and other stakeholders to make sure that we discuss our policy development plans in an open and consultative way.

Corporate Services

The Corporate Services Department provides support with strategic and business planning, reporting and ensuring that we maintain good governance practices, policies and procedures. The Department also provides administrative support for the Chair, Vice Chair and Director General.

Resources Group

We share the following support services with the Bar Council: Facilities, Finance, Information Services, Human Resources, Records and a Project Management Office.

16,444

number of practising barristers we regulate, plus another 50,000 unregistered barristers

85

entities (legal services businesses, owned by lawyers, but not necessarily barristers)

463

conduct complaints opened in 2017

14

locations provided the Bar Professional Training Course

1,423

students in the last academic year

148

people took the Bar Transfer Test (for transferring solicitors or overseas lawyers)

510

pupils registered last year

79

members of staff

£5,463k

our budget for 2018-19

Our Strategic Work Programmes

We have organised our work into three Programmes. Each Programme comprises both reform and continuing regulatory “business as usual”.

Embedded into these Programmes is our approach to addressing the main risks we perceive to our Regulatory Objectives, which include:

- The risk of failure by those we regulate to meet consumer needs;
- The risk of lack of diversity, and discriminatory practice and culture at the Bar; and
- The risk of commercial pressures on legal services providers.

More information about these risks can be found in our [Risk Outlook](#).

In the following pages we give a short explanation of what each of our strategic programmes means and what we will do to achieve our aims during 2018-19.

We have broken down the work that we do in each of our core regulatory functions, into quarterly milestones which are based upon a financial year – so quarter one (Q1) starts in April 2018 and quarter four (Q4) ends in March 2019. These checkpoints help us to monitor performance and ensure we stay on track with our work.



1 Regulating in the public interest

What this means:

In the context of our Strategic and Business Planning, “regulating in the public interest” means that we want to help the public to understand the fast-changing and complex market for legal services, so that consumers of those services can make informed choices and have a better knowledge of their legal rights and duties as citizens.

We will develop a deeper dialogue with the profession and consumers so that what we propose and what we do can be demonstrably evidence-based and risk-focused as well as understood by users and providers. We will do this by engaging with both the profession and consumers in face-to-face meetings and digital channels where appropriate.

We will continue to strengthen our real and perceived independence from the profession, so that we can articulate and defend our judgements on the basis of independent and unbiased assessments of the evidence about where risks to our Regulatory Objectives lie. This includes continuing to ensure our regulatory decision-making processes are independent, consistent and transparent.

Our work programme:

- Responding to the CMA report about the legal services market

During the second year of our current Strategic Plan, working alongside the other legal regulators, we responded to the Competition and Markets Authority (CMA) report about the legal services market and how the public interacts with it. We consulted the profession and more widely about how the Bar could meet the CMA’s recommendations for more transparency about legal service providers’ fees, services and rights of redress for consumers. We proposed a targeted approach that would focus on consumers who could benefit most from greater transparency. In February 2018, we announced that as a result of our consultation we were adopting a focused approach that will continue to benefit consumers and reflect our ongoing work with the profession to ensure that our final proposals are feasible and proportionate.

During 2018-19, we plan to undertake further research into transparency standards at the Bar, consult on our new rules, and to submit any final rule changes to the Legal Services Board by the end of March 2019. Also in response to the CMA recommendations, we plan to publish guidance for barristers on engaging with direct and indirect feedback from clients, and to work with the other legal regulators to make improvements to the [Legal Choices website](#): a public-facing website that we manage jointly with the other legal regulators, and which is designed to help consumers understand the market for legal services.

- **Updating the disclosure rules for barristers**

The latest version (February 2018) of the BSB Handbook (which contains the Code of Conduct for barristers in England and Wales), introduces: new authorisation to practise requirements for barristers: streamlines the public and licensed access rules; and introduces new obligations for barristers and BSB regulated entities to comply with the new Money Laundering Regulations. These updates were all made following consultations last year and to support further the public interest. Our Plan for 2018-19 includes assessing the information we obtain from the profession about measures to combat money laundering and to start visiting chambers identified as potentially being at risk from money laundering.

- **Continuing Professional Development for experienced barristers**

We will also conduct our first spot-checking exercise following the introduction in 2017 of the new Continuing Professional Development (CPD) Scheme for established practitioners. This is a cornerstone of our new approach to assuring quality in barristers' work and we will be using the evidence gathered from the checks to develop further the detail of our approach during 2018-19.

- **Regulatory risk**

By the end of 2018-19, we will have published new versions of our regulatory Risk Index and our Risk Outlook. These are important documents that outline how effectively we think the market for barristers' services is operating. They help us to identify

the biggest risks standing in the way of our upholding our statutory Regulatory Objectives and therefore, to prioritise our work. The Risk Index and Risk Outlook will inform our new Strategic Plan for the period from April 2019, which we will work on during the coming 12 months.

- **Equality and access to justice**

We made good progress in 2017-18 with our work around equality and access to justice in order to help the Bar better reflect the diverse society that it serves. We followed up our major 2016 survey of women at the Bar by agreeing a detailed action plan about how we intend to work with the profession to improve access for, and the retention of, female barristers, and to eliminate all forms of unfair treatment of women including discrimination and harassment. Following a consultation, we introduced new parental leave rules for self-employed barristers that require all chambers to have a policy that allows any member who becomes the carer of a child (whether or not the 'main carer') to take parental leave. Finally, we held a roundtable event called "Heads Above the Parapet: How can we improve Race Equality at the Bar?" to help us develop a similar action plan for BAME barristers. Our Business Plan for 2018-19 includes the continuation of the action plans that we developed as a result of our engagement in the diversity agenda and our statutory equality responsibilities (which you can read more about in the box panel opposite).

Equality statement

Our Equality Objectives are to:

1. Address the causes of discrimination experienced at the Bar because of a protected characteristic.
2. Reduce the barriers to progression and retention, and improve social mobility.
3. Improve our understanding of the diverse experiences of students training for the Bar.
4. Increase equality of access to the profession.
5. Improve Access to Justice for vulnerable clients, with a focus on immigration and young people.
6. Embed Equality and Diversity best practice across all BSB departments.

We are committed to increasing diversity in the profession and within our workforce and ensuring that equality considerations are factored into everything that we do. In particular, we have some specific action plans to address access, retention and progression issues for specific groups at the Bar, which have emerged from our research and our engagement with stakeholders. These focus thematically on women at the Bar, BAME practitioners and students.

The promotion of equal access to, and diversity within, the profession helps to combat social injustice. It is unlawful for individuals to experience disadvantage on the basis of protected characteristics. Everyone with whom we engage and our staff are entitled to be treated with dignity and respect and be part of an environment that is free from unjustified barriers.

A profession that is representative of the people it serves is more likely to meet the diverse needs of clients and to be more effective. We work more productively when we maintain an inclusive workplace free from discrimination.

We have a number of general and specific legal duties arising from the Equality Act 2010. Our commitment to equality and diversity is a significant factor in fulfilling the Regulatory Objective of 'encouraging an independent, strong, diverse and effective legal profession' as set out in the Legal Services Act 2007.

As required by s 149 (1) of the Equality Act 2010, we will work to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act;
- advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- **Supervising chambers and barristers**

Our business-as-usual work supervising barristers' practices will continue during 2018-19. This helps us identify good practice and publicise it as well as spot when things may be going wrong so that we can help avoid or solve problems for the benefit of barristers' clients and the wider public.

In 2017-18, we sought the Lord Chancellor's approval to make Orders under the Legal Services Act to amend our powers. These include a new power of intervention over everyone we regulate to help us protect the public if things go seriously wrong in a barrister's practice. This is an important public protection measure, albeit we would use it only as a last resort and in very rare circumstances. The Orders have been approved by Parliament and the new powers will come into force in October 2018.

- **Investigating reports of barristers' professional misconduct and our enforcement work**

We will continue to enforce our rules in order to maintain the public's trust and confidence in barristers and the businesses we regulate. We aim to do this fairly, swiftly and proportionately. Typically we deal with around 400 conduct reports or complaints about barristers every year. Where there is evidence of a breach of the professional obligations set out in the BSB Handbook, we will investigate the concerns and, where appropriate, take enforcement action.

Following a consultation in 2017, we decided to change the standard of proof applied when barristers, and others regulated by the BSB, face disciplinary proceedings for professional misconduct. Subject to approval from the Legal Services Board, which we will apply for during 2018, the standard of proof will change from the criminal standard ("beyond reasonable doubt") to the civil standard ("on the balance of probabilities") in respect of conduct occurring after 31 March 2019.

Timeline of activities

Strategic Programme 1 – Regulating in the public interest				
The core work that we conduct throughout the year	<ul style="list-style-type: none"> Implementation of the Research Strategy/ delivery of research objectives to ensure we understand what is happening in the market and the impact of our work Monitoring barristers' Continuing Professional Development (CPD) Supervising barristers' practices Assessing and, where appropriate, investigating reports about barristers' conduct and taking enforcement action where necessary 			
Timeline of other activity by quarter	Q1	Q2	Q3	Q4
Updating the BSB Handbook			New statutory powers come into force	New Bar training rules come into force Publish proposals for a full review of the Handbook
CMA - Transparency	Undertake research and consumer testing Update scope of CMA evaluation plans	Agree proposals for new rules and launch consultation		Board decision on any new rules Rule change application submitted to the LSB
CMA - Independent Feedback Platforms	Publication of guidance for providers on engaging with indirect feedback and also direct feedback from clients		Evaluation of this workstream, to inform wider CMA evaluation programme	

Timeline of other activity by quarter	Q1	Q2	Q3	Q4
Entity & ABS Regulation	Publish a review of entity regulation (including revised entity policy statement).			
Anti-Money Laundering	<p>DBS compliance testing to meet HM Treasury requirements for criminal record checks</p> <p>Risk profiling after 2018 Authorisation to Practise process.</p> <p>Response to Financial Action Task Force including follow up on action points and liaison with HM Treasury</p>	<p>Ongoing engagement with The Office for Professional Body Anti-Money Laundering Supervision (OPBAS)</p> <p>Supervision visits with the profession based on risk-profiling</p>		
Enforcement		Annual Enforcement Report to be published		
Regulatory Risk	Ongoing training and development of staff and Board members. Embedding risk based approach into the organisation.			Publication of new Risk Index and Risk Outlook

Table continues

Timeline of other activity by quarter	Q1	Q2	Q3	Q4
Equality and Access to Justice	<p>Conduct research on anti-discrimination</p> <p>Launch of vulnerability guidance</p> <p>Sexual Orientation and Religion and Belief data monitoring consultation</p>	Report findings of research	<p>Implement action plan from research</p> <p>Implement outcomes of consultation</p>	
	Implement our three action plans for Women at the Bar, Race Equality and BPTC			
Professional Practice – Scope of Practice	<p>Publish research on Qualified Persons</p> <p>Begin review of scope of practice rules</p>		Consultation launched	
Professional Practice – Immigration		Produce guidance on how to instruct barristers in immigration cases		
Professional indemnity insurance	Commence review of governance arrangements with BMIF		Review of insurance terms if required	

2 Supporting barristers and those the BSB regulates to face the future

What this means:

The legal services market is continually changing and increasingly competitive. We will help the public to understand the separate nature and specific skills of the Bar. For example, the public needs to understand the difference between a fully qualified, regulated and insured barrister and a paid “McKenzie Friend.”

We will also ensure our regulatory frameworks do not pose unnecessary barriers to entering the market and we will reform legal education and training to support the advocates of the future.

Our work programme:

In the upcoming year, we will continue to build on the work we undertook during 2017-18.

• Future Bar Training

In October 2017, we launched a consultation as part of our Future Bar Training (FBT) programme on updating some of the rules governing barrister training and qualification. It sought views on a number of aspects of the way in which barristers train and qualify including:

- to what extent the BSB should prescribe the role of the Inns of Court in the training and qualification of barristers; and
- what should be the future rules and regulatory arrangements for the work-based component of training (pupillage).

We ran a number of events online and around the country to canvass views on these topics. In the end, over 140 consultation responses were received which the Board will consider in reaching its policy decisions in Spring 2018.

This Business Plan for 2018-19 contains actions to begin implementing any changes that are agreed. In addition, we have begun a pilot with a number of Pupillage Training Organisations (PTOs) to trial potential new rules to link the assessment of pupils at the end of pupillage to the requirements laid out in the Professional Statement for barristers on their first day of practice. This will continue through 2018-19.

Our 2017 consultation also contained a draft of our proposed Authorisation Framework which will enable training providers (of the academic, vocational and professional components of training) to develop new and innovative training programmes for aspiring barristers. This followed the publication of our policy statement in March 2017 in which we said we would authorise a limited number of new training routes for prospective students to qualify as barristers in the future, based on four core principles of flexibility, accessibility, affordability and maintaining high standards.

A key component of our Business Plan in 2018-19 is for the Authorisation Framework to go live in January 2019 and to enable us to begin authorising potential new training pathways from that date. To enable this to happen in time, during the year we will also be consulting on the rule changes that will be necessary to bring about these potentially significant changes to the ways in which prospective barristers train and qualify. We expect to have consulted on the new rules by the end of Quarter 2 so that the Legal Services Board can approve our new rules in Quarter 3.

As part of our FBT programme in 2018-19, we will also:

- continue our review of curriculum and assessments, including the centralised examinations, that form a part of the current Bar Professional Training Course and feed the outcome into our Authorisation Framework; and
- host a roundtable event with Approved Training Organisations to consider best practice on advertising and recruitment for pupillage and work based learning in order to inform any future rule changes or regulatory work in this area.

- **Other policy work**

We will also continue our Strategy and Policy work over the coming year. Last year, we published new consumer guidance documents on immigration and asylum issues and we also introduced rule changes for barristers undertaking Youth Court work so that we may offer more targeted support to those representing young people focussing on the specialist skills and attributes needed to do this effectively.

Timeline of activities

Strategic Programme 2 – Supporting barristers and those the BSB regulates to face the future				
The core work that we conduct throughout the year		<ul style="list-style-type: none"> • Supervising barristers' practices • Managing the central examinations on the BPTC • Considering applications for waivers and exemptions for those wanting to become barristers • Reviewing our regulatory arrangements in the light of emerging risks in the market 		
Timeline of other activity by quarter	Q1	Q2	Q3	Q4
Future Bar Training – Rule changes	Board policy decisions	Launch of rule change consultation Board approves rule changes application	Application to Legal Services Board	New qualification rules come into force (Jan)
Future Bar Training – implementation of the Authorisation Framework	Board policy decisions	Finalise Authorisation Framework and evidence document	Piloting of applications against Authorisation Framework	New authorisations process goes live
Future Bar Training – examinations	Curriculum and Assessments Review completes	Commence design of new Centralised Examinations	Recruitment / Tendering for new question writers	
Future Bar Training – Pupillage project	Update to Pupillage Handbook	New handbook published Visits to Pupillage Training Organisations (PTOs)	Second round of pilot participants begin	
Future Bar Training - Evaluation	Data capture / baselining			

Table continues

Timeline of other activity by quarter	Q1	Q2	Q3	Q4
CPD/assuring standards of practice	Review of barrister CPD returns from 17/18	Commence assessment of the impact of CPD as a means of assuring standards at the Bar		Publish report on the first year of the new approach to CPD
Public and licensed access			Complete review of public access training	

3 Ensuring a strong and sustainable regulator

What this means:

We will continue to position the BSB as the regulator of legal services which have advocacy, and specialist legal advice at their core.

We will actively promote modern regulatory governance arrangements which are constitutionally and financially independent of government and of the profession we regulate, whilst at the same time ensuring that we maintain our credibility with the public and the vital input we need from the profession to regulate effectively. We will also maintain and extend our accountability.

We will continue to promote our core values of fairness, integrity, respect, excellence and value for money. We will maintain our strong track record of transparency, accountability and good stewardship of resources by setting out clear and meaningful measures of success.

Our work programme:

- **Reforming the way we are governed**

We have made good progress in the reform of our governance structures. The programme is intended to ensure that we can demonstrate independence from the profession and command public confidence in our regulation of the Bar. One of the key principles of the reform programme is to separate policy making from regulatory decision-making on individual cases and ensure that decisions are taken at the lowest appropriate level in line with good practice.

We have already delegated many routine decision-making and policy decisions

to appropriately qualified and trained members of our staff and disbanded some of the committees that used to make those decisions. The Qualifications Committee was disbanded in 2017.

Our remaining decision-making committee, and our largest committee, is the Professional Conduct Committee (PCC). In our recently launched consultation on modernising our regulatory decision making (March 2018), we are seeking views on our plans to revise our decision-making structures. This includes creating a centralised function to deal with the assessment of all incoming information and creating a new Independent Decision-Making Body (IDB) to take all regulatory decisions requiring input independent of the Executive. The IDB will replace the PCC and our current Authorisations Review Panels. The intention is that the IDB will consist of a pool of lay and barrister members from which small panels of three or more will be nominated to take individual regulatory decisions such as conduct issues, and appeals against decisions on qualifications, exemptions and authorisations. Along with the training we have given to qualified staff to make decisions without reference to large committees, the formation of an IDB is a key component in our modernising our governance structure.

The centralisation of our assessment function referred to above, is intended to be achieved by the creation of a new Centralised Assessment Team (CAT). It is hoped that the CAT will provide a more effective, efficient and consistent approach to assessing incoming information and ensure that the most appropriate regulatory action is taken based on a consistent application of

risk factors in line with our Risk Framework, Risk Index and Risk Outlook. It will also provide a more coherent means to capture all types of information and build a richer picture of the risks to the Regulatory Objectives.

We will continue to add to our Advisory Pool of Experts (APEX) in the coming year and recruit members to assist specifically in supporting the change in the regulatory decision-making approach described above. The current expert pool consists of both barristers and lay members who provide advice in areas including competition and economics, equality and diversity, higher education, insurance, and regulatory risk. These experts are used where we need to draw on specialist knowledge and advice to inform our work. We are now seeking additional experts in the fields of continuing professional development; information law and data protection; Money Laundering and Terrorist Financing Regulations; regulatory policy and theory; and statistics.

Our Governance Reform programme is due to be completed by the end of the current Strategic Plan in March 2019. This will complete the internal changes that we started in 2016 to help us become a more efficient and more accountable regulator that acts in the public interest and independently of the profession it regulates.

We will also be looking at our arrangements for providing legal support across our functions but particularly in relation to representation at disciplinary tribunals. The latter are currently provided pro bono by a panel of what is known as “prosecutors”. In line with our decision to remunerate barrister members of our committees from

1 April 2018, we will be considering the remuneration of tribunal representatives with a view to making payment for such services from 1 April 2019. As part of our review of the provision of legal support for the BSB we will also be reviewing the mechanisms we have in place for obtaining advice and representation in relation to litigation against the BSB.

- **Quality assurance and developing our next Strategic Plan**

We have revised our assurance model and framework to ensure that the checks and balances and quality assurance processes we have in place to monitor our work remain proportionate and effective. An internal audit programme was agreed with our auditors in 2017.

During 2018-19 our oversight regulator, the LSB, will be implementing a new performance framework for us and we are confident the work we have done under this strategic aim to date will enable us to be assessed successfully against the LSB’s revised standards.

Finally, a key activity for us over the coming year will be to develop and finalise our next Strategic Plan for 2019-21. We expect to engage widely in its formulation and will consult publicly on our proposals.

Timeline of activities

Strategic Programme 3 – Ensuring a strong and sustainable regulator				
The core work that we conduct throughout the year		<ul style="list-style-type: none"> • Ongoing schedule of Internal Audits • Monitoring performance against business plans and budget • Risk management and reporting 		
Timeline of other activity by quarter	Q1	Q2	Q3	Q4
Governance Recruitment		Recruitment activity for Board as needed and lay Governance, Risk and Audit Committee member		Board membership refreshed as necessary
Assurance, governance, risk and audit				Revise internal governance arrangements for compliance with any changes to the Internal Governance Regulations made by the LSB
Board	Development of new strategic plan		Consultation on new strategic plan	Publication of new strategic plan
Advisory Pool of Experts (APEX)	New APEX members appointed	Review of needs within APEX	Recruitment activity for APEX	New APEX members appointed

Table continues

Timeline of other activity by quarter	Q1	Q2	Q3	Q4
Modernising decision making	Modernising Regulatory Decision-Making Consultation closes	Consideration of outcome of Modernising Regulatory Decision-Making consultation Board approval of revised regulations arising from the proposals to modernise enforcement decision-making	Rule changes application submitted to the LSB	Centralised Assessment Team established in preparation for April go-live IDB set up and preparations for disbanding the Professional Conduct Committee
Legal support arrangements	Review of legal support arrangements and potential tender for general legal support (excluding Tribunal representation)	Consideration of proposals for new arrangements for Tribunal representation	Board approval of new arrangements for Tribunal representation	Implementation of new arrangements for Tribunal representation in preparation to go live in April 2019

Governance

The role and work of the BSB Board

The BSB is led and governed by a Board of 15 people, 7 barristers and 7 lay people, and a lay Chair.

During 2018-19, we plan to review the Board's optimum size and its composition, as the Board committed to doing when it announced its governance reforms at the end of 2015.

Leadership

The Board is responsible for leading the organisation. It sets our direction, and approves policy and strategy. The Board represents us with external stakeholders and accepts collective accountability for the organisation's work in regulating barristers in the public interest.

Culture

The Board is responsible for shaping the BSB's organisational culture and values. It leads by example and ensures that the culture and values are developed and adopted appropriately.

Accountability, assurance and oversight

The Board, through its non-decision-making standing committees, monitors the work and performance of the organisation. It holds the executive to account on:

- the commitments made in these Business Plans;
- the BSB's agreed service-standards;
- the delivery of key milestones to time and to budget; and
- the availability of adequate resources to ensure that the BSB can deliver its Regulatory and Strategic Objectives.

Where necessary the Board will constructively challenge the executive. It aims to be sufficiently knowledgeable about the workings of the BSB to be answerable for its actions, yet able to stand back from the day-to-day management of the BSB in order to retain an objective, longer-term view.

Strategy

The Board sets and approves the strategy for the organisation, taking account of the wider regulatory and risk landscape. When approving its strategy, it takes account of short-term pressures but also maintains sight of broader long-term trends.

The Board is responsible for ensuring that sound and effective arrangements are in place so that we can operate in accordance with our organisational values and good governance principles.

Chair:

Baroness Tessa Blackstone

Vice-Chair:

Ms Naomi Ellenbogen QC

Barrister Members:

Mr Aidan Christie QC

Ms Justine Davidge

Ms Judith Farbey QC

Mr Andrew Mitchell QC

Mr Adam Solomon QC

Ms Anupama Thompson

Lay Members:

Ms Alison Allden OBE

Ms Lara Fielden

Mr Steven Haines

Ms Zoe McLeod

Ms Nicola Sawford

Ms Kathryn Stone OBE

Mr Stephen Thornton CBE

Details of terms of office and declarations of interests for all Board members and advisers are available on our website.

Our Board discharges some of its functions through the following standing committees:

- Education and Training Committee
- Governance, Risk and Audit Committee
- Planning, Resources and Performance Committee
- Professional Conduct Committee

The Education and Training Committee oversees all regulatory activity relating to education and training for the Bar. This includes setting the standards of education and training that people must pass before being able to practise as barristers, together with the further training requirements with which barristers must comply throughout their careers. The Governance Reform programme is likely to see this Committee disestablished within 2018/19.

The Governance, Risk and Audit Committee (GRA) is responsible for ensuring the Board's corporate governance standards and internal controls are maintained. The Committee keeps under review and advises the Board on all matters relating to the risk management framework and our internal audit function.

The Planning, Resources and Performance Committee (PRP) supports development of the strategic and annual business plans. The Committee oversees operational and programme delivery by holding the executive to account. It also considers whether financial and operational resources are properly and effectively allocated and efficiently managed. The supervisory function of this committee is one mechanism to achieve transparency and accountability.

Our budget

The Professional Conduct Committee (PCC), and staff authorised by it, make decisions about reports and complaints regarding the conduct of barristers. Where a barrister has breached the BSB Handbook, the PCC has a number of options which include the imposition of “administrative sanctions” (warnings and low level fines) for less serious conduct issues but also referral to disciplinary action (eg a disciplinary tribunal) for more serious issues of professional misconduct. As noted above, the intention is to replace the PCC with a new Independent Decision-Making Body with the new body commencing work at the beginning of 2019-20.

Our work is overseen by the Legal Services Board, in accordance with the Legal Services Act 2007.

Our budget year runs from 1 April 2018 to 31 March 2019 and the budget that we control directly for this period is £5,463k.

We estimate that direct income from sources other than the Practising Certificate Fee (PCF) will be £1,169k.

The Practising Certificate Fee (PCF)

The Bar Council approves our budget and collects our funding. There is no increase to the PCF in 2018-19.

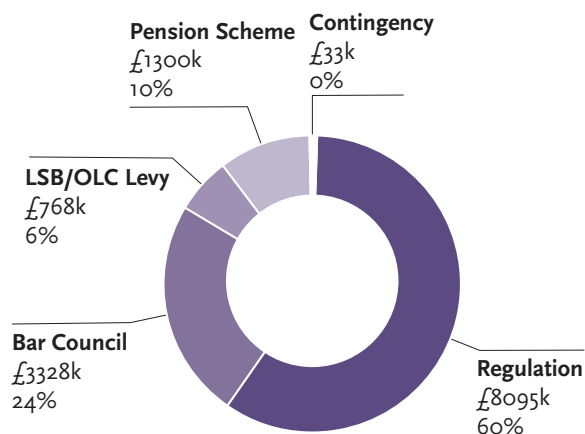
PCF Bands

Income Band	PCF level for 2018
£0-£30,000	£123
£30,001-£60,000	£246
£60,001-£90,000	£494
£90,001-£150,000	£899
£150,001-£240,000	£1,365
£240,001 and above	£1,850

The PCF explained

The PCF can only be spent on the activities that are permitted under s51 of the LSA 2007. Regulation is a permitted purpose and so a significant proportion of the PCF is spent by the BSB. However some of the Bar Council's activities are also "permitted purposes" so a portion of the PCF is also spent by the Bar Council on activities managed wholly separately from the BSB.

Under these rules, the Bar Council has consulted on its budget and PCF proposals with the profession and has received approval of both from the LSB. A copy of the consultation paper for the 2018-19 PCF and budget is on the [Bar Council's website](#).



How is the BSB funded?

Part of our income comes from charges we make for specific services we provide to individuals and organisations. We describe that kind of income as "income streams directly controlled by the BSB". Directly controlled income streams include for example the fees from Bar Professional Training Course (BPTC) providers, and the Bar Transfer Test (BTT). The remainder of the BSB's funding is from practising certificate fees and Bar Council reserves. These income streams are not directly controlled by the BSB.

Where will the BSB get its income from?

Income streams directly controlled by the BSB	£k
Entity Regulation and ABS	80
Authorisations – Waivers and Accreditation	175
Examinations	125
Supervision – Education and Training	789
Professional Conduct Department	–
Total directly controlled income	1,169
Income streams not directly controlled by the BSB	£k
Practising Certificate Fee Contribution	7,220
Funding from Bar Council Reserves	441
Total	8,830

Regulation – the costs explained

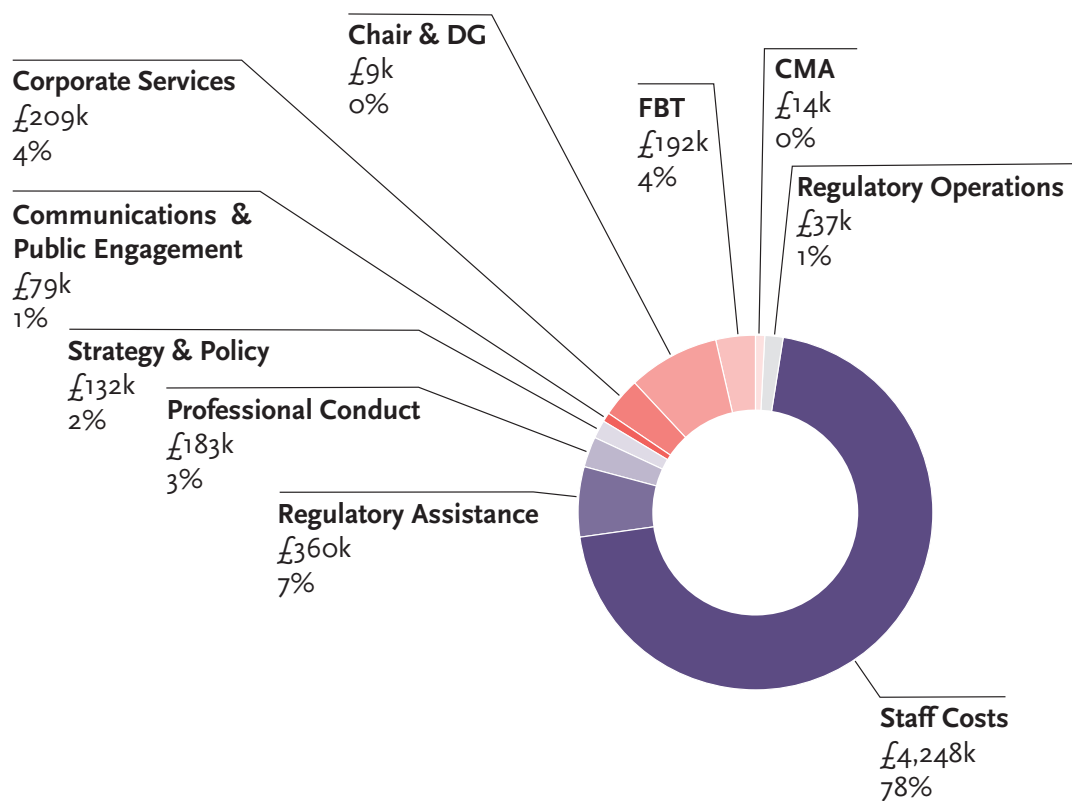
The BSB has direct control of a budget of £5,463k for 2018/19. Those funds will be spent on each of the areas shown below and overleaf.

However, this does not reflect the full cost of the BSB. We share the costs of common services with the Bar Council including a share of the premises at 289-293 High Holborn as well as relying upon the Resources Group to carry out support work (HR, IT, and Finance etc). The Resources Group budget is managed separately and part of that budget (£3,367) is apportioned to the BSB.

For the part of our budget that we control directly, we will as always look to ensure that our expenditure is allocated wisely and in a way that delivers maximum value for money for those who fund us. We undertake rigorous prioritisation exercises as part of our business planning. Only activity deemed essential is agreed and included in the business plan. An example of this drive for efficiency is the implementation of an agile approach to resourcing which provides staff with skills to work flexibly across teams and manage changing work patterns, rather than increasing headcount and cost. In 2018-19 we will continue to implement efficiency seeking measures, including as part of the development of the next Strategic Plan.

What will we spend our money on?

Budgets controlled directly by the BSB	£k
Staff Costs	4,248
Non-Staff Costs	
Regulatory Assurance	360
Professional Conduct	183
Strategy and Policy	132
Communications and Public Engagement	79
Corporate Services	209
Chair and Director General	9
Total Non-Staff Costs	972
Programme Costs	
Future Bar Training (FBT)	192
CMA Programme	14
Regulatory Operations	37
Total Programme Costs	243
Total Expenditure	£5,463k



Totals by area	£k
Staff Costs	£4,248
Non-Staff Costs	£972
Programme Costs	£243

Contacting us

We are committed to providing a high standard of service and dealing with everyone in a way that is fair, transparent, and proportionate. We welcome your feedback on our services, particularly where the level of service has exceeded or fallen below your expectations.

Your comments and suggestions are important to us as they will help us to meet our obligations to you and to improve our performance.

Write to us:

Bar Standards Board

289-293 High Holborn

London WC1V 7HZ DX: 240 LDE

Tel: 020 7611 1444

Fax: 020 7831 9217

contactus@barstandardsboard.org.uk

www.barstandardsboard.org.uk

Twitter: [@barstandards](https://twitter.com/barstandards)

www.linkedin.com/company/the-bar-standards-board

Vulnerability good practice guide

Status

1. For approval.

Executive Summary

2. The Board agreed to the publication of a vulnerability framework in May 2016, in response to risks identified as part of the Immigration Thematic Review.
3. The purpose of the guide is to help immigration barristers better identify, assess and manage client vulnerability in line with good practice. The guide is intended to be used as a good practice reference point and does not form part of the Handbook or regulatory guidance. The guide has been drafted to assist both public access practitioners and the referral Bar. There is also information that is relevant to clerks and practice managers.
4. The guide has been developed in collaboration with a range of stakeholders, including regulators, consumer and third sector organisations, and practitioners. The guide was tested with barristers and clerks. Its development has additionally been supported by a Task Completion Group (TCG), made up of Board members, practising barristers, and representatives of consumer/third-sector organisations.

Recommendations

5. It is recommended that the board:
 - **Agrees** to publish the vulnerability good practice guide, attached at **Annex A**.

Background

6. The BSB began a thematic review of immigration advice and services in July 2015. The review sought to analyse the risks in the immigration advice and services market with reference to the BSB's remit. Evidence gathering consisted of desk research, consultation with a Reference Group, supervision visits to chambers and a roundtable attended by consumer organisations and other regulators.
7. The review identified three themes:
 - *Access to justice* – the barriers people face when accessing immigration advice and services included: demand for immigration services outstripping supply, the impact of the large amount of work that public access immigration cases require, inconsistent client care, cost and geographical location.
 - *Poorly Informed Consumers* – some immigration clients (and potential clients) lack a proper understanding of how to identify the type of advice or provider they need, choose which provider to use, follow progress of their legal issue once they have chosen a provider, and seek redress when things go wrong.
 - *Quality of Advice and Standards of Service* – the standards of immigration advice and services being provided by different practitioners (eg barristers, solicitors, immigration advisers regulated by the Office of Immigration Services Commissioner (OISC)) can be variable. It was also acknowledged that the service provided by barristers is in many cases the last link in the supply chain, and this may impact on their ability to provide a competent service.

8. Three new controls were agreed by the Board in light of the review. These were:
 - provision of illustrative examples of “good” and “poor” practice to supplement existing guidance for both barristers and consumers (this was published in June 2017);
 - development of a “vulnerability framework” to help barristers assess and manage client vulnerability (the subject of this paper); and
 - publication of further guidance jointly prepared with other immigration regulators on how to instruct a barrister (this has been included in next year’s Business Plan).

The guide

9. The guide comprises a detailed document which focuses on the different stages of the client journey, seven shorter factsheets covering discrete topics, and two annexes with a list of useful contacts and further reading.
10. The guide has been drafted for use by public access barristers, the referral bar and (to a lesser extent) clerks and practice managers. Where possible, we have sought to distinguish how the guide can be applied to both referral work and public access work.
11. The longer guidance document takes the reader through a typical client journey highlighting the key stages: identifying; choosing; receiving and follow-up. For each stage of the journey, the guidance explores barriers specific to consumers seeking immigration advice and services and offers advice on how some of these may be overcome.
12. The guide includes shorter factsheets that focus on specific areas that barristers may want to consider as part of identifying, assessing and managing client vulnerability. The guidance and good practice contained within the factsheets, whilst using examples applicable in the context of immigration, can be applied more generally to other areas of law.
13. Two further annexes set out: (i) useful contacts to which barristers can direct their clients for additional support; and (ii) further resources for barristers should they require more detail.

Development of the guide

14. The guide has been developed based on desk research and extensive stakeholder engagement. A TCG was established to provide expertise and input into the development of the guide. It included two Board members (Zoe McLeod and Judith Farbey QC), Amit Popat (Head of Equality and Access to Justice) and representatives from the following organisations:
 - Legal Services Consumer Panel (panel member);
 - Bar Pro Bono Unit;
 - Access to Justice Foundation; and
 - Garden Court Chambers (barrister).
15. The guide was tested over a period of six weeks between December 2017 and January 2018 by barristers and clerks from a range of chambers/organisations. Seven barristers and one clerk provided detailed feedback.
16. Overall feedback was positive. Barristers were satisfied with the content, level of detail and information, style, tone and format of the guide. They felt it covers the right information, and is appropriately comprehensive. Barristers were enthusiastic about the format’s accessibility (i.e. distinct documents on discrete subjects, an easy to navigate list

of useful contacts) and said the reader is easily able to locate and access the information they require. The factsheets were thought to be particularly useful.

17. A draft of the guide was also shared with other legal regulators and consumer organisations, including the Solicitors Regulation Authority, CILEx Regulation, the Office of the Immigration Services Commissioner, Law for Life, Bail for Immigration Detainees, Hibiscus, the Roma Support Group and The Litigant in Person Support Strategy. Feedback from these stakeholders was equally positive. They were confident the guide could improve the way in which barristers identify, assess and manage vulnerable immigration clients. Guidance with a strong consumer-focus was advocated by all. It was recommended that we include more information on signposting and handling complaints, in addition to advice for barristers on steps they can take if their client has received poor service from another provider.
18. The TCG reviewed the feedback and the amended version of the guide is attached at **Annex A**.

Presentation of the guide

19. The guide will be an online tool. Its presentation will ensure the guide is easily accessible and user-friendly. Users will be able to access the guide from a computer or a smart phone/tablet. An additional benefit of an online tool is that it allows information to be regularly updated. The information currently set out in the “User Guide” document will form the text of a newly created webpage. The client journey document, factsheets and annexes will be available as separately downloadable PDF documents. Where there is cross-referencing between documents, these will be hyperlinked to allow users to easily navigate from one document to another.

Equality Impact Assessment

20. An equality analysis was undertaken as development of the guide commenced. No significant adverse impact on any of the protected characteristics was found to be likely. However, the accessibility of the guide for those with additional needs was highlighted, as well as potential language requirements. Several actions were agreed to mitigate against potential issues:
 - the guide will be available in alternative formats for those with additional needs, i.e. braille, larger font size, colour;
 - documents have been produced in plain English (as far as possible);
 - a diverse range of case studies has been produced; and
 - ongoing relationships with consumer organisations and other external stakeholder will be maintained to ensure publicity.

Risk Implications

21. The publication of the guide is intended to mitigate a number of risks identified under the three themes in the Immigration Thematic Review. This control was recommended, in particular, to address the risk of poor public perception of legal services and a lack of cultural competence and people skills. With reference to the BSB Risk Index, the guide will help to mitigate against risks to client service and delivery (Risk category 1), competence to practice (Risk category 3) and market risks (Risk category 5).

Resource Implications

22. There will be an ongoing impact on the Policy and Research Teams in monitoring and evaluating the impact of the project. The teams are currently working together to develop an evaluation framework to achieve this.
23. The Communications and Policy Teams will be required to liaise with external stakeholders to disseminate and publicise the guide through appropriate channels. A number of organisations have expressed a willingness to continue to work with us to publicise the guide (although, progress may be partly dependent on their capacity and resources).

Regulatory Objectives

24. The publication of the guide will contribute to the regulatory objectives of protecting and promoting the public interest, improving access to justice, protecting and promoting the interests of consumers, encouraging an independent, strong, diverse and effective legal profession, and increasing public understanding of citizens' legal rights. This was evidenced in the risk tables developed for each of the themes identified in the thematic review before implementation.

Publicity

25. The guide is scheduled to be press released on the 23rd of March. A communications plan has been developed, as well as a dissemination plan (with input from the TCG).

Targeted activity

26. In order to ensure the guide is publicised and disseminated as widely as possible we will engage in some targeted activity, as recommended by the TCG. In particular, the Legal Services Consumer Panel has agreed to write a Chair's blog on the day we issue our press release. The Communications Team is developing a flyer that can be sent to Chambers and placed in tribunals to serve as a useful reminder, including a weblink to readily enable access to the guide. We are also engaging with the Immigration Law Practitioners' Association to secure a slot at a conference at the end of March. This activity will be in addition to publicising the guide through usual channels, such as the Regulatory Update.

Annexes

Annex A – Vulnerability Good Practice Guide.

Lead responsibility

Rachael Evans (Senior Policy Officer)

Kuljeet Chung (Policy Manager)

Vulnerability Good Practice Guide User Guide

This guide has been developed in collaboration with barristers, clerks, consumer organisations, legal regulators and other stakeholders.

Purpose of the guide

This guide has been developed primarily for barristers who work with adult¹ immigration clients, to help them identify, assess and manage client vulnerabilities in line with good practice. It will also support barristers to meet their regulatory obligations under [the BSB Handbook](#) and [the Professional Statement for Barristers](#), as well as their legislative duties, including under the Equality Act 2010 and Mental Capacity Act 2005. However, others in chambers who have contact with vulnerable clients will also find aspects of this guide useful, such as clerks and practice managers.

Whilst the guidance, advice and good practice provided within this guide does not form part of the Handbook and is therefore not mandatory (except where regulatory or legislative duties are explicitly stated), we would expect barristers to follow good practice in meeting their legislative and regulatory obligations in this area.

This guide is one outcome of the recommendations made in the Bar Standards Board's [Immigration Thematic Review](#) (2016), to improve access to justice for consumers of immigration legal services and the quality of services provided to them. Consumers of immigration and asylum advice and services are often a particularly vulnerable group. This includes people seeking asylum who have fled abuse, torture, imprisonment or death in their home country. It may also include people with mental health problems, English as a second language, individuals who are homeless or destitute and those who may be at risk due to their gender, religious beliefs, sexuality or other protected characteristics.

Who should use the guide?

This guide has been designed for all barristers working in immigration, whether acting on a referral or public access basis. Whilst we recognise that where a solicitor is instructed they will usually have more contact with the client, and are often best placed to identify vulnerability, assess client needs and manage these appropriately, the dynamic and fluctuating nature of vulnerability means that all legal service providers must be jointly responsible. Furthermore, vulnerability can be difficult to identify, and issues can sometimes be missed. As a barrister, you need to be fully aware of the factors involved when working with vulnerable clients, including the identification of any issues or vulnerabilities, how to assess any resulting needs and how to manage them in line with good practice.

Parts of this guide will also be useful for clerks, practice managers and others who have contact with vulnerable clients and responsibility for service delivery. Factsheet 7 of the guide is aimed specifically at clerks and practice managers.

¹ The unique vulnerabilities and challenges faced by child migrants are outside the scope of this guide. If you are working with a child, you should seek specialist guidance.

How and when to use the guide

The guide will help you identify and assess vulnerability, as well as manage any resulting and/or changing needs throughout the case. It can act as a helpful prompt for picking up on indicators of vulnerability, and provides guidance on how you may wish to adapt your service provision accordingly. It will also help you to review your services and ensure they are fully accessible to vulnerable consumers. The format has been designed so that you can quickly access and retrieve the information you need.

In addition to using the guide when meeting a client, preparing a case or reviewing accessibility requirements, you may also wish to use the guide to form the basis of in-house training or a refresher course on vulnerability for barristers and other members of staff. It may also be used in risk management activities when considering vulnerable clients.

Clerks, who often engage with clients directly, will find it useful to know how to exercise good practice when communicating and engaging with clients and ensure services are accessible.

Guide Structure

This guide has been developed with an immigration focus and comprises:

- i) A longer guidance document, following each stage of the immigration consumer journey;
- ii) Seven factsheets covering discreet topics; and
- iii) Two annexes:
 - Annex 1 – Useful Contacts (to which you can direct your client towards additional support)
 - Annex 2 – Further Resources

The guidance document focuses on a typical legal consumer's client journey, which consists of:

- **Identifying** a problem or legal need
- **Choosing** a provider and engaging them
- **Receiving** legal advice and/or representation
- **Follow-up:** satisfaction with service, escalation of any issues

For each stage of the journey, the guidance explores barriers that are specific to consumers seeking immigration advice and services and offers advice and solutions as to how some of these could be overcome.

The factsheets focus on specific topics. These may be referred to when identifying, assessing and managing client vulnerability, and you may refer to them as and when issues arise. The factsheets are not necessarily immigration specific and can be applied more generally to other areas of law. The following topics are covered in the factsheets:

- **Factsheet 1** – Enabling access to your service
- **Factsheet 2** – Identifying and assessing vulnerable clients and their needs
- **Factsheet 3** – Identifying victims of trafficking
- **Factsheet 4** – Issues to consider in relation to court proceedings
- **Factsheet 5** – Client care and communication
- **Factsheet 6** – Issues with mental capacity
- **Factsheet 7** – Dealing with vulnerable immigration clients (For clerks and practice managers)

Whilst the guide provides good practice guidance on areas that are particularly relevant to barristers, it cannot feasibly hope to cover all aspects of working with vulnerable consumers. Good practice examples, useful online tools, resources and further literature are included throughout the guide. If you wish to find further information on a particular area, **Annex 2** (Further Reading) will signpost you appropriately.

Acknowledgements

This guide has been developed with input from and in collaboration with others. We would like to extend our sincere thanks to the following organisations:

The Solicitors Regulation Authority (SRA)

The Office for the Immigration Services Commissioner (OISC)

CILEx Regulation

The Legal Services Consumer Panel (LSCP)

The Bar Pro Bono Unit

The Access to Justice Foundation

Bail for Immigration Detainees (BiD)

Law for Life

Hibiscus Initiatives

The Roma Support Group



REGULATING BARRISTERS

GUIDANCE ON VULNERABILITY AND THE IMMIGRATION CLIENT JOURNEY

SECTION ONE: What do we mean by ‘vulnerability’?

Definition

1. Attempts at defining vulnerability most often describe people being at an increased risk of detriment due to individual characteristics or circumstances. However, the way in which services are provided and the levels of care taken can also impact upon a consumer’s vulnerability and susceptibility to detriment².
2. For the purpose of this guide, we will adopt the British Standard on Inclusive Service Provision (BS18477)³ – also adopted by the Legal Services Consumer Panel (LSCP) – to help us understand what we mean by ‘vulnerability’. The Standard sets out a range of risk factors, which are defined as circumstances that could contribute towards making a consumer vulnerable. The presence of one or more risk factors could increase the likelihood of a consumer being at a disadvantage or suffering loss or detriment during a transaction or communication with an organisation. Risk factors can be made up of both individual factors and market factors

Vulnerability in the legal services market

3. The LSCP adopted and applied the BS18477 to a legal services setting in 2012, and later published a guide for legal services regulators on recognising and responding to consumer vulnerability in 2014⁴. By adopting the Standard, the LSCP sought to develop a shared approach and language around consumer vulnerability within the sector.

Individual risk factors

4. The LSCP expanded on the list of individual risk factors contained in the Standard to take account of the legal services market. These risk factors are:
 - Age
 - Being a carer
 - Bereavement
 - Cultural barriers
 - English as a second language
 - Health problems
 - Inexperience
 - Lack of internet access
 - Learning disabilities
 - Leaving care
 - Living alone
 - Location
 - Lone parent
 - Loss of income
 - Low income
 - Low literacy
 - Mental health issues
 - Physical disabilities
 - Relationship breakdown
 - Release from prison
5. These individual risk factors can be short-term or long-term, and might fluctuate over time.
 - **Long-term or permanent characteristics** could include people who have learning disabilities, those on a low income or with low literacy levels, and communities that have cultural barriers to market participation.

² Financial Conduct Authority (2015) [Occasional Paper No.8: ‘Consumer Vulnerability’](#)

³ British Standards Institution (BSI) (no date) [Fair, flexible services for all](#) (A summary of the British Standard on Inclusive Service Provision (BS18477))

⁴ Legal Services Consumer Panel (2014) [Recognising and Responding to Consumer Vulnerability](#)

- **Fluctuating vulnerabilities** describe people who are vulnerable due to transitory situations, such as mental health issues, English as a second language, health problems and lack of internet access⁵.

Market risk factors

5. The British Standard states that the way the modern market, service sectors and organisations work can cause or contribute to consumer vulnerability. They can place consumers at a disadvantage in accessing and using products and services, and in seeking redress. In the context of the legal services market, the LSCP argues that:

“The legal services market shares many of the characteristics of markets which cause significant consumer detriment, and the nature of legal services mean any consumer can feel vulnerable⁶.”

6. The LSCP identified several market risk factors in the legal services market, including information asymmetry, concerns about cost, a range of access and redress barriers and a lack of quality signals.

Vulnerable immigration clients

7. There are different types of immigration client, and not all will be considered vulnerable. For example, more experienced immigration clients may be well educated and able to use the internet and personal or business contacts to research the market and secure high quality advice. However, the majority of non-professional clients seeking immigration advice will be vulnerable in some way⁷.
8. We know from our supervision activity that many barristers are acutely aware of the vulnerabilities of their clients. Barristers consider it to be in their interests to identify vulnerability, as it tends to be central to the legal case made. It was also reported to be relevant to their personal interest in practising in this area of law. It is evident from our supervision visits to chambers that assessing and effectively dealing with a vulnerable client is key in the provision of good quality immigration advice and services. There is, however, less clarity around whether clients are currently being assessed for vulnerability in a consistent manner, and uncertainty about what happens if they are assessed as vulnerable.

Individual risk factors

9. As part of the BSB thematic review⁸ and ongoing engagement with consumer organisations, we identified a range of individual factors which can contribute towards making an immigration client vulnerable. These include:
 - The underlying reasons for seeking asylum;
 - Gender-based persecution;
 - Being a victim of modern day slavery/trafficking (both those who have escaped and those who are currently being trafficked);
 - Fear of sudden deportation;
 - Fear of children being taken out of school;

⁵ Legal Services Consumer Panel (2014) [Recognising and Responding to Consumer Vulnerability](#)

⁶ *Ibid*

⁷ BSB (2016) [Immigration Thematic Review](#)

⁸ *Ibid*

- Financial hardship;
- Being in immigration detention;
- Being an offender or ex-offender;
- Language barriers;
- Cultural barriers;
- Mental health issues;
- Trauma experience;
- Family conflict or separation;
- Unaccompanied minors; and
- Age (young or old).

10. We also noted that, in the field of immigration, these vulnerabilities often come in combination. Having a multitude of issues can affect a person's ability to engage with services and processes. Furthermore, immigration clients are likely also to be seeking legal advice with regards to other areas of law, such as housing, banking and welfare.
11. Clients who display or experience one or more of the risk factors above should not automatically be considered vulnerable. These are simply indicators of risk. Whether a client is vulnerable will depend on their particular situation, the type of service they require and how accessible that service is to them.

Market risk factors

12. As part of our thematic review⁹ we conducted our own analysis of market factors. In particular, we explored potential barriers to accessing and seeking good quality advice. We identified three main market risks for immigration clients:
- **Access risks:** these are the barriers faced by consumers of immigration legal services when trying to access the legal help they need, including a lack of access to legal aid;
 - **Information asymmetry:** this risk highlights how immigration clients and potential clients lack the information and knowledge they need to identify the right type of provider, choose which provider to use, follow progress of their case once they have instructed a provider and seek redress when things go wrong; and
 - **Quality risks:** these are the risks that the quality of services provided by different practitioners (barristers, solicitors, Office of the Immigration Services Commissioner (OISC) advisers) can be variable.
13. This guide is part of the BSB's response to these market risks. Since the thematic review, we have also published guidance in several languages for immigration consumers, as well as guidance for frontline organisations that support them¹⁰, to help them understand the types of providers that can assist with their legal issue, the differences between them, how to recognise what 'good' and 'poor' service looks like and seek redress if things go wrong. These are available on the [BSB's website](#).

⁹ *Ibid*

¹⁰ BSB (2017) [Guidance on immigration and asylum related issues: Professionals and consumers](#)

SECTION 2: The “Client Journey”

14. Assessing and managing vulnerability is essential to improving the consumer experience, and helping vulnerable people understand their legal problem and be able to effectively access justice incurs a number of benefits, including:

- Vulnerable people better understand their legal issue and likely outcome;
- The safety and wellbeing of vulnerable people is supported;
- A positive impact on the reputation of legal providers;
- Upholding the rule of law; and
- Protecting the public¹¹.

15. As part of the BSB’s immigration thematic review, we looked at a typical legal consumer’s client journey. An individual (or organisation) with a legal problem will go through several different stages in identifying and responding to their legal need. Whilst every consumer’s experience will be individual to their circumstances, we can categorise this in general terms using a 4 stage model¹², as set out below.

1. Identifying	2. Choosing	3. Receiving	4. Follow up
<ul style="list-style-type: none"> • First awareness of the problem or legal need 	<ul style="list-style-type: none"> • Deciding upon a response to that problem • Selecting a provider to assist 	<ul style="list-style-type: none"> • Engaging that provider • Receiving legal advice/ representation 	<ul style="list-style-type: none"> • Satisfaction with service, escalation of any issues • Feedback, recommendations and referrals to others • Repeat client?

16. The review recognised that immigration clients may come to barristers at different stages of this journey. In particular, as part of our supervision fieldwork, barristers told us that the client’s contact with the barrister can often be at the final stages of a case. Regardless of the stage at which the client instructs the barrister, however, the barrister should be aware of vulnerabilities and issues to look out for, as these may not be the same for every stage of the journey i.e. they can change over time. Issues earlier in the journey can also be missed.

17. The immigration client’s journey was also considered by a reference group made up of other regulators, third sector organisations and representative bodies. The group assisted the BSB in refining a client’s journey through the immigration system. They advised that there was a wider range of issues that affect immigration clients, including housing, family, banking and welfare, and not just the right for people to be and remain

¹¹ Solicitors Regulation Authority (2016) [Providing services to people who are vulnerable](#)

¹² BSB (2016) [Risk Outlook](#)

in the UK. The group therefore felt that barristers should be aware of the interconnectivity of such issues, as although they may be unable to advise in specific areas they can signpost to organisations that can help.

18. The issues discussed above and others that are relevant to the stages of the client journey are explored more fully in the following sections. For each stage of the journey we consider what vulnerabilities and issues barristers may be faced with, and provide solutions and options as to how these could be overcome. Where possible we have provided worked examples.

SECTION 3: “Identifying” (Stage 1 of the client journey)

19. The initial stage of the typical client journey is becoming aware of the problem or legal need, then deciding upon a response to that problem. Even at this initial stage there are various barriers that can prevent individuals from recognising they have a legal problem, including:

- Legal capability barriers. Legal knowledge and understanding amongst the general population is low. Consumers may not recognise an issue as a legal matter, know their legal position or how to address it¹³;
- The complexity of navigating the legal system;
- A lack of familiarity with the legal system and how to explore options; and
- A lack of familiarity with legal terminology and language.

Additional issues to consider for those seeking immigration advice and services

20. For immigration clients, the barriers highlighted above can be compounded by additional issues, such as:

- ***The lack of voluntary organisations that can help*** individuals recognise they have a legal need and signpost appropriately – In the past, voluntary organisations provided the route by which many people obtained advice and referral to a solicitor or barrister. Our thematic review found that many of those voluntary organisations no longer exist due to funding issues¹⁴.
- ***Legal aid cuts*** – Due to a significant curtailment of the types of immigration work for which legal aid is available, even if individuals are able to identify that they have an immigration related legal need, they may be unable to afford advice or representation.

¹³ [The Public Legal Education Evaluation Framework](#) (2011), developed by the Personal Finance Research Centre (PFRC) at the University of Bristol, discusses and explains legal capability, and contains a legal capability evaluation framework. The framework identifies four key domains when evaluating legal capability, including a person’s ability to recognise and frame the legal dimensions of issues, the ability to find out more about the legal dimensions of issues and situations, dealing with law-related issues and engaging and influencing.

¹⁴ Toynbee Hall’s report, [Trusting the dice](#) (2015), on immigration services and the demand for such advice found that providers of immigration advice in the borough were increasingly few in number and under considerable pressure. This was translating into difficulties for clients who were trying to access increasingly oversubscribed services.

Part 1 – Public

- ***A lack of knowledge amongst clients*** – Research commissioned by the BSB¹⁵ on the experiences of immigration clients found that consumer organisations felt there was a general lack of understanding amongst clients about their legal circumstances, the stages of an immigration case and particularly at what stage representation might be required.
- ***Hesitancy in seeking advice*** – People in need of immigration advice can be hesitant to seek it due to their personal circumstances. The level of vulnerability can potentially convince people to approach their community for advice in the first instance. Individuals may then receive legal help from those that have been recommended from their networks, through word of mouth, rather than directly approaching barristers, solicitors or OISC registered advisers for legal advice. This, in some circumstances, leads to incorrect advice and an exacerbation of the issue.
- ***Capacity issues*** – The provision of immigration legal services can be labour intensive work for public access barristers, particularly sole practitioners. Our thematic review found that public access barristers have been hesitant to advertise their services because they have enough work.
- ***Quality issues*** – Our review found that immigration clients can often access or be provided with inaccurate information either due to multiplicity of information sources, unintentionally due to the complex and changeable nature of immigration law, or deliberately on the part of unscrupulous and/or unregulated providers.

How can you overcome some of these issues?

21. You may not be able to address all of the issues highlighted above; however, below are some suggestions that may make it easier for potential immigration clients navigating this stage of the client journey.

Information provision

22. You should consider where information about your services will have the most impact and is likely to be most beneficial. Relying solely on websites will exclude certain groups from receiving that information. For example, those in need of the most urgent immigration advice may be in detention centres, where they are unlikely to have access to the internet or may have just arrived in the country. You may wish to explore whether you are able to reach out to such groups: you could develop information pamphlets and disseminate these to local centres or organisations, or simply make contact to introduce yourself and ensure they are aware of your services¹⁶. This will facilitate potential immigration clients being able to make contact with a legal service provider should they wish to do so.

¹⁵ IFF Research (2013) [Immigration Client Experience Research](#)

¹⁶ See competence 1.9 in the [Professional Statement for barristers](#). Barristers are expected to be able to exercise good communication, through any appropriate medium and with any audience as required in their work, including being able to identify the audience and respond appropriately to any needs and sensitivities created by individual circumstances.

Building links in the local community

23. Barristers are expected to have an awareness of the wide range of organisations supporting the administration of justice and their roles, as well as be able to identify and advise clients of alternative sources of advice and funding available to them¹⁷.
24. We know from our thematic review and engagement with consumer organisations that people in need of immigration advice and services will often look to friends, family and others within their community for advice. Some individuals will seek advice from community, cultural and faith groups/places of worship. This may result in poor advice due to a lack of knowledge and expertise, particularly given the fast-changing nature of immigration law. Organisations and groups that come into contact with people needing immigration advice and services would benefit from being able to direct individuals towards appropriate and professional legal advice and services.
25. As such, you may wish to familiarise yourself with local support services and community organisations, including those that take on a signposting role. Building links with voluntary organisations can be beneficial in terms of both ensuring your services are visible and accessible to these consumers, and for you to be able to refer clients who require additional support to those that can help. It additionally reduces the risk of consumers accessing poor or incorrect advice. You could consider introducing yourself to local groups and making them aware of the services you can provide, to ensure that anyone seeking professional immigration advice can be directed towards your services. This may be particularly beneficial for public access barristers. For more information see **Factsheet 1** (Enabling access to your service) and **Annex 1** for useful contacts.

Advertising and transparency – public access barristers providing immigration advice and services

26. Although our thematic review found that not all public access barristers advertise the fact they provide immigration advice and services, in the future all providers are likely to be required to set out the legal services they provide. The BSB has consulted on new proposals that will increase transparency around costs, services and redress. If approved, it will be mandatory for barristers to provide basic information on both the types of service they offer and redress available¹⁸. The BSB is also considering the scope of barrister's fee requirements. Barristers will be required to comply with any transparency requirements from 2020. This increased transparency should help address some of the issues identified around inconsistent information provision and the lack of affordability of advice.

SECTION 4: “Choosing” (Stage 2 of the client journey)

27. Once a consumer has identified they have a legal need and decided on an appropriate course of action, the second stage of the journey involves selecting and choosing a provider to assist. There are various barriers at this stage that can make choosing particularly difficult for a consumer, including:

- The difficulty for consumers in assessing quality and value;

¹⁷ BSB (2016) [The Professional Statement for Barristers](#) (1.4)

¹⁸ More information on these proposals can be found in our [consultation document](#).

- The challenge in finding an appropriate provider to meet needs and understand what those needs are;
- A lack of good quality comparison data;
- The fact that legal services can often be a distress purchase, made in difficult circumstances;
- Perception issues, particularly around cost, and lack of trust in legal professionals or authority generally;
- A lack of clear information on costs; and
- The fact that choosing the basis of instruction (public access, intermediaries, terms of engagement etc.) may be confusing.

Additional issues to consider for those seeking immigration advice and services

28. As in the initial stage of the client journey, there are additional factors that should be considered for those seeking immigration advice and service, including:

Lack of understanding of different provider “types”

29. The Solicitor’s Regulation Authority’s (SRA) report on the “Quality of Legal Services for Asylum Seekers” found that asylum clients struggle to understand the difference between provider types and regulatory protections. Research commissioned by the BSB in 2013¹⁹ similarly found that immigration clients were not entirely sure of the differences between a barrister and solicitor, even after having been through the immigration legal process.
30. This evidence was supported by consumer engagement sessions conducted by the BSB when developing its guidance for immigration consumers²⁰. Almost none of the consumers who participated could articulate the difference between a solicitor and a barrister, and many were not aware of OISC-registered advisers, despite having been through or currently going through the legal process.

Inaccurate information provision

31. The thematic review also found evidence to suggest that inaccurate information provision is a barrier to clients accessing immigration advice. The BSB hosted a Roundtable in 2013, attended by representatives from the profession, consumer organisations and other regulators, which highlighted concerns that clients were not being provided the right information at the right time. Word of mouth recommendations and internet search engines were reportedly common tools used to find immigration advice, but clients had a limited understanding to inform their choice. The 2013 BSB commissioned research found evidence of a substantial amount of misinformation circulated within communities, which placed those needing immigration support at risk of exploitation and exposure to poor quality advice and services²¹. The “[Trusting the Dice](#)” report similarly found that clients frequently have very little accurate information on which to base choice, often paying over the odds for advice which can be either futile or inaccurate.

“No market”

¹⁹ IFF Research (2013) [Immigration Client Experience Research](#)

²⁰ BSB (2017) [Guidance on immigration and asylum related issues: Professionals and consumers](#)

²¹ IFF Research (2013) [Immigration Client Experience Research](#)

Part 1 – Public

32. At the BSB roundtable in 2015, there was consensus that there is little choice in terms of provider for the majority of people seeking immigration and asylum services. The group felt that there is ‘no market’ for many consumers, making the decision on choice of legal representation very difficult.
33. Our engagement with consumer organisations as part of this project supports this finding. One consumer organisation said that the idea that clients have “free choice” when choosing a provider is “not reality”, and that clients have very little choice in selecting a provider (e.g. due to cost, location, lack of understanding of different providers), particularly if they are funded by legal aid.

Supply vs demand

34. Evidence gathered during our thematic review suggests that there is an increased demand for immigration advice and services but not necessarily the supply to meet this. A number of barristers who were public access accredited expressed reluctance to actively promote that option because they felt that the work is less profitable (because clients need more ‘hand-holding’ by both the barrister and clerk) and carries more risk. Those engaging primarily in public access work find that they get enough work through word of mouth recommendations and do not need to advertise their services. This means that vulnerable consumers trying to navigate their way through the legal system for the first time are unlikely to find services by good quality barristers publicly advertised.

Geographical issues

35. Chambers that carry out immigration work tend to be clustered around the towns and cities where immigration tribunals are located. Our review found that some of the most vulnerable people who find themselves in need of urgent immigration services, but who were not located in one of these centres, might struggle or even find it impossible to locate good quality advice.

Costs

36. Cost can be a significant barrier to accessing advice and can heavily influence the choice of legal service provider that an individual makes. Cuts to legal aid for immigration advice and services has compounded this issue further. Our review also found that there is a lack of clarity around costs and some evidence of over-charging.²²

How can you overcome some of these issues?

37. Barristers are expected to respond appropriately to those from diverse backgrounds and to the needs and sensitivities created by individual circumstances. Barristers should be receptive and responsive to how those needs might be met through making adjustments to their own practices, including providing information in a way that others can understand, taking into account their personal circumstances and any particular vulnerability, and recognising and taking reasonable steps to meet the particular needs of clients, including those who are disabled or vulnerable²³.

Enabling access

²² More information in relation to issues around cost can be found in our [Thematic Review report](#) from paragraph 128 onwards.

²³ BSB (2016) [The Professional Statement for Barristers](#) (3.3)

Part 1 – Public

38. Consider how you present information in advertising or marketing materials, particularly if you accept public access instructions. To facilitate the process of choosing a provider for consumers, you should be transparent about costs and the services you are able to provide. For example, publishing your pricing model (e.g. fixed fee, hourly rates, capped charges) on your website will help consumers understand the basis on which they will be charged and know what to expect. You should also be clear about whether any additional charges are likely to be incurred (e.g. court fees and other disbursements).
39. Some chambers' websites publish consumer reviews of the service they have received to better inform others. As discussed above, we expect it will soon be a requirement for barristers to publish basic information in relation to cost, service and redress. You could also consider how prominent this information is on your website and any other advertising/marketing material.
40. Further useful information on enabling access can be found in **Factsheet 1** (Enabling access to your service).

Interpreting and translation

41. For many people seeking immigration advice and services, English may not be their first language. If your website or any printed marketing material is in English, this may make it difficult for a potential client to make an informed choice. Consider the area in which you provide immigration advice and services, as certain locations may require the provision of services in a particular language. If you are aware of communities in your area where English is not a first language, you could consider the need for website translation and the translation of any printed material. If sections of your website are translated, clients should be clearly directed towards these in the translated language. **Factsheet 1** (Enabling access to your service) sets out good practice in ensuring website accessibility. Refer to **Annex 2** (Further resources) for organisations that can assist.
42. If you are working with a client who needs an interpreter/translator on a public access basis, you may need to consider whether the client should instruct an OISC-registered adviser or solicitor, or are able to make arrangements to contract an interpreter themselves. You may get a client who requests that a family member or friend accompany them to client conferences to translate. If this occurs, carefully consider any potential risks, including the possibility of inaccurate translation or undue influence, as well as implications for legal professional privilege. However, if there is limited funding for an interpreter and the client requests and consents to the use of a family member or friend, this may in some cases be the most convenient arrangement, providing it is adequately managed and carefully monitored.

Flexibility

43. Consumers are now able to access services more flexibly: they can instruct barristers directly, and can 'unbundle' services according to their needs. The latter affords the client more control over their case, and the ability to keep costs down. You may wish to consider whether this is a service you could offer clients. Unbundled services can increase access to justice for those who cannot afford a 'full service'.
44. However, this will not be suitable for all clients, and you must bear your regulatory duties in mind, and refer to the Public Access Rules in the BSB Handbook if you are uncertain.

More information on what you should do when offering unbundled services is available in the section below.

SECTION 5: “Receiving” (Stage 3 of the client journey)

45. At this stage of the client journey the consumer receives legal advice and/or representation. The barriers to consider at this stage include the following:

- Clients can struggle to build trust and communicate their needs effectively, especially under tight time constraints;
- Clients can lack the opportunity to build rapport with their lawyers;
- Clients may not receive a service that is tailored to their particular needs, especially if they are vulnerable;
- A lack of understanding of what is expected of the client, including the documentation and information they need to provide;
- A lack of understanding of the necessary protocols, procedures and implications if the legal outcome is complex; and
- Clients who take an ‘unbundled approach’ will need to manage lines of responsibility carefully.

Additional issues to consider for those seeking immigration advice and services

46. This stage of the client journey is crucial when it comes to identifying, assessing and managing vulnerability. When a consumer has chosen you as their provider, it is important that you take steps to identify, assess and put in place actions to manage vulnerability. Additional barriers/issues you should consider to those listed above are explored further below.

Value concerns/failure to give clear information about fees

47. During the supervision fieldwork the BSB undertook in 2015, serious concerns were expressed by barristers about providers of immigration legal services attracting clients with an initially low fee offer and then raising the fee; providing evidence of “marking up” fees. This means that genuine providers are subject to fee pressures to remain competitive, which creates difficulty for barristers to remain in the immigration market as well as confusion for clients who may perceive immigration legal services by certain providers as wholly unaffordable.

Lack of awareness about what constitutes a good service

48. Our research confirmed that clients often associate the quality of immigration advice with cost. This is also highlighted in the “[Trusting the Dice](#)” report by Toynbee Hall. The BSB’s Immigration Thematic Review Roundtable also highlighted that immigration, asylum and nationality work is a very complicated and challenging area of law. It was not uncommon for less experienced advisors to ‘get out of their depth’. The BSB commissioned research²⁴ highlighted positive views about the advice clients received from their barrister. However, several clients felt the amount of advice they had received was minimal, and that they would have appreciated more detail or explanation. Consumer organisations also stated in this research that clients had a tendency to judge the quality of advice received purely on the basis of the outcome achieved in their case.

²⁴ IFF Research (2013) [Immigration Client Experience Research](#)

49. Our thematic review likewise found that a negative result in a case is often seen by clients as an indicator that they have received a poor service. During the supervision fieldwork, specific concerns were expressed that clients might not be able to establish whether they are likely to receive, or indeed have received, “good quality” service, as there is no transparent way for them to ascertain this. Chambers said that in the absence of other measures, price is often taken as a sign of good quality – the perception being that the more expensive something is, the better the quality. This could compound the effect of poor service by allowing unscrupulous providers to charge higher and higher fees to vulnerable clients.

Supply chain risks

50. Clients may seek immigration advice and services from you after having sought services elsewhere, or you may be the last link in the supply chain. Our thematic review found that a poor standard of advice is often provided at the outset of a case by an intermediary, which includes family/friends as well as professionals, which may have an effect on your ability to provide a competent service. Anecdotal evidence from the consumer organisations with which we have engaged suggests that unscrupulous providers can mislead clients about the merits of the case and their chances of success. We also received reports that it is extremely difficult for those receiving legal aid to change their provider if they are unhappy with the service, often requiring a formal complaint be made.

51. You should be mindful of the possibility that your client may not have received appropriate advice or client care in the supply chain before reaching you, and that it may be too late for you to rectify all problems. A report on “[Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers](#)” states that the damage done by poor advice early on is, in some cases, irreparable²⁵.

Lack of cultural competence and people skills

52. The evidence we collected in our thematic review highlighted that barristers or other individuals engaged in the provision of services might demonstrate a lack of social and cultural insight, interpersonal, communication skills and empathetic behaviours, which may impact on the ability to provide a good service.

Immigration detainees

53. Those in immigration detention include some of the most vulnerable consumers of legal services, and they often struggle to access professional legal advice and services. Research commissioned by the Bar Council²⁶ found that not everyone succeeds in obtaining the legal aid they are entitled to as promptly as they require, and that many people struggle to secure free legal representation to challenge their detention in court. It suggests that access to publicly funded immigration advice much earlier would help people resolve their immigration status or make plans to leave the UK and thus avoid detention.

How can you overcome some of these issues?

²⁵ Clayton (2015) [Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers](#)

²⁶ SOAS (2017) [Injustice in Immigration Detention: Perspectives from legal professionals](#) (Research report commissioned by the Bar Council)

Communication and building rapport

54. Communication is integral to effectively managing client vulnerabilities and addressing some of the issues highlighted above. Barristers are expected to exercise good communication skills, choose appropriate means of communication, be able to adapt their language and communication to suit their audience and recognise and respond appropriately to what others communicate to them²⁷.
55. If your client has a learning disability or English as a second language, being patient and clear in your communication is especially important. You may need to adapt your style of communication to ensure the information you are relaying is easily understood by your client. You should also be aware that language barriers can make the identification of learning disabilities difficult. This further highlights the importance of involving a professional interpreter where required.
56. Using plain English at all times is especially important when you are dealing with a vulnerable client. You could check your client's understanding of what has been said by summarising and asking them to summarise information. Be alert to verbal and non-verbal cues which may indicate a lack of understanding. Some clients, for example, will nod or smile out of politeness. If your client does not seem to fully understand what has been said, consider the need for an interpreter/translator and other potential means of communication.
57. Clients may not know how to properly engage with their legal provider, including the documentation and information they need to provide to advance their case. For example, your client may not know they need to inform you of simple facts such as a change of address or telephone number. Clearly explain to your client at the earliest opportunity what you need from them and why, and encourage them to contact you if they experience a change of circumstances.
58. Be aware of the challenges of cross-cultural communication. People from differing cultures have different styles of communication and may interpret tone, style and language in a way you may not have expected. To be effective at communicating across cultures, it is key that you employ positive listening skills, are able to build an effective rapport and identify when a misunderstanding has occurred.
59. See **Factsheet 5** for more guidance on effective client care and communication, including advice on client care letters and cross-cultural communication.

Tailoring your service

60. The BSB Handbook requires all barristers when accepting instructions to confirm in writing the terms and/or basis on which they will be acting, including the basis of charging (rC22). Consider whether a client care letter is the most appropriate means of achieving this – if not, you will want to think about how you can tailor your communications to suit your client's needs and preferences.

²⁷ BSB (2016) [The Professional Statement for Barristers](#) (1.9)

61. Research commissioned by legal regulators and the LSCP into client care letters found that they are perceived as difficult to read, and are particularly problematic for vulnerable consumers, including those with low literacy, visual impairments, or for whom English was a second language²⁸. Difficulties engaging with client care letters was found to be most acute for those with low literacy levels. There was consensus amongst this group of research participants that existing communications do little to help them understand the legal process, and many expressed a reluctance to ask for support from their legal provider.
62. Taking the time to understand any potential challenges is important. You may need to spend extra time explaining the process fully and ensure that this is sufficiently broken down i.e. what steps will be taken²⁹. You could offer clients clear guidance to help them clarify the information contained within the client care letter, or the opportunity to have any questions answered by, for example, encouraging them to give you a call. If guidance on understanding client care letters is available, this should be clearly highlighted.
63. **Factsheets 2 and 5** provide more information on how you can tailor client care letters and your service effectively.

Managing expectations at the outset

64. Barristers are expected, where appropriate, to keep clients informed of case progress and manage their expectations, including in relation to options, the range of possible outcomes, risks and timescales³⁰.
65. As highlighted above, barristers are often the last link in the supply chain, and clients tend to associate the outcome of their case with the quality of service they have received. To mitigate against this risk, you should manage your client's expectations appropriately from the outset. If there is little chance of success (either due to the merits of the case, or because the client has already been the subject of poor advice or service from a different provider) you should be clear with your client about this and advise them on what (if anything) can be done.
66. Managing expectations is also crucial if you provide unbundled services. As noted in the previous section, offering unbundled services can provide greater flexibility for clients in terms of cost and service, and may facilitate access to professional legal services for some who may otherwise be unable to obtain it. If you do opt to offer unbundled services, ensure that the client fully understands what you will and will not be doing, and that they will retain responsibility for the aspects of work you have not been instructed to undertake. Ensuring clarity on respective responsibilities is important, and mitigates against the risk of client dissatisfaction further down the line. You will also wish to bear in mind your regulatory duties to consider whether such services are appropriate in the circumstances, and whether your client's best interests are better served by different legal representation (rC17). If you are unsure, refer to the Public Access Rules in the BSB Handbook.

²⁸ Optimisa Research (2016) [Research into Client Care Letters](#)

²⁹ *Ibid*

³⁰ BSB (2016) [The Professional Statement for Barristers](#) (3.5)

Managing cases where the client has received poor advice and services

67. You should be alert to the possibility that your client may have received poor advice and services from another provider, or from friends, family or those within their community before they come to you. If you become aware that a client has received poor advice and services from another legal provider, you should consider whether the client's interests are best served by different legal representation and, if so, inform the client to that effect (rC17). Rapport sessions can be useful in this respect, providing an opportunity for the client to raise any concerns.
68. If your client has received poor advice and services, check they have been provided with necessary information, and that they understand their case, the grounds, their chances of success and options going forward. You may also wish to highlight the client's right to complain about their providers.
69. In the event that you meet the client for the first time at court and become aware that your client has received poor advice and services, you may need to request an adjournment and ensure your client understands the reasons for this (e.g. because the solicitor has failed to discover key evidence). If such a situation arises, consider whether the client's best interests are better served by another legal service provider, and inform the client if so. Also, consider whether your client is aware of their entitlement to complain. You could direct your client towards other providers who may be able to help, or provide them with **Annex 1** (Useful Contacts).

Consider the use of family, friends and carers when providing services

70. Family, friends and carers can be best placed to assist in advising you of a client's vulnerabilities, communication issues and levels of understanding, including the person's ability to maintain concentration, when they are showing signs of distress or unease. Yet the knowledge that carers have is often under-utilised and the benefits of involving them unrecognised. If a client attends meetings with a carer, family member or friend, you could encourage them to participate in conversations and provide input where relevant.
71. However, there are a number of important considerations you should make before involving a third party or discussing the case with a third party present, including legal professional privilege, conflicts of interest, taking instructions from a third party, possible power imbalances or undue influence and whether the third party is a witness in the case. Third parties can sometimes fail to act in the client's best interests and you should be particularly aware of this when the client is vulnerable.
72. Where a carer claims to have authority to act on the client's behalf, you may find the CARER protocol helpful to ensure this is appropriately managed.

CARER protocol³¹

1. **C**heck for authority (e.g. power of attorney) and request evidence of this. If evidence is not produced, you can take the following steps:
2. **A**void discussing any details of your client's case with the carer, or even acknowledge that there is a case.
3. **R**eassure the carer that any concerns they have will be listened to and considered.
4. **E**xplain to the carer that if you take notes of their concerns these will be recorded as observations (unverified).
5. **R**ecord any observations and concerns, including any actions needing to be taken. Confirm what has been recorded with the carer.
6. **S**ummarise what has been agreed and get the carer to confirm this.

73. Where carers are involved, remember that they may be vulnerable themselves. Caring responsibilities can have a significant impact on a person's wellbeing: carers can suffer stress-related symptoms that can be severe and long lasting, as well as social isolation due to the amount of time spent providing care to the person. They sometimes struggle to access the help and information they need, and report often feeling excluded from the process involving the person for whom they care. You should be mindful of this when dealing with carers or family members. Set boundaries early on to establish a constructive dynamic, and ensure that everyone involved in the process is comfortable and knows what to expect.

74. Although developed in the context of mental health care, the Carers Trust's ['Triangle of Care' guide](#)³² sets out best practice to include and recognise carers as 'partners in care'. It highlights the fact that carers are often the first to be aware of a developing crisis, and are best placed to notice early warning signs. These principles are equally applicable in the legal services context, and apply not only to clients with mental health problems, but to vulnerable clients generally.

Ensure communication with intermediaries/referrers (including solicitors and OISC advisers)

75. If you are the last link in the supply chain and a client has already been through a process or has been referred by an intermediary/other professional, you should engage in an active dialogue in order to ascertain key information. For example, if you have been instructed by an OISC adviser or solicitor on behalf of a client, it would be reasonable for that client to expect the adviser or solicitor to share information in relation to

³¹ Money Advice Trust (2016)

³² Carers Trust (2013) [The Triangle of Care. Carers Included: A guide to best practice in mental health care in England \(Second Edition\)](#)

vulnerabilities that have already been identified. In this scenario you should be proactive and ask the solicitor or adviser if their client's needs have been assessed. This will prevent the client having to repeat information.

Immigration detainees

76. Immigration detainees often have a low awareness of their rights, including their entitlement to legal aid in respect of their detention matter. If your client is an immigration detainee, take extra care to ensure they understand they are entitled to apply for legal aid (or exceptional case funding, where relevant). Ensuring that clients are aware of their entitlement to legal aid funding inspires confidence in the service that is being provided. You must also be clear about the basis upon which you are instructed. For example, if you are instructed to represent them at an appeal, but not to undertake their application for bail.

SECTION 6: “Follow-up” (Stage 4 of the client journey)

77. At this stage of the client journey there will either be satisfaction with the service or escalation of any issues. There may be feedback, recommendations and referrals to others. As with the other stages of the client journey there are various barriers that should be considered at this stage of the process including:

- A complex variety of routes for redress differing between regulatory bodies;
- A lack of take-up of redress routes even when dissatisfied;
- The fact that clients can find the overall process confusing and intimidating. They may perceive that it is ‘stacked against them’ and they are taking on lawyers ‘at their own game’;
- Limited mechanisms for providing and sharing helpful feedback on service received; and
- Difficulty in separating satisfaction with outcome from quality of service.

Additional issues to consider for those seeking immigration advice and services

78. There is a contradiction between the view that immigration work is deemed to be high risk and therefore likely to generate more complaints compared to other areas, versus our observation that actual complaints levels are low. Chambers that were visited as part of the thematic review told us that various factors may reduce the likelihood of immigration clients making a complaint or questioning the service they are receiving. For example:

- Certain cultures hold legal professionals in high esteem and are unlikely to question them;
- Particularly vulnerable consumers at risk of removal or deportation may be afraid that making a complaint will bring them into conflict with the authorities who will remove them;
- Other types of vulnerability mean that the client is completely dependent on the barrister, solicitor or OISC adviser to direct the case and keep them informed, so they are likely to be unable to hold them to account; and
- Clients are unlikely to complain after they have been removed from the country.

How can you overcome some of these issues?

Managing expectations

79. A report commissioned by the SRA and Legal Ombudsman (LeO) into solicitors' handling of complaints found some disparity between what consumers expect from the service and solicitors' perceptions of consumer expectations. Communication was particularly important to consumers: they want clear information about the legal work and costs at the start and end of the work, and at appropriate intervals throughout. If communication is clear and timely, consumers are less likely to be dissatisfied. To this end, you may wish to agree with your client when and how you will be in touch to provide updates at the start of the case.
80. Managing expectations is key to an effective relationship with clients, and can prevent dissatisfaction or complaints further down the line. To this end, you should be honest with your client from the outset, including about the prospect of success and likely outcome.
81. You may also wish to prepare your client for the worst case scenario. This may be especially important for clients who lack a clear understanding of the law and legal process, as well as those with English as a second language. Helping them to prepare for all eventualities helps build trust and confidence in you and your service.

Explain the outcome of the case

82. After the case has concluded, you should be aware that your client may not fully understand the decision or its implications. Clearly and simply explain the decision to your client and what this means for them. If you receive the judgment in writing, you could call the client or arrange a conference to discuss the outcome. If they want to challenge the decision, you should explain what their options are, and ensure that sufficient support is provided to enable them to make an informed decision.
83. After having explained the outcome of the case, you could discuss next steps with your client, ensuring they are aware of all the options available to them. If there are no further routes to redress, you should be clear about this.

Good practice example

Dalia has appealed the decision to refuse her application for leave to remain. Dalia's barrister receives a written copy of the Tribunal's decision, which upheld the refusal. The barrister calls Dalia to explain that the Tribunal has refused her leave to remain, which means she has no legal right to remain in the UK. The barrister informs Dalia of her right to appeal to the Upper Tribunal and the grounds for doing so. The barrister explains that they are able to argue that the Tribunal had not followed correct procedures. The barrister knows that Dalia sometimes struggles to process information quickly, and would be unlikely to be able to make an informed decision immediately, over the phone. The barrister asks Dalia whether she would like to arrange a meeting to discuss her options in more detail. Dalia agrees.

Dalia and the barrister meet at chambers the following week. The barrister asks Dalia whether she recalls the contents of the telephone conversation the week previously. Dalia explains she has no right to remain in the country unless she appeals the decision on the grounds that the Tribunal did not follow correct procedures. Dalia asks what her chances are that the appeal will be allowed. The barrister tells her that it is difficult to predict the outcome of a case. However, a failure to follow correct procedures has been identified and these are admissible grounds for an appeal.

The barrister then explains that any work he does in relation to the appeal is not covered by the original costs, and explains how costs would be charged going forward i.e. at an hourly rate. Dalia states she would like to appeal. The barrister explains that Dalia is able to remain in the country and need not make any arrangements until the appeal has been decided.

The barrister sends Dalia a new client care letter, setting out the work agreed to be done, expected timelines and costs. The barrister directs Dalia towards further sources of information about the appeal process, and provides contact details should she have any questions.

Ensure your client understands routes of redress

84. Section 2D of the BSB Handbook sets out your obligation to provide clients with information on their right to complain, including their right to complain to the LeO (rC99). You are also obliged to ensure that chambers' website or other literature displays information about chambers' complaints procedure. The complaints process can be confusing to navigate and you should explain the process as simply as possible.
85. Provide reassurance to clients that if they complain, they will not suffer adverse consequences as a result. You could consider including a statement in your complaints information that making a complaint will not have an impact on the outcome of ongoing cases.
86. If your client has received poor advice and/or services from another provider, you should ensure they are aware of their right to complain. You may in some cases wish to encourage them to make a complaint, as this may be necessary or relevant to the case.

Good practice example

Lawrence is applying for asylum. He is unhappy with the service he has received from his barrister and informs his solicitor that he wants to complain. Lawrence's solicitor calls the barrister to explain Lawrence's dissatisfaction. After a discussion about Lawrence's concerns, the barrister directs the solicitor towards the complaints procedure on the chambers' website. Lawrence's solicitor says that Lawrence has requested a copy of the forms and does not have access to the internet at his current residence. The solicitor asks whether the barrister can send a hard copy of the forms to Lawrence. The barrister agrees.

The barrister explains the steps involved in making a complaint to the solicitor so that the solicitor can relay this information to Lawrence, including that chambers has an eight-week timescale for responding to complaints. The barrister provides the contact details of a clerk that the solicitor or Lawrence can contact to track the progress of the complaint, or should they have any questions. The barrister emails the clerk to inform them of this conversation, and sends a written copy to Lawrence's solicitor. The clerk makes a note of this, and sets a reminder to contact Lawrence's solicitor to provide updates.

Four weeks after the complaint has been received, the clerk calls the solicitor to state that the complaint is still being considered and that they will be in touch when a decision has been taken.

The use of complaints information and other feedback

87. Barristers should respond appropriately to clients' concerns and complaints³³. You may also want to consider how you best utilise the information you receive via complaints and other feedback you collect. Not only can you use the opportunity of a complaint to provide redress to your clients, but you can also use the information to improve your service, where necessary. Research by the SRA and LeO³⁴ found that good complaint handling has an important role in improving service standards, as well as understanding consumer expectations and providing an opportunity to improve client retention. It recommends that providers consider collecting feedback in different ways to understand consumer expectations, including through the use of feedback forms and online reviews at the end of the work.

³³ BSB (2016) [The Professional Statement for Barristers](#) (3.5)

³⁴ London Economics (2017) [Research into the experiences and effectiveness of complaints handling processes](#) (Research commissioned by the Solicitors Regulation Authority and Legal Ombudsman)

Enabling access to your service for clients with additional needs (Factsheet 1)

1. This factsheet will help you to consider the actions you can take to ensure your service is accessible to vulnerable clients, in line with good practice. This information will also be helpful to clerks, practice managers and others with responsibility for ensuring accessibility and who come into contact with clients.
2. Your duty under the Equality Act 2010 to anticipate the needs of people with particular types of disabilities and make reasonable adjustments for them also applies to anticipating the needs of people to be able fully to access your services.
3. In determining how accessible your services are, you should consider what, if any, barriers there are to access. Below is a list of useful areas to think about when considering accessibility³⁵.

Website accessibility

4. For many clients, a website can be an important source of information and is often the first contact they will have with your service. You should seek to remove barriers that prevent interaction with or access to your website for people with disabilities and language requirements particularly. If your website (and other consumer facing communications) are not easy to read or navigate, or if content is difficult to understand, it could deter clients from seeking your services. For example, you could consider whether consumers have to struggle with small font sizes, colours, jargon they cannot be expected to understand, or small buttons on a mobile site. You may additionally want to consider providing website content in alternative languages. For clients who would otherwise not be able to access your services due to location, remote access via video calling software may be an option.
5. The Web Content Accessibility Guidelines (WCAG)³⁶ is an internationally recognised set of recommendations for improving web accessibility. It explains how to make digital services accessible to everyone. If you need advice on making your website and digital communications accessible, you can contact the Government Digital Service (GDS). Alternatively, you may want to consider installing software to ensure website accessibility. A list of other organisations that can help you with website accessibility can be found in **Annex 2** (Further resources).

Accessibility to and around premises

6. Consider whether your premises are easy to find and access. Ask yourself: would people with mobility issues struggle to access the building or meeting rooms? Are rooms big enough to allow clients to attend meetings with family members, intermediaries and carers? If meeting rooms are not suitable for clients to attend with carers or other third parties, you may want to consider alternative meeting arrangements in a more suitable location. Some examples of physical features which may require consideration include steps and stairs, passageways/paths, entrances and exits, toilets, signs, lighting and

³⁵ The Law Society (2015) [Meeting the needs of vulnerable clients](#)

³⁶ For tips on getting started with web accessibility, visit the [Web Accessibility Initiative's website](#).

ventilation and the size of premises. Examples of reasonable adjustments you could make include providing ramps and stairway lifts, more lighting and clearer signs³⁷.

7. There are likely to be limitations on what you can do to improve physical accessibility to premises. As a minimum, however, you should ensure that adequate and clear directions to your service are available on your website and other publicity materials, as well as information on accessibility e.g. wheelchair access, hearing loops.

Accessibility of communications

8. Barristers should be able to choose appropriate communication media, taking into account the message and audience, and are expected to be able to adapt their language and communication to suit their audience³⁸.
9. For clients with certain needs, you may need to adapt your standard methods and means of communication, including client care letters and copies of advice, as they may not be suitable for all clients. If your client has additional needs, you should ask about their preferences for communication, which may be via any number of methods. For example, many clients like to communicate via Whatsapp. You may wish to consider the use of new technology and applications.
10. The Accessible Information Standard (applicable in NHS and adult social care provision) may be useful to you in considering communication accessibility. It sets out a specific and consistent approach to identifying, recording, flagging, sharing and meeting the information and communication needs of service users and carers. It requires organisations to:
 - **Ask** people if they have any information or communication needs, and find out how to meet those needs³⁹;
 - **Record** those needs clearly and in a set way;
 - **Highlight or flag** the person's file or notes so it is clear they have information or communication needs and how to meet those needs;
 - **Share information** about people's information and communication needs with other care providers, when they have consent or permission to do so; and
 - **Take steps to ensure people receive information they can access and understand**, and receive communication support if they need it⁴⁰.
11. For more information on ensuring accessible communications, visit the [Disability Action Alliance's website](#)⁴¹, or see the Government's [guidance on Accessible Communication Formats](#)⁴².

³⁷ Citizens Advice (No date) [Duty to make reasonable adjustments for disabled people](#)

³⁸ BSB (2016) [The Professional Statement for Barristers](#) (1.9)

³⁹ However, be aware that your client may not self-disclose. You should remain alert to potential risk indicators and consider how any needs can be met.

⁴⁰ NHS England (2017) [Accessible Information Standard – Overview 2017/2018](#)

⁴¹ <http://disabilityactionalliance.org.uk/>

⁴² Department for Work and Pensions, Office for Disability Issues (2014) [Accessible communication formats](#)

Encouraging disclosure

12. In order to encourage clients to disclose any vulnerabilities, communications and advertising materials (including the website) should provide clients/potential clients with reassurance that support can be provided where it is required, and that you aim to ensure equal access for everyone. For example, you could consider including a statement such as:

“We aim to provide services that are accessible to everyone. If you need extra help or require information in different formats, please let us know.”

13. If you provide public access services, it is particularly important to include information on your website that encourages people to alert you to any access needs.
14. For guidance on handling disclosures, refer to **Factsheet 2**.

Staff training

15. It is beneficial for all staff who come into contact with clients to be trained in identifying vulnerability and effectively communicating with clients to be able to accommodate any additional needs. Barristers should look out for training on vulnerability provided by the Inns, Bar Council, The Inns of Court College of Advocacy (ICCA), Law Society and other providers. If you regularly work with vulnerable clients (of any type) you could consider undertaking vulnerability training as part of your Continuing Professional Development (CPD) requirements. This would help to ensure competency in working with vulnerable clients in line with best practice, and your professional knowledge and skills are kept up-to-date. The Institute of Barristers’ Clerks (IBC) provides events and training for clerks on a number of issues, and chambers should consider encouraging their clerks to engage with IBC training.

Flexibility around appointment times, duration and location

16. Whilst recognising that professional boundaries are crucial, to ensure your clients have proper access to your services, you may have to be flexible in terms of the location at which you meet them, the time and duration of meetings. For example, you may need to allow extra time for people with language requirements, hearing impairments, learning disabilities, mental health issues or those who have suffered abuse and trauma.

The use of support professionals and carers, where appropriate

17. Clients with a learning disability may need assistance from a professional or carer at the initial advice stage and throughout the process; without which they would not be able to fully participate in and engage with the process. This may also be true of clients with English as a second language, who may need an interpreter to be present during conferences, and written communications to be translated. Vulnerable clients who have experienced violence, abuse, torture, modern day slavery and trauma may also require specialist assistance. To ensure these groups are able meaningfully to access your services, you should seek to ensure that additional support and systems to facilitate this are available.

18. There are, however, risks involved in the participation of third parties, and careful consideration of a third party's involvement is important; whether a family member or intermediary (see Guidance on vulnerability and the client journey for more information on the considerations required when there is third party involvement). For example, our thematic review highlighted the risk of substandard service delivery from interpreters and the potentially severe consequences for clients. Mistakes can be made both in terms of accuracy and properly conveying the nuances of what is being said. When an interpreter is required, use one which is registered, and bear in mind potential cultural/dialectal considerations. You should also be alert to the interpreter taking on a more active role than is appropriate or required.

Marketing and making use of local links

19. If you are registered to undertake public access work, you should consider the location and ways in which your services are advertised, being mindful of the fact that many immigration clients may not have access to the internet. Consumers also approach a variety of different organisations to seek help in the first instance. As such, you may wish to gain basic knowledge of local organisations that undertake a signposting role and those that may be able to offer your clients support with additional needs e.g. local MIND groups, immigration charities or groups, housing sector organisations, Citizens Advice and community organisations⁴³. The benefit of building these links is twofold: it would increase the visibility of your services in the community, and could be an effective way of reaching potential clients; it also helps you to signpost your clients to appropriate sources of support if necessary. You could consider inviting these organisations to short information sessions, where you can share information about the services you respectively provide. Alternatively, you could simply make contact with local organisations via email or telephone to introduce yourself and provide details of your services. Should they come into contact with someone seeking professional legal services, they can then direct them towards you.
20. A growing number of people are representing themselves across civil and criminal courts, including the immigration tribunals; many due to the lack of availability of legal aid⁴⁴. This may present an opportunity for barristers undertaking public access work (providing the case is suitable) to consider new ways of making their services accessible to consumers who may currently struggle to gain access. Effective marketing, technology and an online presence are important factors to consider when trying to meet these consumers' needs, as is flexible pricing structures and client financing options.
21. **Annex 1** provides a list of useful contacts that you can provide to your client should they require additional support or advice. However, you may wish to expand upon this list yourself to include organisations that operate in your local area, thus widening the support options available to your clients. In addition, clients often struggle to recognise whether a source of information is correct and legitimate. Having a list of useful contacts can mitigate against the risk that clients access poor advice or incorrect information by providing them with details of reputable organisations from which they can seek advice and/or support.

⁴³ [The Professional Statement for Barristers](#) expects barristers to have an awareness of the sources of advice available to their clients and the organisations supporting the administration of justice (competency 1.4). It additionally states that barristers should recognise and take steps to meet particular needs of clients, including those who are disabled or vulnerable (3.3)

⁴⁴ National Audit Office (2014) [Implementing reforms to civil legal aid](#)

Assessing whether your service is accessible

21. Below is an example checklist of the things you may wish to consider when assessing your service's accessibility:

- ✓ Is your website accessible? Is it in line with best practice?
- ✓ Are your services easy to find? Are your premises accessible? E.g. do you need to provide a lift or ramp?
- ✓ Does information/printed material encourage people to inform you of any accessibility requirements they may have?
- ✓ Are you able to provide information in large print/braille/audio/easy to read format?
- ✓ Do you need to provide written text on a coloured background for someone who may have dyslexia/a visual impairment?
- ✓ Might you need to provide extra time for meetings because your client takes longer to understand what you are explaining, due to a speech impediment/learning disability or because an interpreter might be needed?
- ✓ Might an interpreter/carer/intermediary need to be present during client conferences? If so, does this require a bigger conference room or alternate meeting location?
- ✓ Do you need to provide a sign-language interpreter/lip-speaker/deaf-blind communicator?
- ✓ Are you able to provide a reader for clients with visual impairments? Do you need to provide a digital recorder/dictaphone/electronic note-taker?
- ✓ Are there processes in place to ensure that clients understand information provided?
- ✓ Is it necessary for you to allow alternative ways of making complaints or other requests, rather than in writing?
- ✓ Should you consider offering clients flexible pricing structures or financing options?
- ✓ Do you need to arrange for remote access e.g. via Skype?
- ✓ Have you used sufficient channels to ensure your services are visible to consumers who may require your services? E.g. Have you made use of local links? Where are your services advertised?

Summary of key points

- The Equality Act 2010 confers a duty to anticipate the needs of people to be able to fully access your services, and to make reasonable adjustments to avoid people being placed at a substantial disadvantage because of their disability.
- Encouraging disclosure is key to identifying additional needs. Reassure clients that you aim to meet any needs they may have, and provide details of service accessibility in promotional materials and website.
- Assess the accessibility of your website and communications, physical access to premises and the way in which your services are marketed.
- For some clients to be able to fully engage, you may need to be flexible and diverge from your usual way of working.
- Consider the need for all staff that come into contact with clients to be trained to recognise vulnerability and how their needs may be met.
- The use of third parties may be required. Consider how this can be facilitated, whilst being aware of the risks of third party involvement.

Further information/Key resources

- Citizens Advice (No date) [Duty to make reasonable adjustments for disabled people](#)
- Department for Work and Pensions, Office for Disability Issues (2014) [Accessible communication formats](#)
- NHS England (2017) [Accessible Information Standard – Overview 2017/2018](#)
- [Plain English Campaign Website Resources](#)
- [Recite](#) (A web accessibility solution to make your website more accessible).
- Web Accessibility Initiative (2017)
- [Web Content Accessibility Guidelines](#)

Identifying and Assessing Vulnerability and Clients' Needs (Factsheet 2)

1. This factsheet will provide you with practical advice to help you identify and assess the needs of potentially vulnerable clients, including signs to look out for, questions you could ask your client and risk factors to consider when making an assessment of their needs.

Part One: Identifying Vulnerability

2. As a barrister, you need to be aware of the diversity of the people you encounter, and the potentially differing needs of people from a range of backgrounds, life experiences and those who have protected characteristics under the Equality Act 2010⁴⁵. You should be alert to risk factors, including certain characteristics, circumstances and behaviours that can indicate vulnerability. The identification of client vulnerability as early as possible is important to the client experience, and may have a bearing on the case itself.
3. Identifying people that may be at a higher risk of harm than others can be challenging, particularly in the context of the provision of legal services. At a time when a person requires immigration legal services, they may be in a vulnerable position. Not only might they be in a difficult and stressful situation, but the legal process itself can leave a person feeling more vulnerable. The disparity in knowledge between the public and legal professionals – and, therefore, the difficulty in being able to judge the quality of legal services they receive – is one reason for this. For immigration clients, this disparity may be even more pronounced due to language barriers, a lack of understanding of the providers that can help, and of the immigration system and legal system generally.
4. Some issues and needs will be easier to identify than others. For example, if a client has a physical disability which requires wheelchair use, this will be evident when you first meet them (although with other physical disabilities, this will not always be obvious). Other needs may be more difficult to identify or even hidden. Factors such as domestic violence, abuse, torture, being a victim of modern slavery, trauma and mental health issues can be particularly difficult to identify. Clients may not even be aware of a mental health issue themselves, or may avoid disclosing their experience of violence to others, due to shame, embarrassment, fear, or a combination of these. Some clients may also have a lack of trust in authority, due to negative experiences involving authorities in their country of origin.
5. Where you have been instructed by a solicitor, OISC-registered adviser or other professional client, do not assume that they will have already identified and/or sufficiently explored a person's vulnerabilities. Instead, proactively seek information from the solicitor (or other professional client/intermediary) about potential vulnerabilities, and establish whether an assessment has been undertaken. This will prevent the client from having to repeat information, which can be both time consuming and distressing, and may undermine a client's trust in and perception of the legal system.
6. In public access cases, try to arrange a consultation as soon as possible, so that any vulnerabilities and needs are identified at the outset, and a prompt assessment to determine how to meet additional needs is undertaken.

⁴⁵ BSB (2016) [The Professional Statement for Barristers](#)

7. Even where risk factors are present and have been identified, vulnerability is not always acted upon. You should therefore make your own considerations and assessment of a client’s potential vulnerabilities, regardless of the stage at which you meet them or the involvement of a solicitor or others.
8. Furthermore, the variable nature of vulnerability means that risk factors which may not have been apparent before or were not identified can appear at a later stage. This is particularly the case in the context of legal services, as the legal issue they are facing or the process itself can make an otherwise robust person vulnerable. Be alert to possible changes – behavioural and psychological – in your client, as vulnerability can change over time or may only become apparent later⁴⁶.

Signs to look out for

9. Below is a (non-exhaustive) list of signs that may indicate vulnerability. We cannot hope to provide an exhaustive list of all indicators of potential vulnerabilities, given the complexity of the subject matter. Rather, the characteristics and factors listed below will provide you with an awareness of potential issues that, should they be present, may warrant further exploration⁴⁷:

Behavioural characteristics	Circumstantial factors
<ul style="list-style-type: none"> • Finds it difficult to communicate without assistance/interpretation • Has no speech/limited speech, difficult to understand • Has difficulty in understanding questions/what is being said • Uses gestures or signs to communicate • Responds inappropriately or inconsistently • Cannot read or write • Has difficulty with memory and recalling facts and events • Appears eager to please • Repeats what is said to them • Appears confused by what is said/happening • Is physically withdrawn • Has difficulty in telling the time • Appears over-excited or exuberant • Appears uninterested or lethargic • Is violent • Expresses strange ideas or makes a decision that is out of character 	<ul style="list-style-type: none"> • Receiving disability benefits • Resident at a group home or institution • Employed in sheltered workplace • Receiving support from a carer, social worker, community psychiatric nurse etc. • Is elderly • Is/has been excluded from school • Has a statement of Special Educational Needs (SEN) • Is/was under local authority care • Is/was an asylum seeker • In possession of prescribed medication • Is an alleged victim of modern slavery/torture/rape/religious/hate crime/sexual exploitation⁴⁸ • Is an alleged victim of honour-based violence/forced marriage • Is an alleged victim of domestic or sexual violence • Is a carer • Has witnessed a traumatic incident • Is an alleged victim of financial exploitation

⁴⁶ The Advocate’s Gateway (2014) [Identifying Vulnerability in Witnesses and Defendants: Toolkit 10](#).

⁴⁷ *Ibid*. This table has been taken from The Advocate’s Gateway’s Toolkit 10 but has been expanded upon to include other relevant risk factors.

⁴⁸ Identifying victims of modern slavery involves certain unique considerations. **Factsheet 3** specifically considers identifying and working with victims of modern slavery.

<ul style="list-style-type: none"> • Unusual appearance of the eye • Hesitant in movement/reluctant to move • Uncontrollable muscular movements • Does not understand common everyday expressions • Failing to search visually for people • Appears restless, hyperactive, impulsive, inattentive etc. • Appears intoxicated during meetings • Has a history of self-harming 	<ul style="list-style-type: none"> • Is recently bereaved • Has lost their home/is homeless
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10. You should exercise caution when considering these signs, as they are simply risk factors and do not necessarily indicate vulnerability. For example, if a client is disabled, it cannot be assumed that in the context of legal services they are vulnerable. A disability may have no impact on a person's ability to make informed choices and fully participate, even where they require assistance to be able to do so. Be wary of jumping to conclusions: take time to understand your client, assess their needs and how your services may need to be adapted⁴⁹, and consult others where appropriate.

11. Given the complexity in identifying vulnerability, encouraging self-disclosure is crucial – and can be a better predictor of vulnerability than relying on signs and predictors. When a client instructs (or is seeking to instruct) you, make sure you ask the right questions (see more on this below), remind clients that anything they tell you will be treated confidentially, and that disclosure helps you to ensure they are fully able to participate in proceedings.

Part Two: Assessing how to meet your clients' needs

Questions to ask yourself

12. The checklist below provides examples of the types of questions you can ask yourself to ensure a robust assessment of client vulnerability:

- ✓ Have I encouraged self-disclosure and reassured the client of the confidentiality of information they provide?
- ✓ Have I spoken to relevant third parties to identify additional needs and vulnerabilities?
- ✓ Are there any health considerations that are contributing to making the client vulnerable?
- ✓ Do I need to provide information in large print/braille/audio/easy to read format? Do I need to provide written text on a coloured background for someone who may have dyslexia/a visual impairment?
- ✓ Do I need to provide a sign-language interpreter/lip-speaker/deaf-blind communicator?

⁴⁹ See competence 3.3 of the [Professional Statement](#).

Part 1 – Public

- ✓ Is extra time needed for conferences because my client takes longer to understand what I am explaining, due to a speech impediment/learning disability or because an interpreter is needed?
- ✓ Does an interpreter/carer/intermediary need to be present during client conferences? If so, does this require a bigger conference room or alternate meeting location?
- ✓ Are there any gender considerations e.g. when hiring an interpreter or expert witness?
- ✓ Am I able to provide a reader for clients with visual impairments? Do I need to provide a digital recorder/dictaphone/electronic note-taker?
- ✓ Are there sufficient checks in place to ensure that clients understand information provided?
- ✓ Has the client had sufficient opportunity to ask me any questions/inform me of concerns?
- ✓ Do I need to arrange for a clinical or psychological assessment?
- ✓ Should I consider offering the client flexible pricing structures or financing options?
- ✓ Should I arrange for remote access e.g. via Skype?
- ✓ Should I allow alternative ways of making complaints or other requests, rather than in writing?
- ✓ Have I provided my client with the details of organisations that can support them with any other issues/needs they have?

Questions to ask your client

13. As well as having your own mental checklist, ask your clients questions, tailoring your approach to the individual, in order to identify any needs and preferences.
14. Some clients may immediately disclose any issues to you, while others may not be so forthcoming or may even be unaware of factors that leave them vulnerable. Many people have undiagnosed conditions. Others simply do not want to or find it difficult to disclose personal or sensitive information. The initial discussion, where you are seeking to identify any potential indicators of vulnerability, should be handled sensitively. Look out for verbal and non-verbal signs that the client is uncomfortable or distressed, and adapt your communication accordingly.
15. To gather a full and clear picture of your client's situation, you may want to consider using a tool such as the IDEA tool below.

IDEA⁵⁰

Impact – What happens and how bad is it? What does the vulnerability stop the client from doing, or make it harder for them to do?

This will provide you with insight into the severity of the vulnerability and its consequences.

Duration – How long has it been going on?

The duration of different situations and conditions will vary significantly. This information can inform decisions about the time a client might need to consider certain options or make decisions.

Experiences – Has it happened before? Could it happen again?

This will help determine whether this is a fluctuating situation or not, and will inform how you provide your services, how and when you may want to communicate with your client etc.

Assistance - Is your client getting any help?

Consider whether the client has been able to get any help, support or treatment. This can lead to discussions about obtaining any relevant medical evidence or other information.

16. This is only intended as an example, and other tools exist across a variety of sectors. You may wish to conduct your own research to find a tool that suits you best.

17. Questions you could consider asking your client in order to best adapt your services to meet their individual needs include:

- ***Do you have any particular requirements, such as needing help moving around or communicating?***

This could highlight a client's difficulties with mobility, dexterity, sight, hearing or speech problems. It may also raise the issue of English as a second language, literacy, learning difficulties or mental health problems.

- ***How and when would you prefer I communicate with you?***

Find out whether your client would prefer information to be provided orally, in written or an alternative format. This may again highlight issues around language, low literacy, sight or hearing impairments. Ask whether they would prefer to be contacted at a specific time or on certain days. This could reveal physical or mental health problems.

- ***Could you tell me a bit more about your background?***

⁵⁰ Money Advice Trust (2016) [Vulnerability: a guide for advice agencies. 12 steps for treating clients in vulnerable situations fairly](#)

Do not ask probing questions like this without first considering whether the client feels sufficiently comfortable and open, and reminding the client that everything they say will be kept confidential. Asking your client to tell you about their background may alert you to any cultural barriers or considerations. For example, this information could influence the choice of interpreter.

➤ ***Do you take any medication? [If so] How does this affect you?***

If health issues have already been highlighted, or you feel the client is sufficiently comfortable and it is appropriate to do so, asking this question can help you assess requirements related to physical and mental health. It may also lead to the identification of personal circumstances which may be a risk factor. For example, a client may disclose that they are taking anti-depressants to cope with trauma they experienced in their home country. Further exploring what impacts (if any) the medication has on your client will help you to build an understanding of the client's day-to-day experience, and their needs in terms of accessing and utilising your services.

➤ ***Do you have any help to manage your money or bills?***

Again, you should use your discretion to determine whether any question you ask your client is appropriate in the time and circumstance. However, if the client discloses that they do have help in managing their affairs, this gives you the opportunity to explore the forms of support they are accessing, whether they have a carer or have any issues such as mental health problems or learning disabilities. This information could be pertinent to the case, as well as to your assessment of the client's needs in terms of your service provision.

Handling disclosures

18. A 2016 survey of people with mental health problems and financial difficulties⁵¹ explored consumer experiences of disclosure. It found:

- **People do not feel it is taken into account when they do disclose** – 35% said that despite having told the organisation about their mental health problems, they did not feel this was taken into account.
- **A lack of understanding of the importance of disclosing** – Where consumers did not tell providers about their mental health problems, 44% said they were not aware that this would make any difference to the way in which services were provided to them.
- **Prejudice/Being believed** – 21% said they did not feel they would be believed if they disclosed their mental health problem and 16% thought they would be treated unfairly if they disclosed their mental health problem.

19. These findings highlight the barriers to self-disclosure (albeit in the context of financial services) and, thus, the importance of encouraging clients to tell you if they have specific needs or requirements. Seek to actively encourage self-disclosure of any issues from the very start. Disclosure by the client themselves can be a much more accurate predictor of vulnerability than relying on risk indicators. Consider whether your chambers/organisation has a written policy on handling client disclosures, and ensure that clients and potential clients are easily able to access this, if so.

⁵¹ Money Advice Trust (2016)

20. You should clearly explain to clients what happens with any information they give you, how this will be taken into account and recorded (if at all) and remind them of client confidentiality. When a client does disclose an issue, take care to ensure they feel this has been heard and will be appropriately considered. This reassures the client and builds trust. The TEXAS tool, developed by the Money Advice Trust and the Royal College of Psychiatrists, is a useful one to ensure that disclosures are handled correctly.

TEXAS⁵²

Thank the client. What they disclosed could be useful to everyone involved.

Explain how the information will be used and recorded, and who it may be shared with/disclosed to (if anyone).

Explicit consent should be obtained.

Ask the client questions to get key information (to help you better understand the situation).

Signpost or refer to other sources of help and support, where appropriate.

⁵² *Ibid*

Good practice example

In the first client conference with her barrister Anna discloses that she struggles with mental health issues. The barrister recognises that this presents an immediate opportunity to explore Anna's wider circumstances and characteristics. The barrister asks Anna about the mental health issues she is struggling with. Anna states that she is schizophrenic and has episodes every morning. Whilst this is managed by medication, she feels unwell until approximately 10.30am each morning. The barrister thanks Anna for disclosing this, and explains it is useful to know so that he can arrange for her to be contacted at a time when she feels at her best. A record of this is made, and it is agreed that the barrister will only contact Anna after 11am. The barrister asks Anna to describe how she feels during an episode, which enables him to build a full picture of how her mental health affects her on a day-to-day basis. Anna says she hears voices, which makes communication difficult and also sometimes affects her ability to think clearly. The barrister asks whether anything can be done to aid her communication. Anna says that written information is more helpful. This is recorded and it is agreed that Anna will be provided with written copies of advice and information. The barrister asks if anyone helps Anna to attend appointments, manage her money or carry out day-to-day activities. She says she has a carer, who visits her twice a week. The barrister asks Anna if she consents to him taking the carer's details, so that they can be contacted in case of an emergency or if she were to become unwell. Anna agrees and the carer's details are recorded. The barrister wants to obtain Anna's consent today, when she is feeling well and has full capacity, so that it is clear what actions will be taken in the future if she presents as incapacitated.

** This example is based on a case study by the Money Advice Trust, adapted to the legal context.*

Part Three: Risk factors to be aware of when assessing how best to meet your clients' needs

21. In the context of legal services, there are certain risk factors that are more prominent in relation to vulnerable migrants, as opposed to vulnerable clients generally. Some of the most common factors which you will need to be aware of include:

English as a second language

22. Ascertain as soon as possible whether a client does not speak English as their first language and will require an interpreter. If it becomes apparent in your first meeting with your client that they do require an interpreter, you could rearrange the meeting to ensure they have the support they need. Even if a client's English seems good, they may be struggling to understand the advice you give them – especially legal terminology with which they may be unfamiliar. Ensure that they have understood the full extent of your advice at all times by summarising or asking them to summarise what has been said. You also need to understand their reading ability and consider whether written communications need to be translated.

23. Where language barriers exist, consider whether there are any cross-cultural communication issues that should be taken into account when communicating with your client. Refer to **Factsheet 5** for further guidance on issues of client communication, including cross cultural communication.
24. If your client is paying privately, you should consider whether they are eligible for legal aid, to include disbursements of fees such as interpreters' fees, and whether their best interests would be best served by a legal aid provider. You should also determine whether they can apply for exceptional case funding due to their vulnerability and difficulty understanding English (and therefore the law) – and inform the client of their options⁵³.

Modern slavery, torture and trauma victims

25. Victims of modern slavery often struggle to disclose their history, sometimes due to a lack of recognition that they are in fact a victim, and other times because they feel complicit in their own situation. The impact of experiencing modern day slavery can be substantial and long-lasting, and victims will often require support with practical, psychological and emotional issues, including with trauma. Building trust and rapport is therefore key to effectively managing these vulnerabilities.
26. Be alert to indicators that a person could be a victim of modern slavery and/or torture. Victims may be referred to the National Referral Mechanism (NRM) for protection and support. See **Factsheet 3** for further guidance on identifying victims of modern slavery and responding to their needs. A list of organisations that provide support to victims can be found in **Annex 1**.

Victims of domestic abuse

27. Victims of domestic abuse may display similar indicators of trauma to victims of modern slavery e.g. fearfulness, reluctance to disclose information, physical wounds or bruising. Domestic violence includes any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse between individuals aged 16 or over who are, or have been, intimate partners or family members. Abuse can be psychological, physical, sexual, financial or emotional, and includes honour-based violence, female genital mutilation (FGM) and forced marriage⁵⁴. If your client is a victim of domestic violence they may inform you directly, enabling you to explore the issues and any needs arising from these. However, domestic violence is a notoriously under-reported crime and clients may be reluctant to disclose any abuse they have suffered.
28. Resolution, an organisation of lawyers and professionals specialising in family law, has designed a [Domestic Abuse Screening Toolkit](#) which you may find useful when meeting with a client who is a potential victim. It provides examples of questions you can ask your client, information on the characteristics and manifestations of abuse, and details of organisations to which you could direct your client.

⁵³ Competence 1.4, threshold standard (b) in the [Professional Statement](#) expects barristers to be able to identify and advise clients of alternative sources of advice and funding available to them, as appropriate.

⁵⁴ <https://www.gov.uk/guidance/domestic-violence-and-abuse>

Drug and/or alcohol use

29. If you suspect your client is using drugs and/or alcohol, this can be a difficult topic to address and you should do so sensitively. Some clients will openly admit to their use of substances, but others may seek to hide it. Explore the client's ability to understand and process information, and take informed decisions.
30. If you suspect a client is intoxicated, you should not take their instructions. Drug and alcohol use can lead to temporary loss of capacity. If you suspect your client lacks capacity to instruct you and/or make decisions, refer to **Factsheet 6** for guidance.
31. Some drug and alcohol users have carers. If your client requires a carer to be present, consider how this will impact the way you provide your services (e.g. whether you will need to arrange for a bigger conference room).

Mental health and learning disabilities

32. People with certain mental health issues or learning disabilities are often reliant on family, friends or carers to help them in their day-to-day lives, and may require a third party to attend client conferences. If they have had a clinical or psychological assessment, you may be able to obtain a copy of this. This can help you to understand their needs and support them. If they have not had a recent assessment, you may want to consider whether one should be obtained.

Offenders and ex-offenders

33. Those with a criminal record may be vulnerable for many reasons, and this is often exacerbated by the difficulties in being able to access legal advice when in prison. Anecdotal evidence from our engagement with frontline organisations suggests that even where prisoners do manage to access legal advice, they can sometimes struggle to advance their case, or to challenge removal orders. If a client of yours has been in prison, check that they are fully aware of the details of their case, as they may not have received good quality legal services in the past. They may also lack trust in legal professionals as a result of bad experiences, and building a rapport and trust is key.

Key points

- Identifying vulnerabilities can be challenging and you should be aware of potential indicators of vulnerability.
- The identification of vulnerability and assessing your client's needs is a continuing process. Vulnerabilities and needs can change and you should be alert to changes in your client's behaviour.
- Familiarise yourself with the types of questions you need to be asking yourself when making an assessment, as well as those you could be asking your clients.
- Actively encourage disclosures and ensure clients are reassured that any disclosure they make will be handled sensitively and appropriately.
- Refer to **Annex 1** of this guide and direct your client towards further support, if needed.

Further information: Key resources

- Bar Standards Board (2016) [Immigration Thematic Review](#)
- Legal Services Consumer Panel (2014) [Recognising and Responding to Consumer Vulnerability](#)
- The Advocate’s Gateway (2015) [General Principles from Research, Policy and Guidance: Planning to Question a Vulnerable Person or Someone with Communication Needs: Toolkit 2](#)

Identifying victims of modern day slavery and responding to their needs (Factsheet 3)

34. Modern day slavery encompasses slavery, servitude, and forced or compulsory labour and human trafficking⁵⁵. Modern day slavery is not specific to immigration law (although it is a common factor), but could also appear in cases of employment, crime, housing and civil law. Recognising that a person is a victim of modern slavery could be a defence in the criminal courts, and may give rise to claims against employers and civil claims against the police for e.g. failure to investigate or unlawful detention. As a result, this is a risk factor that many barristers would benefit from being able to identify.
35. Modern slavery and torture are serious violations of a person’s right to life, liberty and security and their human dignity and integrity, yet the overlap between the two are often overlooked⁵⁶. Modern slavery is wide-spread and is increasing⁵⁷, and human rights bodies have recognised that modern slavery can amount to torture and other forms of inhuman and degrading treatment⁵⁸. It is known that both men and women who are victims of modern slavery suffer a high incidence of rape and sexual abuse⁵⁹. The risk factors present in cases involving victims of modern slavery may therefore result in severe vulnerability.
36. Being able to identify victims of modern slavery is important not only due to the severity of potential risk factors, but because victims of modern slavery often struggle to disclose their history. You should therefore be aware of the possibility that the solicitor (if instructed) may not have identified this issue. Establishing a relationship of trust is crucial to identifying indicators of modern slavery. If a client does provide an account of such an experience, do not dismiss this in the early stages of contact because it seems flawed. Evidence from those who work with victims of modern slavery suggests that accounts become more coherent over time, as the relationship and trust become more established⁶⁰.

⁵⁵ HM Government (no date) [Help for victims of modern slavery](#)

⁵⁶ Organisation for Security and Cooperation in Europe (OSCE) (2013) [Modern slavery in Human Beings Amounting to Torture and Other Forms of Ill-treatment. Occasional paper series no.5.](#)

⁵⁷ National Crime Agency (2017) [National Referral Mechanism Statistics – End of Year Summary 2016](#)

⁵⁸ OSCE (2013)

⁵⁹ *Ibid*

⁶⁰ *Ibid*

37. Hope for Justice, an organisation that fights to end modern day slavery, notes six key areas to be aware of when trying to identify a victim of modern slavery:
- general indicators
 - sexual exploitation
 - forced labour
 - child abuse
 - criminal activities
 - domestic servitude.
38. Whilst these areas should be considered together, being able to identify one or more of these indicators does not necessarily mean a person is a victim of modern slavery. If you do suspect that your client is a victim, consider the need for a clinical assessment and additional support.
39. Victims of modern slavery will have wide-ranging experiences, perhaps most notably due to the purpose for which they were trafficked. However, it is important also to recognise that victims of trafficking for the same particular purpose may have had drastically different experiences from one another. For example, some victims of trafficking for the purpose of forced labour may have experienced extreme physical violence from their traffickers, whilst others may have been deprived of money or food. An understanding of the range of experiences will help you to identify potential indicators and appreciate the psychological impact this may have had on your client and how they can be supported. A selection of case studies from a report by the Office of the Special Representative and Co-ordinator for Combating Modern slavery in Human Beings⁶¹ is provided below to help illustrate this.

⁶¹ (OSCE) (2013)

Domestic servitude

Valerie, from Togo, was a child when she was brought to a Togolese family in Paris. In return for taking care of the family's child she was promised a monthly salary and professional training. Instead, she was forced to take care permanently of the child, was never paid any salary, had to do almost all the housework and was not allowed to talk to anyone outside the house. She was punished daily for practically no reason by the mother. She was burnt with cigarettes, was beaten with hot irons and her palm was burnt on a hot plate.

Labour exploitation

In 2009 Serbian, Bosnian and Macedonian women and men were trafficked to Azerbaijan for labour exploitation. They had to work in kitchens, do administrative work or work on construction sites. It cost them RUR 200-250 to sign the contracts and a salary of USD 700-800 was promised. After arriving, passports and travel documents were taken away, living conditions were bad, working hours were exceeded, remuneration was less than agreed and the workers were not paid at all for four months. In their accommodation, strict house rules were applied. The workers had no possibility to complain or refuse work, even in case of illness. They were punished for different acts and a fine imposed on them. They were exposed to physical punishment and threats.

Sexual exploitation

A Moldovan national was kidnapped at the age of 14 and trafficked for the purpose of sexual exploitation to Italy, Turkey, Hungary, Romania, Israel and the UK. In 2003, the UK police and Home Office immigration officers raided the brothel in which she was forced to work. She was accused of possessing false documents, imprisoned for three months and sent back to Moldova. Back in Moldova, her trafficker found her, savagely ill-treated her and re-trafficked her. In 2007, after being re-trafficked to the UK, she was arrested and detained again. Finally, she was referred to an NGO which identified her as a victim of modern slavery and she was granted refugee status because Moldovan authorities could not offer her adequate protection against her traffickers.

40. Victims of modern day slavery often do not consider themselves to be a victim and are therefore very much reliant on their lawyers. For example, your client may have signed a debt bondage agreement or consented to work in exchange for accommodation and food, or to low or no wage in exchange for their travel costs to the UK. Victims are often fearful of their exploiters, which prevents self-identification and can have a significant psychological impact.

Juju trafficking (taken from OSCE, 2013)

In cases of Juju trafficking, traffickers perform ritualised, often violent ceremonies in order to subjugate and silence victims through the threat of their destruction, or that of their loved ones, by malign spirits. Victims of Juju modern slavery are often subjected to very high levels of physical control, abuse and violence throughout their modern slavery experience, but are in any case psychologically entrapped and overwhelmed.

Eliza's story

The trafficker took Eliza to a house. There were several men in the room. She was told to go to the bathroom and change. They took her clothes, including her underwear. They took samples of her pubic hair and nails. They removed some blood from her arm. The men then showed her a mirror in which she believes her image appeared even though she was not looking directly at it. She was told she had to keep everything secret, and never run away. They said they would know if she tried to run away as the mirror showed them what she was doing. The hair samples meant that if she ran away she would go mad. The blood samples meant that she would bleed to death.

41. The table below contains a non-exhaustive list of general indicators of modern slavery to look out for:

Indicators of modern slavery⁶²⁶³

- Being fearful and/or distrustful of police/authorities
- Reluctance to disclose their immigration status
- Showing fear/anxiety
- Being fearful of the trafficker, believing their lives or their family's lives are at risk if they escape
- Exhibiting signs of physical and psychological trauma (e.g. anxiety, lack of memory of recent events, bruising, untreated conditions)
- Being fearful of disclosing their situation to others
- Showing signs that their movements are being controlled
- Being unpaid or paid very little
- Having limited access to medical care
- Having limited social interaction
- Not knowing their home/work address
- Seeming to be in debt to someone
- Having no passport or mentioning someone is holding their passport
- Being regularly moved (to avoid detection)
- Evidence that someone feels controlled by use of witchcraft e.g. Juju

⁶² [Hope for Justice Website](#)

⁶³ UN Office for Drugs and Crime (no date) [Human Modern slavery Indicators](#)

42. Where a person has been trafficked for the purposes of sexual exploitation, forced labour, domestic servitude or conducting criminal activities, a number of further indicators, specific to each, may be present. For example, substance use may indicate sexual exploitation, or mentioning that they work excessive hours may be an indication of domestic servitude. For more information on these issues, refer to the United Nations Office for Drugs and Crime's list of '[Human Trafficking Indicators](#)⁶⁴', or visit the Hope for Justice [website](#).

How you can meet your clients' needs

43. If you are aware that your client has been trafficked for the purpose of sexual exploitation, domestic servitude, criminal activity or otherwise, assess how this affects the way in which you provide your service and how it could be managed. Be prepared to adapt your approach according to the circumstances. If support is required, this should be arranged in a timely manner to ensure full participation throughout⁶⁵.
44. The emotional impact of trauma on modern slavery victims can be significant, and people who have experienced trauma may present with physical and mental health problems. Consider possible health concerns: they may have been deprived of food or sleep, exposed to hazardous materials or dangerous working conditions. They may also be suffering from post-traumatic stress disorder, which can result in aggression, hostility, difficulty in recalling events and concentrating⁶⁶. Substance use and sexual health may also be issues.
45. The National Referral Mechanism (NRM) is a framework by which certain professionals can refer a person who may have been a victim of modern slavery to have their case assessed by a 'Competent Authority'⁶⁷. A person must consent to an NRM referral. If you think your client is a victim of modern slavery, you can alert the police, a local authority, the Salvation Army or other organisations which can refer to a Competent Authority. If it is recognised that the person is a victim of modern slavery, they are provided rights such as to accommodation and support. Rights of Women has produced a helpful guide on '[Modern slavery and the National Referral Mechanism](#)' for people who have been trafficked into the UK⁶⁸.
46. The National Crime Agency (NCA) has produced a [best practice guide](#) on dealing with potential victims of modern slavery⁶⁹. The key points for the purposes of this guide are set out below:
- Put the potential victim at ease on first contact, including taking care around verbal and body language used and using neutral spaces where possible;
 - Individuals will have differing needs, and consideration must be given to how these are managed and the approach to take;

⁶⁴ United Nations Office for Drugs and Crime (no date) [Human Trafficking Indicators](#)

⁶⁵ National Crime Agency (no date) [Dealing with potential victims of modern slavery or human modern slavery: Best practice guide](#) (webpage)

⁶⁶ Home Office (2016) [Victims of modern slavery – Competent Authority guidance \(version 3.0\)](#)

⁶⁷ Either within the UK Human Modern slavery Centre or UK Visas and Immigration.

⁶⁸ Rights of Women (2014) [Modern slavery and the National Referral Mechanism](#)

⁶⁹ National Crime Agency (no date) [Dealing with potential victims of modern slavery or human modern slavery: Best practice guide](#)

- Victims may be unwilling to cooperate;
- Possible health concerns must be considered;
- A change of personnel should be avoided where possible (unless requested), including interpreters, to establish and maintain rapport and instil confidence in the victim;
- Interpreters must be on the national register, speak the right dialect, and be aware of the nature of the task and the time it might take;
- A female interpreter should be used for female victims;
- When interviewing victims, check their health and fitness for interview first;
- Ensure the pace of the interview is considerate of the person's state of mind, and explain roles and processes, ensuring they are understood; and
- Recognise the victim may feel stigmatised by the process.

Working with victims of modern slavery: Good practice example

Gloria has recently been released from prison and is now looking to appeal her removal order. Her solicitor has instructed a barrister to represent Gloria in the appeal. The barrister receives the papers from Gloria's solicitor, which show that she was imprisoned after the brothel in which she was working was raided. The barrister arranges a client conference in advance of the appeal date. When Gloria arrives, she is withdrawn and nervous. The barrister explains the confidential nature of the discussion and encourages Gloria to disclose any issues she may have, reassuring her that anything she says will be handled appropriately.

Gloria describes her financial difficulties and states that she has no family or friends in the UK. The barrister adapts to Gloria's style of communication, and she becomes more relaxed. It soon becomes apparent that Gloria has been trafficked to the UK for the purposes of sexual exploitation. Gloria confirms this. The barrister asks whether Gloria suffers from any pain or other health complications for which she requires assistance. Gloria says she does not suffer from any pain, but has difficulty in recalling events and sleeping. The barrister asks Gloria whether she has any preference for the times at which she should be contacted. Gloria says that afternoons are best, when she is less tired.

The barrister then asks whether she has received support to help her deal with her traumatic experiences. Gloria has recently registered with a GP, but is not receiving any further support for her wellbeing and psychological needs. The barrister provides Gloria with contact details for local organisations that can provide this support. This information is recorded and the barrister arranges another conference the day before the appeal. The barrister clearly explains what documentation Gloria will need to provide at their next conference, and makes a note to remember to check whether Gloria has successfully engaged with any services in their next conference.

Managing expectation is key: hope and expectation are tools used by the traffickers to manipulate victims, and assurances which are not carried through can repeat this negative pattern.

Following this meeting, and having obtained Gloria's consent, the barrister calls Gloria's solicitor and explains that her experience of being a victim of modern slavery needs to be further explored and her needs considered. This avoids Gloria having to repeat information she has already provided to her barrister.

Key questions to ask yourself

- Have I sufficiently encouraged disclosure and reassured my client of legal professional privilege?
- Are there any indicators of trafficking present? Could the solicitor/adviser (if instructed) have missed these indicators?
- Do I need to consider a referral to the National Referral Mechanism?
- Do I need to arrange for a clinical assessment?
- Have I considered particular needs around the involvement of third parties e.g. do I need to hire a female interpreter?
- Have I provided my client with a list of organisations that can support them?

Key sources of expert support and information for your client

- HM Government (no date) [Help for victims of modern slavery](#)
- Rights of Women (2014) [Trafficking and the National Referral Mechanism](#)
- [Kalayaan](#) (020 7243 2942)
- [Modern Slavery Helpline](#) (Helpline: 08000 121 700)
- [Poppy Project](#) (Referral line: 020 7735 2062)
- [Rights of Women \(Advice Line: 020 7490 7689\)](#)

Refer to Annex 1 for further sources of support and advice.

Further information

- Hope for Justice (no date) [Spot the Signs](#)
- Organisation for Security and Cooperation in Europe (OSCE) (2013) [Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-treatment. Occasional paper series no.5.](#)
- Rights of Women (2014) [Trafficking and the National Referral Mechanism](#)
- United Nations Office for Drugs and Crime (no date) [Human Trafficking Indicators](#)

Issues to consider in relation to court proceedings (Factsheet 4)

Preparing to go to court

1. Before going to court, you should be familiar with the client's vulnerabilities and have a clear understanding of their capacity and communication needs⁷⁰. If you are instructed by a solicitor or OISC-registered adviser, ensure you have discussed any vulnerabilities and additional needs with them. A rapport session prior to going to court can help clarify any last-minute details, and ease the effectiveness of communication whilst at court. It also, crucially, provides the client with an opportunity to raise any concerns they may have.
2. When preparing your client for court, make sure you explain what your role will be, and be clear about what you can and cannot do for the client. This will establish boundaries, manage expectations and address any misconceptions. If known, provide the client with an estimation of how long the session is likely to be, what will happen at each stage of the process, including the questions they are likely to be asked (if any), and what will happen at the end.
3. Your client may be nervous and apprehensive about appearing in court. Where possible you could consider holding a pre-trial conference with your client to foster trust, understanding and offer reassurance. You could also direct your client towards materials provided by government departments and awareness raising bodies, such as Rights of Women and Citizens Advice, to help them prepare for court and know what to expect.
4. Pre-trial familiarisation visits have been shown to be beneficial, particularly for those with learning disabilities and stress or anxiety problems, providing that they are conducted in a reassuring manner⁷¹. If you arrange such a visit, be sensitive to possible sources of anxiety, and consider the adjustments that can be made to alleviate this.
5. If your client has accessibility requirements, check arrangements at the court beforehand, or if a solicitor is instructed check that they have made sufficient enquiries. For example, if there is no lift access, a request could be made to have the hearing on the ground floor. If your client needs an interpreter, you or the solicitor may need to request one from the court interpreting service. Make sure this is done in good time, and it is advisable to check the request has been processed a few days prior to the hearing.
6. Many clients attend court with their children, yet there is often a lack of provision for this. If your client has children, you could make enquiries as to arrangements for childcare on the day of the hearing. If the client is unable to make arrangements, you or the solicitor could check whether there are provisions in place at the court. If not, alternative arrangements may need to be considered to avoid potential disruption on the day.

⁷⁰ Competency 1.11 of the [Professional Statement](#) expects barristers to ensure they are fully prepared, including being familiar with their clients' circumstances and goals, so as to be able to supply a good standard of work.

⁷¹ Advocacy Training Council (2011) [Raising the Bar: The handling of vulnerable witnesses, victims and defendants at court](#)

7. If an intermediary or other third party is involved, consider the need for a pre-hearing meeting to clarify details and roles.

Good practice example

Peter is appealing the Home Office decision to refuse him asylum. Peter's barrister has been provided with information by his instructing solicitor, including that Peter requires an interpreter, is overly deferential to authority and is very apprehensive about appearing in the tribunal.

Before the court date, the barrister arranges a pre-trial conference with Peter and his solicitor. An interpreter has also been arranged and is present. The barrister introduces both the interpreter and himself. He explains his role and that he will be putting Peter's case forward to the court. The barrister sits next to Peter, rather than behind a desk, to ensure Peter feels they are on an equal footing. The barrister explains what will happen during the court process at each stage, and prepares him for the types of question that Peter will be asked. The barrister explains where everyone will be sat to help familiarise Peter with the setting. The barrister then asks questions about Peter's day to day life to build rapport, which he hopes will encourage effective communication at court. This additionally allows the barrister to build an understanding of Peter's capacity for understanding and communication needs. Before the end of the conference, the barrister provides Peter with further sources of information about the court process and what to expect.

Before the hearing, the barrister checks that all relevant documents have been disclosed and that the court has appointed an interpreter.

At court

8. You should seek to ensure that other lawyers and the judge are aware of any issues related to language, literacy or learning disabilities during proceedings. This will ensure that they are mindful to avoid using language that is likely to confuse or not be understood by your client. If your client has a hearing impairment, you may need to advise the court that a hearing loop is required or ensure that a sign language interpreter is available.
9. If your client struggles with their attention span due to learning difficulties, mental health issues or other factors, you may want to consider excusing their attendance at court during lengthy arguments or submissions, or asking the judge to take breaks where appropriate. This is advised in [Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#).
10. The positioning of your client in court can also be important. Some clients may feel reassured being sat closer to the judge, whilst others may need to be closer to the questioner if, for example, they have hearing difficulties. Ask your client about their preferences, and try to accommodate these as far as possible. This will encourage confidence and effective communication during the session.

11. If you meet your client for the first time on the day of court, you will be limited in your ability to identify and properly assess any needs and vulnerabilities. As such, it is crucial that you seek information from the solicitor, OISC adviser, intermediary or anyone else involved beforehand, to ensure you are informed on the day and are able to respond appropriately to your client.

Key questions to ask yourself

- Have the client's issues and needs been sufficiently explored and considered before going to court?
- Is a rapport session or pre-trial conference required?
- Do special arrangements need to be made e.g. does an interpreter need to be arranged? Does a hearing loop or sign language interpreter need to be present? Does the client need to take breaks?
- Have accessibility requirements been considered and prepared for e.g. does the client need lift access or should the hearing be on the ground floor?
- Have other parties been made aware of any specific requirements or issues?
- Does my client know what to expect and is he/she sufficiently prepared?

Further information: Key resources

- [Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#)
- Justice (2017) [Mental health and a fair trial](#)
- The Advocacy Training Council (2011) [Raising the Bar: The handling of vulnerable witnesses, victims and defendants at court](#)
- The Advocate's Gateway (2015) [General Principles from Research, Policy and Guidance: Planning to Question a Vulnerable Person or Someone with Communication Needs: Toolkit 2](#)

Client care and communication (Factsheet 5)

1. Good client care and effective communication helps ensure access to justice, encourages constructive client participation and leaves clients feeling supported and listened to. This factsheet provides advice and guidance on effective client care and communication when dealing with vulnerable immigration clients⁷².
2. In addition, some people are concerned about doing or saying the ‘wrong thing’ and offending people, when it comes to vulnerability. This factsheet can help you to raise what can sometimes be difficult conversations with other members of chambers around appropriate communication, tone and use of body language.

Tips for the first meeting

3. The majority of non-professional clients seeking immigration advice will be vulnerable in some way⁷³. The first meeting provides a crucial opportunity to explore clients’ needs and identify vulnerabilities. The table below provides advice on how to conduct the first meeting.

- **Consider language requirements** – do you have translated materials in the client’s native language? Does an interpreter need to be present?
- **Introduce yourself properly** – this can help reduce anxiety for the client and creates a safe space. You should also ensure clients understand your role and the difference between your role and that of other professionals involved.
- **Adopt a neutral tone and body language** – this avoids unintentionally sending messages to the client. For example, if you nod, the client might feel that you want a positive response and react accordingly.
- **Use short questions, simple language and an appropriate pace** – speak clearly, do not rush and avoid jargon.
- **Ask open-ended questions** – this will provide your client with the opportunity to speak freely about their legal issue and wider issues, providing an opportunity for you to develop a full picture of the client and their needs.
- **Employ active listening skills** – concentrate on the information the client is giving you, and use non-verbal and verbal cues to show the client you are listening – for example, by maintaining eye contact..
- **Be alert to any signs or risk factors which could predict vulnerability** – encourage self-disclosure, and look out for risk factors which may indicate that an immigration client is vulnerable. (See **Factsheet 2**)
- **Clarify that both you and the client understands what the other is saying** – summarise what the client has told you and check that your understanding is correct. Similarly, you could ask the client to repeat back to you the information you have provided. If information has been provided verbally, consider whether sending a written copy of the discussion would be useful for the client.

⁷² Bar Standards Board (2016) [Immigration Thematic Review](#)

⁷³ *Ibid*

Client care

4. The BSB's review of immigration advice and services found that immigration clients need good quality client care in addition to good legal advice. Our research, however, highlighted a number of areas of concern around client care, including:
 - Concerns about the level of client care provided by solicitors, in preparing the client for the court process;
 - Concerns that some barristers may be failing to provide a proper standard of client care to immigration clients; and
 - Inconsistencies in client care.
5. Seek to ensure the client feels actively involved in the process, and clearly tell your clients that if they do not understand something or are unsure. They are entitled to, and should, ask questions.
6. During BSB consumer engagement sessions with people seeking or having sought immigration advice and services in 2017, it was observed that many clients lacked a basic understanding of their rights and were not even aware they 'had the right' to ask their legal provider questions (or make a complaint). During a focus group with people with experience of receiving immigration advice and services, the group identified the following factors as indicators of what they would consider to be 'good' client care. The service provider:
 - Asks the 'right' questions;
 - Properly explains the outcome afterwards;
 - Provides regular updates on the case; and
 - Provides links to other support agencies, such as housing services.
7. When you first meet your client, consider providing them with a resource such as the BSB's [Guidance for consumers of immigration legal services](#)⁷⁴, which explains the different types of provider, lets them know what to expect, how to recognise good and poor service and what they can do if something goes wrong. Having this knowledge and understanding empowers clients to be a more active participants in the process and instils faith in the service they are receiving.

Client care letters

7. The BSB Handbook⁷⁵ requires that all barristers, when accepting instructions, must confirm in writing the terms and/or basis on which they will be acting (including the basis of charging). A range of model client care letters are available on the BSB website⁷⁶.
8. Whilst the SRA requires that solicitors provide certain information to clients in writing (e.g. complaints information), it is not mandatory that this be in the form of a client care letter. Therefore, in referral cases, you may wish to check whether your client has received a client care letter from their solicitor and, if not, whether they fully understand the information that has thus far been provided to them.

⁷⁴ BSB (2017) ['Need help with your immigration and asylum issues? What you need to know'](#)

⁷⁵ [BSB Handbook](#)

⁷⁶ [BSB Code Guidance](#)

9. The results of our work on immigration fed into a wider review of client care letters⁷⁷. One of the primary outputs of this review was the identification of eight key principles for preparing client care letters. These are set out below.

- **Show a clear purpose** – state clearly what the role of the letter is and explain the importance of reading it.
- **Keep it concise** – the ideal length for consumers is two pages or less. If this is not feasible, use bullet points and a clear structure to ensure information is presented in a manageable way.
- **Put it in plain English** – avoid legal terminology, or clearly explain what it means. Avoid vague and caveated sentences.
- **Prioritise information** – focus on information which the client perceives to be of most relevance. Ensure a logical and coherent structure.
- **Personalise information** – provide details specific to your client’s case, and tailor the letter so that irrelevant information is excluded. Use personal pronouns.
- **Make it easy to read** – make sure that the letter is not too text-heavy, make use of appropriate line and paragraph spacing, and use headings to ease navigation. Consider the use of tables and bullet points.
- **Highlight key information** – use visual tools (e.g. bold text/summary boxes/headers/highlighting) to draw the reader’s attention to key points.
- **Consider additional opportunities to engage clients** – for example, is some information, such as regulatory information or terms of business, best delivered via an alternative medium or at a later stage?

10. The need for clear, concise and simple language will be particularly acute for clients whose first language is not English and who may have different styles of communication to their barrister, due to cultural or other background factors. Highlighted information in client care letters and other documents are particularly useful for those with English as a second language or low literacy, as it enables them to focus on key information or ask for help with understanding key points from consumer organisations or others that may be supporting them.

11. With respect to vulnerable consumers, the review made a specific recommendation:

“Given the specific challenges more vulnerable consumers face when engaging with legal services communications, it was felt that legal services providers should play a more central role in providing support. Fundamental to this is ensuring that any potential issues with reading communications are identified at the start of the process. While some sensitivity needs to be shown, simple steps such as... providing clear guidance as to where consumers can get support if they have any questions, were considered to be a step in the right direction”.

⁷⁷ Optimisa Research (2016) [Research into Client Care Letters](#)

12. This reinforces the need for legal professionals to identify vulnerabilities during the first meeting with the client, and to adapt communications accordingly. However, you must be alert to changing or new vulnerabilities and needs throughout the case.
13. The [Plan English Campaign's website](#) contains a number of free guides you may find useful in ensuring communications are in plain English⁷⁸.

Cross-cultural communication

14. Evidence collected as part of the BSB's thematic review found that service providers might demonstrate a lack of social and cultural insight, interpersonal communication skills or empathy.
15. Being competent in cross-cultural communication is defined as "*appropriate and effective in the communication process that takes place between individuals from different cultures*⁷⁹". Key skills required for effective cross-cultural communication include good listening skills, the ability to effectively build rapport and to identify cross-cultural misunderstandings. You may want to consider undertaking training on cross-cultural communication as part of your continuing professional development (CPD).
16. Issues of cross-cultural communication and its relevance to the Bar were discussed at a BSB Symposium attended by a range of professionals and experts in January 2016⁸⁰. The discussion highlighted how negative experiences in some communities as a result of poor cross-cultural communication has led to disengagement from mainstream providers. People can then seek help from those with a similar cultural background, where the quality of advice and services can be variable, due to a lack of expertise and/or specialism. Participants felt that a barrister's ability to communicate across cultures was pivotal in supporting access to justice.
17. The first meeting with your client provides an opportunity to identify factors that may impact upon their ability to engage with the process. People from different cultures may have different attitudes, norms and expectations. Whilst these can be subtle, try to pick up on patterns of verbal and non-verbal communication that can be informed by a person's cultural background, such as eye contact, politeness and silences during conversation. Try to adapt your style to suit your client and put them at ease.
18. You should not make assumptions about your client's behaviours or needs based on their cultural background. Instead, you could ask your client about their background, where you perceive it to be appropriate. This may reveal important information relevant to the case, and can inform decisions such as the choice of interpreter.
19. Aside from the language spoken, other personal, cultural, social and economic factors and characteristics may need to be considered when choosing an interpreter or other third party, as such factors can impact upon or be reflected in service provision. For example, in some countries, there are a variety of cultures, traditions and societies; some of which may hold prejudicial views against one another. Seek to gain an understanding of any such issues, and carefully consider the choice of interpreter.

⁷⁸ <http://plainenglish.co.uk/free-guides.html>

⁷⁹ Messner & Schäfer (2012) *The ICCA Facilitator's Manual, Intercultural Communication and Collaboration Appraisal*

⁸⁰ BSB (2016) [Does cross-cultural communication matter at the Bar? Report from a symposium hosted by the Bar Standards Board](#)

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20. Gender is another important factor to consider when hiring third parties. For example, female victims of modern slavery may require a female interpreter in order to properly participate and provide information, due to experiences of abuse by men. Those from the Roma community also adhere to certain traditions whereby individuals will not speak about certain topics in the presence of the opposite gender. You should also be aware of the gender composition during conferences and other settings, as it may be intimidating for a female client if she is the only woman present.
21. You may want to consider conducting your own research into a client's culture. Alternatively, making contact with community/cultural groups with specialist knowledge or expertise can help you gain an understanding of relevant factors pertaining to a culture, such as cultural taboos, and issues around gender, age, mental health, sexuality and other factors.

Good practice example

Suzan is a Roma woman from former Yugoslavia who has suffered discrimination based on her ethnicity. She has also experienced violent sexual assault during the war and suffers from trauma related to her past experiences. She does not speak English well and has limited literacy.

Suzan has one son and they are applying for leave to remain in the UK. Suzan has instructed a barrister to represent her in the tribunal. The barrister arranges a pre-hearing conference with Suzan. She attends with her son, whom she wants to translate. The barrister asks Suzan whether she is receiving any support. Suzan explains that she is in regular contact with a local charity that supports the Roma community with legal matters. The staff help her to understand letters and legal documentation due to her limited literacy. She says she particularly struggles with legal jargon and vocabulary used in a professional context.

The barrister asks whether Suzan would be happy for her to contact the charity to discuss Suzan's case and needs. Suzan agrees. Following the conversation with the charity worker, the barrister realises that Suzan might find it difficult to speak openly in front of her son. The charity worker explained that many Roma consider it inappropriate to talk about sensitive topics (such as health or mental health) in front of younger and older community members, as well as people of the opposite gender. The barrister is also advised that the use of Roma interpreters is preferred, as non-Roma interpreters may not understand specific cultural issues or may hold discriminatory views towards Roma. This understanding enables the barrister to consider how best to communicate with Suzan going forward.

The barrister suggests hiring a professional Roma interpreter to encourage a more open discussion. However, Suzan has trouble identifying the dialect she speaks. The barrister has been made aware of a [directory of Romani dialects](#) by Suzan's charity worker, and proceeds to show Suzan words in each dialect, asking her to identify which words she would use. Via process of elimination, the barrister is able to identify the dialect spoken by Suzan.

Following the meeting, the barrister arranges for a female Roma interpreter of a similar age to Suzan to be hired. The interpreter explains that maintaining eye contact when talking to Suzan is important. She also watches Suzan's body language to ensure that she understands the information provided. The barrister ensures that the interpreter and Suzan make him aware if something is unclear, or if information needs to be explained in a different way e.g. through visual aids.

Key questions to ask yourself:

- Are all written communications in plain English?
- Do I need to provide information in alternative formats?
- How can I tailor information to suit my client's particular needs and preferences?
- Am I fully aware of language and literacy requirements?
- What considerations are required when choosing to hire a third party, such as an interpreter, expert or medical professional?
- Should I arrange for translation of written communications?
- Have I sufficiently guarded myself against making generalisations or stereotyping people from certain cultures?
- Would it be helpful for me to contact specialist organisations/do further research to find out more about my client's background and culture?

Key resources

- Bar Standards Board (2016) [*Does cross-cultural communication matter at the Bar? Report from a symposium hosted by the Bar Standards Board*](#)
- Optimisa Research (2016) [*Research into Client Care Letters*](#)
- [Plain English Campaign Website Resources](#)

Issues with mental capacity (Factsheet 6)

1. You may have a client about whom you are unsure whether they have the capacity to instruct you. This factsheet will help you in identifying a potential lack of capacity, provide practical advice on obtaining evidence of capacity and steps that can be taken if the client is found to lack capacity. It also directs you towards further sources of information.

When might a person lack capacity?

2. The Mental Capacity Act (MCA) 2005 states that a person lacks capacity in relation to a matter if *'at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain'*. This includes temporary and permanent impairments and disturbances.
3. A person may lack capacity due to health conditions such as dementia, learning disabilities, or mental ill-health due to, for example, the effects of trauma. Likewise, drug or alcohol use may mean that a person lacks capacity to instruct you and/or make informed decisions. These effects on a person's capacity can be temporary (time-specific), and specific to the decision to be taken. A person's capacity should therefore be continually monitored throughout the process.
4. The MCA established four core principles which must be taken into account when considering a client's capacity⁸¹:
 - i) A person must be assumed to have capacity unless it is established that they lack capacity ("presumption of capacity")
 - ii) A person is not to be treated as unable to make a decision unless all practicable steps to help them do so have been taken without success
 - iii) A person is not to be treated as unable to make a decision merely because they make an unwise decision
 - iv) An act done, or decision made, under this Act for or on behalf of a person who lacks capacity must be done, or made, in their best interests
 - v) Before an act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.
5. You should be continually assessing your client's capacity throughout the process, due to the fluctuating and dynamic nature of vulnerability and the stress associated with accessing and receiving legal services. If you notice your client taking decisions or behaving in a manner which is inconsistent with previous decisions or behaviour, you may want to explore this further. For example, perhaps your client is easily influenced by others and a family member is exerting undue pressure on them, which has led to a series of seemingly inconsistent decisions.

Identifying a possible lack of capacity

⁸¹ [Mental Capacity Act 2005](#), Part 1, s.1

Referral cases

6. If you entertain a reasonable doubt that a client lacks capacity to give proper instructions, it is your professional duty to satisfy yourself that the client either does or does not have capacity as quickly as possible⁸². Where a solicitor is involved, discuss any questions of your client's capacity with them, since they will likely have had more contact with the client. However, given the difficulties in identifying a potential lack of capacity in some cases, particularly where the client's native language is not English, be aware that solicitors, advisers or others involved may not have picked up on this issue.
7. It is important to be alert to signs that a client may lack capacity for a number of reasons, including that it would not be proper to act on any instructions if the client's capacity is in doubt, and you may need to consider placing the issue before the court⁸³.
8. When considering whether a person lacks capacity under the MCA 2005, ask yourself the following:
 - Does the person understand the information which is relevant to their decision?
 - Can the person retain this information?
 - Can the person use or weigh up the information as part of the process of making the decision?
 - Can the person properly communicate their decision?
9. If your client appears to struggle to understand what is being said, remember events and information or make and communicate decisions, you should consider the need for a mental capacity assessment. This assessment should be conducted by a professional. Do not assume your client lacks capacity, but ensure they are assessed prior to acting on instructions.
10. If, after having considered the questions above and spoken to the solicitor, you remain concerned, inform your client of this in a tactful manner, taking their views and comments into account. It is highly advisable that both you and the solicitor keep records of actions taken and advice provided.
11. If you meet a client for the first time at court and suspect a possible lack of capacity that has not been previously identified, call the instructing solicitor to make them aware of this and ask for an adjournment so that evidence can be sought.

Public access cases

12. If you are working on a public access basis, seek to meet the client or arrange a consultation as soon as possible to identify any potential issues regarding capacity. Again, keep a record of actions taken and advice provided. However, you may be unable to act – or continue to act – since concerns about your client's capacity may lead you to believe the case is unsuitable for public access and/or the client's best interests are served by different legal representation. If such a situation arises, explain to the client that you believe it is in their best interests to inform the court of your suspicion, and inform them of the procedures around this.

⁸² Re P [2008] EWCA Civ 462

⁸³ Bar Council (2014) [Client Incapacity](#)

13. Where you believe you may need to return instructions you should bear in mind your duty to act in your client’s best interests, and carefully consider whether your withdrawal would adversely affect the client by, for example, placing them in a position where they do not have sufficient time to engage other adequate legal representation. If you refuse or return instructions, this does not prevent you from helping the client by assisting them to find alternative legal representation. Before you withdraw, consult the [BSB Public Access Guidance](#)⁸⁴ on withdrawing from a case.

Obtaining evidence of capacity

14. Where you have doubts about a client’s capacity, you should seek an opinion from a doctor or other professional expert⁸⁵. Ideally, assessment should be sought from a psychiatrist. However, in cases of urgency, assessment by a mental health nurse or social worker may be sufficient in the first instance. Where you are instructed by an OISC-registered adviser, solicitor or other professional client, advise that evidence about the client’s capacity should be obtained. If you are seeking medical evidence, you may advise the client to cooperate with this but may not insist upon it. You could additionally consider seeking evidence from those who know the client (with the client’s consent), such as carers or the client’s GP.
15. If you have accepted instructions and the presumption of capacity applies, legal aid funding should be available for a capacity assessment. Where it is not possible to gather means information or get the legal aid forms signed, seek advice from the Legal Aid Agency.
16. Baker J in *KK v CC* [2012]⁸⁶ set out how capacity to make a particular decision should be assessed:

“The person under evaluation must be presented with detailed options so that their capacity to weigh up those options can be fairly assessed...As the Code of Practice makes clear, each person whose capacity is under scrutiny must be given ‘relevant information’ including ‘what the likely consequences of a decision would be (the possible effects one way or the other)’. That requires a detailed analysis of the effects of the decision either way, which in turn necessitates identifying the best ways in which the option would be supported...”

17. This makes clear that whilst a person may lack capacity to make a decision (e.g. to apply for immigration leave), they may still be supported to express their wishes which are relevant to the litigation in question. Bear in mind that a client’s capacity may be time-specific and/or decision-specific.

⁸⁴ BSB (2017) [The Public Access Scheme Guidance for Barristers](#)

⁸⁵ [Mental Capacity Act 2005 Code of Practice](#), para. 4.41

⁸⁶ *KK v CC* [2012] EWCOP 2136, para. 68

Managing issues around mental capacity

18. If you are instructed by a client who lacks capacity you should refer to the [MCA Code of Practice](#)⁸⁷, which provides guidance, information, and sets out responsibilities when acting on behalf of individuals who lack capacity.
19. Before taking a decision or acting on behalf of a person who lacks capacity, the least restrictive means – or that which would allow the person the greatest freedom – should be pursued, unless it is not in the person’s best interests⁸⁸. All possible steps must be taken to help the person make the decision themselves before deciding a person does not have capacity to take a certain decision.
20. How (or if) you can help your client to make a decision will depend on their individual circumstances and the decision to be made, as well as the length of time your client has to take the decision. The box below provides tips on how best you can do this.

How to help your client make a decision for themselves

- ***Provide relevant information*** – Refrain from providing lengthy and tangential detail. Focus on key information the client needs to know in order to make the decision.
- ***Communicate appropriately*** – Adapt your style, tone and language to suit the client. Avoid jargon, and use clear and simple language. Be aware of cross-cultural communication issues (see [Factsheet 5](#) for guidance on good client care and communication).
- ***Make the person feel at ease*** – Adopt neutral body language, avoid formal or aggressive language and tone. Be aware of any signs that your client is anxious or distressed.
- ***Be supportive*** – Ensure your client knows you are there to act in their best interests, and to provide them with the necessary information and support to enable them to make a decision for themselves.

21. A Presidential Direction⁸⁹ issued in 2008 and the Joint Presidential Guidance Note No 2 of 2010⁹⁰ provide detailed guidance on the approach the tribunal should adopt in cases involving incapacitated or vulnerable persons. The Senior President in *AM (Afghanistan) v Secretary of State for the Home Department* [2017]⁹¹ identified five key features of these guidance documents:
- i. the early identification of issues of vulnerability is encouraged, if at all possible, before any substantive hearing, through the use of a case management review hearing (CMRH) or pre-hearing review;

⁸⁷ Mental Capacity Act 2005, [Code of Practice](#)

⁸⁸ *Ibid*

⁸⁹ [Practice Direction ‘First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses’](#)

⁹⁰ [Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#)

⁹¹ [AM \(Afghanistan\) v Secretary of State for the Home Department \[2017\] EWCA Civ 1123 \(paragraph 31\)](#)

- ii. a person who is incapacitated or vulnerable will only need to attend as a witness to give oral evidence where the tribunal determines that "*the evidence is necessary to enable the fair hearing of the case and their welfare would not be prejudiced by doing so*";
 - iii. where an incapacitated or vulnerable person does give oral evidence, detailed provision is to be made to ensure their welfare is protected before and during the hearing;
 - iv. it is necessary to give special consideration to all of the personal circumstances of an incapacitated or vulnerable person in assessing their evidence; and
 - v. relevant additional sources of guidance are identified in the Guidance including from international bodies.
22. Where necessary, draw the tribunal's attention to these documents, and make submissions about the appropriate measures to be considered to protect your client's welfare and provide them with access to justice, and whether or not your client should provide oral evidence.

Litigation friends and the Court of Protection

23. There is currently no express provision for the immigration tribunal to appoint a litigation friend. However, in *R (C) v First-tier Tribunal* [2016]⁹² the Court of Appeal found that the First-tier Tribunal's decision not to appoint a litigation friend for a foreign national who lacked capacity was unlawful. Despite the lack of provision, Picken J ruled that the immigration tribunal can appoint a litigation friend to represent a person who lacks capacity, and further submitted that were this not the case it would breach the common law duty of fairness. This decision was later upheld in the case of *AM (Afghanistan)*⁹³, making it clear that tribunals have not only the power but the duty to appoint a litigation friend where instructions cannot be given by someone who lacks capacity.
24. A litigation friend could be a family member, friend, solicitor, advocate or Court of Protection Deputy. Where a litigation friend is proposed, you will need to be satisfied that the person is someone who "can fairly and competently conduct proceedings" on the client's behalf, and that they have "no interests adverse to that of [the client]"⁹⁴. If you suspect there is a risk of undue influence, this may suggest a person is not suitable to act as a litigation friend. An application to the court to appoint a litigation friend can be made at any time during the case. Guidance on who can act and how to apply for a litigation friend can be found on the [Government website](#). As a last resort, the Official Solicitor may be approached in the absence of a suitable litigation friend.
25. In cases of urgency, you may also wish to make an application to the Court of Protection, for example, to prevent a removal order or detention under compulsion. The Court has a number of responsibilities and powers, including granting permission for someone to take decisions on behalf of a person who lacks capacity, and handling emergency or urgent applications where a decision must be made on behalf of another person without

⁹² *R (C) v First-tier Tribunal* [2016] EWHC 707 (Admin)

⁹³ *AM (Afghanistan) v Secretary of State for the Home Department* [2017] EWCA Civ 1123

⁹⁴ [Civil Procedure Rules 1998, rule 21.4\(3\)](#)

delay. For more information on making applications to the Court of Protection, refer to the Legal Action Group's Court of Protection Handbook⁹⁵.

Key questions to ask yourself:

- Does my client struggle to understand what is being said, remember events and information or make and communicate decisions?
- Before taking a decision as to whether my client lacks capacity, have I taken all practical steps to help them do so?
- Do I need to arrange for a capacity assessment?
- My client lacks capacity. What measures must be taken to protect their welfare and allow them to participate in proceedings as fully as possible?
- Have I considered the need for a litigation friend to be appointed, or should I apply to the Court of Protection?

Further information:

[AM \(Afghanistan\) v Secretary of State for the Home Department \[2017\] EWCA Civ 1123](#)

Bar Council (2014) [Client Incapacity](#)

LAG (2017) Court of Protection Handbook: A user's guide (*Second Edition*)

[Mind](#) (for information and advice on mental health and capacity issues)

[Medical Justice](#) (writes medico-legal reports (MLRs) which can be used to support asylum claims and letters outlining significant medical concerns).

[Mental Capacity Act 2005](#), [Code of Practice](#)

R (C) v First-tier Tribunal [2016] EWHC 707 (Admin)

⁹⁵ LAG (2017) Court of Protection Handbook: A user's guide (*Second Edition*)

Information for clerks and practice managers: Dealing with clients with additional needs (Factsheet 7)

1. This factsheet draws together information from across this guide which will be helpful to clerks, practice managers and others who may come into contact with vulnerable immigration clients. It will provide you with a better understanding of the types of things that can make a person vulnerable, will help you ensure services are accessible and that you can communicate effectively with clients.

What is vulnerability?

2. When considering what makes a person vulnerable, we can look to three main factors:
 - **Individual characteristics and circumstances** (e.g. age, cultural barriers, health problems, low income, being an asylum seeker/a victim of modern slavery)
 - **Market risk factors** (e.g. costs, barriers to access, lack of quality signals)
 - **Service provision** – The way in which services are provided can contribute to or even cause vulnerability or increase the likelihood of detriment.
3. In the context of immigration, these factors often come in combination. Being able to effectively recognise signs that a person is vulnerable and may have additional needs is key to effective service provision. Some issues and needs will be easier to identify than others. For example, a physical disability requiring wheelchair use may be obvious, whereas the effects of trauma, domestic violence or a mental health issue can often be hidden.
4. If you want to know more about vulnerability in the context of immigration, refer to the **Guidance on Vulnerability and the Client Journey (Section One)**. For a list of signs that may indicate vulnerability see **Factsheet 2** (Identifying and Assessing Vulnerability).

Ensuring access for people with additional needs

5. When considering how to ensure services are accessible to clients with additional needs, there are a number of factors to consider. These include:
 - **Website accessibility** – Is your website easy to read and navigate? Is information provided in plain English and without the use of jargon? Do you need to provide information in alternative languages?

If you would like advice and information on making your website and digital communications more accessible, you can contact the Government Digital Service or visit the [Web Accessibility Initiative's website](#).

- **Accessibility to and around premises** – Are your premises easy to find and access? Do you need to install steps, lifts, better lighting, ramps, clearer signs, disabled toilets or anything else to improve access?

As a minimum, clear directions should be available on your website and other promotional materials, as well as information on accessibility such as wheelchair access or hearing loops.

- **Accessibility of communications** – Standard methods of communication will not be suitable for all clients. Some clients may struggle to understand English and may need communications to be translated. Some may require communications in alternative formats, such as braille, large print or audio. Make sure you ask people when they first access your service if they have any information or communication needs and how you can meet them, and ensure this is recorded in a systematic way. For example, you could flag the person's file so that it is immediately clear they have additional requirements.

For more information on ensuring accessible communications, visit the [Disability Action Alliance's website](#). The Government's [guidance on Accessible Communication Formats](#) will also help you to develop accessible communications.

- **Encouraging disclosure** – Communications and marketing materials should seek to encourage clients to disclose any additional needs they may have, and provide reassurance that support can be provided if required. This is particularly important in the context of public access work.

For guidance on how to handle disclosures effectively, see **Factsheet 2** (Identifying and Assessing Vulnerability).

- **Marketing and making use of local links** – Consider where and how services are advertised, being mindful of the fact that many immigration clients may not have internet access and can struggle to find the help they need. Building links with other local organisations that might come into contact with your client group can be helpful to reach these clients. For example, you could consider inviting local organisations, such as local MIND groups, immigration charities or groups, housing sector organisations or Citizens Advice to short information sessions, where information about your respective services could be shared. Alternatively, you could simply make contact to introduce them to your services, so that they are able to direct clients needing professional legal services to you.
- **Staff training** – Have you considered the need for staff who may come into contact with clients to undergo training on identifying vulnerability and how to effectively communicate with clients to meet any additional needs?

The Institute of Barristers Clerks provides training for clerks on a number of issues and uptake of such training could be encouraged.

- **Flexibility around appointment times, duration and location** – To ensure some clients with additional needs are able to access your services, you may need to offer flexibility in terms of appointments, duration and location. For example, people with English as a second language, mental health issues or learning disabilities may require more time for discussions.

- **Third parties** – Some clients may need assistance from an interpreter, support professional or carer, without which they would not be able to properly engage with you. You will need to consider whether you can facilitate this. For example, are meeting rooms big enough to accommodate for third parties?
6. For more detailed guidance on ensuring accessibility, including a checklist to assist you in assessing whether your services are accessible, refer to **Factsheet 1** (Enabling access to your service).

Client care and communication

7. Good client care and effective communication is crucial to ensuring constructive client engagement. It also ensures the client feels supported and listened to.
8. When meeting or speaking to a client for the first time, you should:
- **Introduce yourself properly and explain your role** – This can help to ease any anxiety the client may be feeling.
 - **Consider language requirements** – Does the client appear to struggle with English? If so, do you have translated materials you could provide to the client in their native language? Flag any communication needs on the client's file.
 - **Encourage disclosure** – Ask the client whether they have any additional needs or issues that you should be aware of, and record any information they provide.
 - **Be alert to signs or risk factors that may predict vulnerability** – Not all clients will be open about (or even aware of) any issues they are experiencing or needs they may have. Listen closely to what they say and try to pick up on any non-verbal cues that could indicate additional needs or vulnerabilities.
 - **Clarify that both you and the client understand one another** – You could summarise what the client has said and check your understanding is correct. On the other hand, you could ask the client to repeat back to you the information you have provided. Encourage the client to ask questions if they do not understand something or they are unclear. If information has been provided verbally, consider whether sending a written copy of the discussion would be useful for the client.
9. Some more general principles for effective communication include:
- **Adopt a neutral tone and body language** when communicating with clients. This avoids unintentionally sending messages to the client. For example, if you nod, the client might feel that you want a positive response and react accordingly.
 - **Use short questions, simple language and an appropriate pace** – Speak clearly, do not rush and avoid jargon.
 - **Ask open-ended questions** when you need to elicit more information. This will provide the client with the opportunity to speak freely about any issues or concerns they may have.

- **Employ active listening skills** – Concentrate on the information the client is giving you, and use non-verbal and verbal cues to show the client you are listening – for example, by maintaining eye contact.

Written communications

10. The Bar Standards Board (BSB) commissioned research into client care letters to find out how they can be most useful to clients. Whilst this research focused on client care letters, the principles identified are applicable to all written communications. They are:
- 1) **Show a clear purpose** – what is it about? Why is it important?
 - 2) **Keep it concise** – is it too long? Is the structure clear?
 - 3) **Put it in plain English** – is there any jargon? Are sentence structures short and simple?
 - 4) **Prioritise information** – focus on information that is most relevant to the client. Put key information at the beginning.
 - 5) **Personalise information** – use personal pronouns (I, you, she, he etc.) and specifics about the individual client (where this is relevant).
 - 6) **Make it easy to read** – is it too text-heavy? Should you use bullet points, tables or headings? Use appropriate spacing.
 - 7) **Highlight key information** – use visual tools e.g. bold text, summary boxes, highlighting to draw attention.
 - 8) **Consider additional opportunities to engage clients** – for example, is some information better provided in another format or at a later stage?
11. The need for clear, concise and simple language is particularly important for clients with English as a second language, those who are unfamiliar with the legal system and legal terminology, low literacy levels and learning disabilities.
12. The [Plan English Campaign's website](#) has a number of free guides that you may find useful in ensuring communications are in plain English.

Cross-cultural communication

13. Being effective in cross-cultural communication is particularly important in the context of immigration work. Working in the legal sector, you will encounter people from a variety of backgrounds and cultures, and an awareness of cultural factors is required for effective client care and communication.
14. Effective cross-cultural communication is defined as “*appropriate and effective in the communication process that takes place between individuals from different cultures*”⁹⁶. Key skills for effective communication with people from other cultures include good listening skills, the ability to build trust and a rapport and be able to identify cross-cultural misunderstandings.
15. People from different cultures may have different attitudes, norms and expectations, as well as alternative styles of communication. Verbal and non-verbal patterns of communication can be subtle, but try to pick up on patterns that may be informed by a person's cultural background, such as eye contact, politeness, pauses and silences during conversation. Try to adapt your style to suit the client to put them at ease.

⁹⁶ Messner & Schäfer (2012) *The ICCA Facilitator's Manual, Intercultural Communication and Collaboration Appraisal*

16. It is important not to make generalisations or assumptions about a person because of their background or culture. To avoid this, you could consider undertaking training on unconscious bias, to increase your awareness of these issues.
17. For more detailed guidance on how to provide good client care and effectively communicate with clients, refer to **Factsheet 5** (Client care and communication).

Key resources

Annex 1 of this guide provides a list of useful contacts for clients in need of additional support, which you could consider providing to vulnerable clients.

Citizens Advice (No date) [Duty to make reasonable adjustments for disabled people](#)

Department for Work and Pensions, Office for Disability Issues (2014) [Accessible communication formats](#)

NHS England (2017) [Accessible Information Standard – Overview 2017/2018](#)

Optimisa Research (2016) [Research into Client Care Letters](#)

[Plain English Campaign Website Resources](#)

[Recite](#) (A web solution to make your website more accessible).

Web Accessibility Initiative (2017) [Web Content Accessibility Guidelines](#)

Useful Contacts (Annex 1): Directing your client towards further support

Barristers should have an awareness of the wide range of organisations supporting the administration of justice, including sources of advice and funding available to clients⁹⁷. Consumers of legal services value being directed towards other sources of support, both within the legal sector and outside e.g. help with housing or mental health issues

This annex provides details of organisations that can provide information and support to vulnerable clients on a range of issues.

Support and Helplines

[Asylum Aid](#): Provides legal advice and representation. Advice Line: 020 7354 9264.

[Asylum Help UK](#): Free advice in a range of languages on claiming for asylum, the asylum process, support, accessing healthcare and other asylum issues. Advice line: 0808 8000 630.

[Asylum Justice](#): Free legal services for asylum seekers and refugees in Wales, in cases where legal aid is unavailable. Telephone: 029 2049 9421.

⁹⁷ BSB (2016), [The Professional Statement for Barristers](#)

Action on Elder Abuse: Provides information, advice and support to victims and others who are concerned about or have witnessed abuse, neglect or financial exploitation. Helpline: 080 8808 8141.

Bail for Immigration Detainees (BiD): Provides legal advice, information and support to immigration detainees. Helpline for detainees: 020 7456 9750.

Citizens Advice: Free, independent and impartial advice on a range of issues and rights. Advice Line: 03444 111 444 (England); 03444 77 20 20 (Wales).

Coram Children’s Legal Centre: Free legal information, advice and representation to children, young people, their families, carers and professionals. Advice Line: 0207 636 8505

Debt Advice Foundation: Provides free, confidential advice about debt problems over the phone. Helpline: 0800 043 4050.

Dyn Wales: Supports heterosexual, gay, bisexual and trans men experiencing domestic abuse from a partner. Helpline: 0808 801 0321.

Eastern European Advice Centre: Free advice to Central and Eastern European migrants. Initial advice line: 0800 121 4226.

Joint Council for the Welfare of Immigrants: Legal advice and representation (in limited circumstances). Operates an advice line for irregular or undocumented migrants in London. Advice Line: 020 7553 7470. Advice Line for those in prison: 020 7553 7468.

Kalayaan: Free employment and immigration advice to migrant domestic workers (for example, if your employer is keeping your passport or you want to understand more about your rights). Telephone: 020 7243 2942.

Medical Justice: Provides essential medical help, medical advice and assessments to immigration detainees. Telephone: 0207 561 7498.

Migrant Help UK: Advice, guidance and support for vulnerable migrants, including those who have been trafficked. An advice line for people claiming asylum. Advice Line: 0808 8000 630.

Migrants Resource Centre: Free, one-off advice to migrants, refugees and asylum seekers and any organisations working with them. Telephone: 020 7354 9264.

Mind: Information on types of mental health problems, where to get help, medication and alternative treatments and advocacy. Its “legal line” provides information and general advice on mental health law, including mental capacity, community care and human rights and discrimination related to mental health. Telephone: 0300 123 3393.

Modern Slavery Helpline: A 24-hour helpline for people needing help, advice or information about any modern slavery issue. Helpline: 08000 121 700

National Centre for Domestic Violence: Free, emergency injunction service for survivors of domestic violence, regardless of financial circumstances, gender, race or sexual orientation. Helpline: 0800 970 2070.

National Domestic Violence Helpline: A 24-hour free helpline for women experiencing domestic violence, their family, friends, colleagues and others. Helpline: 0808 2000 247.

Personal Support Unit: Provides advice, information and support for litigants in person. Telephone: 020 7073 4760.

Part 1 – Public

Poppy Project: Supports women trafficked into the UK for prostitution and/or sexual exploitation, forced labour, domestic servitude, forced illicit activities, begging or pickpocketing or organ harvesting. Referral line: 020 7735 2062.

Prisoners' Advice Service: Free legal advice and support to adult prisoners in England and Wales. Telephone: 0845 430 8932 or 020 7253 3323.

Rethink Mental Illness: Advice, support and advocacy for people with mental health problems and access to justice issues. Advice and Information Service: 0300 5000 927.

Rights of Women: Charity helping women with legal issues, including asylum and immigration, trafficking, the rights of Europeans and their families; advice line. Immigration and Asylum Law Advice Line: 020 7490 7689.

Roma Support Group: Offers a variety of services to East European Roma refugees and migrants.

Samaritans: Helpline support for anyone who wants to talk to someone about the problems they are facing in their life. Helpline: 116 123.

Shelter: Advice about housing problems on the phone or face-to-face at one of the Shelter advice centres. Helpline: 0808 800 4444 (England), 0345 075 5005 (Wales).

Stop Hate UK: Information and support for victims of discrimination and hate crimes. Helpline: 0800 138 1625.

The Equality Advisory Support Service (EASS): Advises and assists individuals on issues relating to equality and human rights. Helpline: 0808 800 0082.

The Forced Marriage Unit: Advice and support for victims of forced marriage and their friends and family. Telephone: 0207 008 3100.

The Medaille Trust: Support and safe house provision for victims of trafficking and modern day slavery. Telephone: 0161 817 2260.

The Money Advice Service: Free, confidential advice about managing finances and dealing with debts. Advice line: 0800 138 7777.

The Salvation Army: Support for adult female and male victims of human trafficking. Helpline: 0300 3038151

UK Lesbian and Gay Immigration Group: Supports LGBT asylum seekers and those wishing to immigrate here to be with their same-sex partner. Helpline: 020 7922 7811.

Victim Support: Supports vulnerable witnesses. Support Line: 0808 1689 111.

Women for Refugee Women: Support group for refugee women. Telephone: 07852 765193. 'Rainbow sisters' is also run by Women for Refugee Women and is group open to lesbian and bisexual women who have sought asylum in the UK (London). Telephone: 07950 118 998.

Information and advice

Advice UK: A network of advice centres across the country.

AIRE Centre: Provides information on EU law and the free movement of people, as well as making applications to the European Court of Human Rights.

Asylum Support Appeals Project (ASAP): Offer assistance with asylum support appeals (NB: cannot advise on asylum cases).

Hibiscus Initiatives: Works with foreign nationals and black, minority ethnic and refugee groups serving a custodial sentence released into the community or returned to their home country.

Law for Life: A charity that aims to advance public legal education and empowers people to increase their confidence and capability to deal with legal issues.

Legal Choices: Help with choosing a provider, information about costs, how to complain about a provider and more.

NHS Mental Health Support (IAPT Services): The Improving Access to Psychological Therapies (IAPT) programme provides treatments for people with anxiety and depression.

Personal Support Unit: Supports litigants in person.

Refugee Action: Help and advice for refugees and asylum seekers on issues including the asylum process and how to access support, poverty, homelessness and resettlement.

Refugee Council: Supporting and empowering refugees and asylum seekers with a range of issues, including resettlement, health and therapeutic services.

Finding an alternative legal services provider

Public Access Portal: Search directory of public access barristers by region, specialism and seniority.

Bar Council's Bar Directory: Search directory of practising barristers by region and specialism.

Bar Pro Bono Unit: Free advice and advocacy on legal matters (applications-based). Contact: 020 7092 3960.

Immigration Law Practitioners' Association (ILPA): Search directory of immigration advisors, by region or specialism.

Law Centres Network: Search local law centres in England.

Law Works: Connects people in need of legal advice with lawyers who are able to help for free. Search directory of local legal advice clinics in England and Wales.

Office of the Immigration Services Commissioner (OISC): Adviser finder – search OISC advisers regulated by region, specialism and organisation/adviser.

Resolution: Search for a solicitor specialising in family law matters.

SRA's Law Firm Search: Search for information about SRA-regulated law firms.

The Law Society's Find a Solicitor: Search directory of solicitors by region and specialism.

Further resources (Annex 2)

This annex sets out some useful resources for further reading, to provide more in-depth information on the areas covered in the toolkit. Resources are separated under headings so that you can quickly find resources on the issues on which you are seeking further information and/or guidance.

Vulnerability and Immigration (General)

[AM \(Afghanistan\) v Secretary of State for the Home Department \[2017\] EWCA Civ 1123](#)

Advocacy Training Council (2011) [Raising the Bar: The handling of vulnerable witnesses, victims and defendants at court](#)

Bar Standards Board (no date) [Code Guidance](#) (webpage)

Bar Standards Board (2016) [Immigration Thematic Review](#)

Bar Standards Board (2016) [The Professional Statement for Barristers](#)

Bar Standards Board (2017) [Guidance on immigration and asylum related issues: Professionals and consumers](#)

Bar Standards Board (2017) [The Public Access Scheme Guidance for Barristers](#)

British Standards Institution (BSI) (no date) [Fair, flexible services for all](#)

Bulley et.al. (2017) [An Introduction to the FCA's Focus on Vulnerable Consumers](#) (blog)

Clayton (2015) [Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers](#)

Financial Conduct Authority (2015) [Occasional Paper No.8: 'Consumer Vulnerability'](#)

IFF Research (2013) [Immigration Client Experience Research](#)

[Joint Presidential Guidance Note No 2 of 2010: Child, vulnerable adult and sensitive appellant guidance](#)

KK v CC [2012] EWCOP 2136

Legal Services Consumer Panel (2014) [Recognising and Responding to Consumer Vulnerability](#)

Legal Services Consumer Panel (2012) [Research Note: Immigration and Asylum Services](#)

Ministry of Justice (2011) [Vulnerable and intimidated witnesses: A police service guide](#)

Money Advice Trust (2016) [Vulnerability: a guide for advice agencies. 12 steps for treating clients in vulnerable situations fairly](#)

National Audit Office (2014) [Implementing reforms to civil legal aid](#)

Personal Finance Research Centre (PFRC) at the University of Bristol (2011) [The Public Legal Education Evaluation Framework](#)

[Practice Direction 'First-tier and Upper Tribunal Child, Vulnerable Adult and Sensitive Witnesses'](#)

Re P [2008] EWCA Civ 462

Resolution (2016) [Guide to Good Practice on working with vulnerable clients](#)

SOAS (2017) [Injustice in Immigration Detention: Perspectives from legal professionals](#) (Research report commissioned by the Bar Council)

Solicitors Regulation Authority (2016) [Providing services to people who are vulnerable](#)

Solicitors Regulation Authority (2016) [Quality of legal services for asylum seekers](#)

The Advocate's Gateway (2014) [Identifying Vulnerability in Witnesses and Defendants: Toolkit 10](#)

The Advocate's Gateway (2015) [General Principles from Research, Policy and Guidance: Planning to Question a Vulnerable Person or Someone with Communication Needs: Toolkit 2](#)

[The Equality Act 2010](#)

The Law Society (2015) [Meeting the needs of vulnerable clients](#)

Toynbee Hall (2015) [Trusting the dice](#)

Accessibility/reasonable adjustments

Citizens Advice (No date) [Duty to make reasonable adjustments for disabled people](#)

Department for Work and Pensions, Office for Disability Issues (2014) [Accessible communication formats](#)

[Disability Action Alliance website](#)

Justice (2017) [Mental health and a fair trial](#)

NHS England (2017) [Accessible Information Standard – Overview 2017/2018](#)

[Plain English Campaign Website Resources](#)

[Recite](#) (A web accessibility solution to make your website more accessible).

Web Accessibility Initiative (2017) [Web Content Accessibility Guidelines](#)

Carers

Carers Trust (2013) [The Triangle of Care. Carers Included: A guide to best practice in mental health care in England \(Second Edition\)](#)

Children/young people

As noted, working with child and young migrants is outside the scope of this toolkit. Working with children and young people, including migrants, requires specialist advice.

Immigration Law Practitioners Association (2012) [Working with children and young people subject to immigration controls: Guidelines for best practice](#)

Institute for Criminal Policy Research (2015) [The Youth Proceedings Advocacy Review: Final Report](#) (Research commissioned by BSB and CILEx Regulation)

Communication

Bar Standards Board (2016) [Does cross-cultural communication matter at the Bar? Report from a symposium hosted by the Bar Standards Board](#)

Optimisa Research (2016) [Research into Client Care Letters Plain English Campaign Website Resources](#)

Domestic Violence

Home Office (2013) [Domestic violence and abuse](#) (webpage) (last updated March, 2016)

Resolution (no date) [Domestic Abuse Screening Toolkit](#)

Health

[Medical Justice](#): Offers medical advice and assessment to immigration detainees, and writes medico-legal reports (MLRs) which can be used to support asylum claims and letters outlining significant medical concerns.

Mental Capacity

Bar Council (2014) [Client Incapacity](#)

LAG (2017) Court of Protection Handbook: A user's guide (*Second Edition*)

[Mental Capacity Act 2005](#)

[Mental Capacity Act 2005, Code of Practice](#)

R (C) v First-tier Tribunal [2016] EWHC 707 (Admin)

Trafficking

Home Office (2016) [Victims of modern slavery – Competent Authority guidance \(version 3.0\)](#)

HM Government (no date) [Help for victims of modern slavery](#)

Hope for Justice (no date) [Spot the Signs](#)

National Crime Agency (no date) [Dealing with potential victims of modern slavery or human trafficking: Best practice guide](#)

National Crime Agency (2017) [National Referral Mechanism Statistics – End of Year Summary 2016](#)

Organisation for Security and Cooperation in Europe (OSCE) (2013) [Trafficking in Human Beings Amounting to Torture and Other Forms of Ill-treatment. Occasional paper series no.5.](#)
Rights of Women (2014) [Trafficking and the National Referral Mechanism](#)

United Nations Office for Drugs and Crime (no date) [Human Trafficking Indicators](#)

Chair’s Report on Visits and External Meetings from March 2018

Status:

1. **For noting**

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair’s visits and meetings since the last Board meeting.

List of Visits and Meetings:

2 March 2018	Visited Doughty Street Chambers
5 March 2018	Attended a meeting with Lord Keen of Elie QC accompanied by Vanessa Davies
8 March 2018	Hosted the T Level Legal Panel, DfE Accompanied by Vanessa Davies
15 March 2018	Attended the Emoluments Committee meeting
20 March 2018	BSB/LSB 6-way meeting; met with Interim Chair, Dr Helen Phillips, CEO Neil Buckley and Board member Michael Smyth, QC accompanied by Nicola Sawford and Vanessa Davies
20 March 2018	Attended a Training Event ‘Advocacy and the Vulnerable’ for Barristers on the invitation of the Treasurer of Inner Temple, The Rt Hon Lady Justice Gloster DBE

Director General’s report - BSB meeting 22 March 2018

For consideration and noting.

Director General

1. Programmes which I oversee directly are detailed below, with Future Bar Training being the most significant focus in the last month. My involvement includes leading the meetings with current and prospective training providers at Faculty Dean and VC level to discuss their plans and how they are likely to make the transition to the regulatory framework we expect to be effective from January 2019. I continue to speak externally about the reform programme, albeit one presentation scheduled in the past month was deferred because of the weather.
2. The BSB puts on “Knowledge Share “sessions for staff, which aim (amongst other things) to widen understanding of the context in which we work. My invited speakers in the last month have included a senior staff member at HMCTS to talk about the court reform programme; a university academic to present on the constitutional law implications of Brexit as seen from an EU perspective; and a pupil criminal barrister to talk about her work in the Magistrates Courts. Board members are always welcome at these events.
3. The BSB was invited to contribute to the evidence gathering visit of the Independent Review of Legal Services in Scotland; and to answer follow up questions from the team in Dublin working on legal services regulatory reform in Ireland. We are also considering providing evidence to the Commission on Justice in Wales, following their recent call.

Future Bar Training programme

4. The FBT budget and resource plan for 2018/19 has been approved. Work continues as we strive to deliver all milestones in accordance with the programme timelines:

Rule changes

5. Last year the Board agreed to timetable discussions and any policy recommendations from the 2017 FBT consultation over three “Tranches”. These are:

Tranche 1: The future role of the Inns (March)

Tranche 2: Review of work-based learning (pupillage) arrangements (April); and

Tranche 3: Advertising & Recruitment for WBL and Authorisation Framework (May).

6. As decisions are taken by the Board, we will also be working to draft new Handbook Part 4 Training Rules to give effect to the policy decisions the Board is taking to implement the FBT reforms. To assist with this, we have secured services from Kingsley Napley solicitors to assist in providing quality assurance for the rules drafting process. We propose to publish a summary of the decisions reached in principle following each Board meeting, whilst noting that the Board will not formally agree its final policy positions until all issues have been fully considered (May).

Review of Curriculum and Assessments

7. The Curriculum and Assessment Review (CAR) group met on 26 February to review and consolidate its findings and prepare the final proposals to be fed into the papers for the Education and Training Committee in March and April. Draft versions of these proposals were shown to current and prospective providers on 8 and 9 March. Constructive feedback was obtained which will enable the group to make final amendments to its proposals before presentation to the Committee.

Implementation of the Authorisation Framework

8. The implementation group is making good progress and working groups have been formed to look at fees and risk. Professor Mike Molan, who now has a consultancy role as a special advisor on the implementation of the Future Bar Training programme, is involved in both working groups.

Transitional Arrangements

9. The series of confidential individual meetings, led by the Director General, with current and prospective providers to discuss their likely future plans and timelines for presenting proposals continues. These meetings are proving valuable on both sides as sometimes issues are raised that help to shape our work on implementation.

Pupillage pilot

10. Visits to the four Pupillage Training Organisations taking part in this year's pilot have continued. The three visited so far have given very positive feedback about the Professional Statement as a tool for assessing competences.

Advertising and Recruitment project

11. Qualitative analysis has been conducted on pupillage advertisements from the Pupillage Gateway. In addition, a sample of around 50 PTOs have been asked to provide details of their marking criteria for determining (1) how they select candidates to interview, and (2) how they go on to select pupils. This information will be used to identify whether there are any common practices that might inhibit the diversity of entrants to the profession. A meeting with BACFI has been arranged to consider barriers to creating pupillage in the Employed Bar. A summary of the findings will be presented to the Advertising and Recruitment Task Completion Group in early April, prior to the Education and Training Committee and the Board.

Regulatory Operations Programme***Consultation***

12. Following Board approval at its February meeting, on March 8th we launched our consultation on the changes we are seeking to make to our regulatory decision making as part of the Regulatory Operations Programme. This consultation will be open until 31 May 2018. A consultation event is in planning.

CAT Project

13. The CAT Project Team is continuing to develop a consistent approach to assessing risk in incoming information. Two workshops were held with the Project Team and a selection of the SMT to finalise the impact and substance assessment process for incoming pieces of information. This involved working through several assessments, which we will now use in future guidance to staff, while also helping resolve any issues with the assessment process itself.

CMA Programme***Programme management and planning***

14. The CMA budget and resource plan for 2018/19 has been approved. All projects in the programme are currently progressing according to their timelines and budget.

Transparency

15. The policy consultation on the CMA's recommendations relating to new cost, service and redress transparency requirements closed on 5 January 2018. We then published a full summary of responses to the consultation and our proposed way forward on 23 February 2018.
16. A range of chambers, entities and sole practitioners with different practice areas, and undertaking both Public Access and referral work, took part in "pilots" of potential new transparency requirements. The "pilots" finished at the end of February, and the participants are now being interviewed to discuss their experiences. To add to our evidence-base, we are also commissioning consumer testing to ensure our proposed way forward is robust, and that any mandated disclosure would be appropriate and useful for consumers. This research programme will result in a rule change consultation, which will be on the Board agenda in July.
17. Finally, we also plan to undertake an engagement programme with Specialist Bar Associations and others to develop more detailed guidance and worked examples in specific areas of law. This guidance will be published alongside the rule change consultation to help respondents understand the nature of the changes we are proposing.

Independent Feedback

18. As part of the feedback workstream, we are committed to producing two guidance documents: a good practice feedback guidance document for barristers and a guidance document for consumers on how to engage with feedback.
19. We discussed the contents of the barrister guidance with a group of clerks as part of an Institute of Barristers Clerks seminar in February. Feedback was constructive and we are incorporating their recommendations into the guidance. The next step is to test the guidance with the same group.
20. We sent the Legal Services Consumer Panel (LSCP) the first draft of the consumer guidance for comments. Feedback was positive and their suggestions are being incorporated.

Strategy & Policy**Policy*****General***

21. In February, the Policy Team received 99 calls and e-mails to the Professional Standards Helpline.
22. We continue to support a number of key projects across the business. This includes support to the Records Team and Project Management Office on the rollout of MyBar, and queries arising from the Authorisation to Practise process which is now well underway for 2018.

23. We are updating our guidance for barristers on first tier complaints handling (i.e. before client complaints may be made to the Legal Ombudsman). In particular, this is to ensure the model complaints procedure for sole practitioners is fit for purpose, and that barristers comply with client notification requirements in respect of the availability of alternative dispute resolution (ADR) services.

BSB Handbook

24. A new version of the BSB Handbook (v3.2) was published on 1 February. The amendment includes changes to streamline the Public and Licensed Access rules, as well as changes to require new information from regulated persons as part of the Authorisation to Practise process.

Public Access Training Review

25. The Policy Team is leading the review of the Public Access training, which was a key recommendation of last year's Public and Licensed Access Review Report. We will be assessing how well the current Public Access training providers are meeting the required outcomes, and how well the providers are delivering training in the areas which barristers identified for improvement in the Public and Licensed Access Review. These assessments will then be used to produce a revised set of outcomes, which may not differ substantially from the current outcomes, but may lead to the training placing more emphasis on certain areas (including those which barristers have identified for improvement).
26. Following this, an invitation to tender will allow existing training providers to demonstrate how they intend to revise their current Public Access training to reflect the revised training outcomes. Any prospective new training providers will also need to demonstrate how their Public Access training proposal reflects the revised training outcomes. Contracts for the revised Public Access training will then be awarded ready for January 2019 (the current training provider contracts expire at the end of December 2018).

Scope of Practice

27. The team has begun scoping a project that will review certain aspects of Part 3 section B (scope of practice) of the BSB Handbook. Two broad themes have been identified that will form the focus of the review. These are:
- Authorisation/practising requirements; and
 - The provision of reserved/unreserved legal activities.
28. The purpose of the review will be to review the identified themes from a first principles basis, to define and better understand the problems in relation to scope of practice through evidence collection and to identify specific areas of risk and consider how these could be mitigated. As part of the project we also hope to engage with the profession and key stakeholders to help build a better understanding of some of the issues faced in relation to scope of practice. The project will formally commence next month with the aim of publishing a policy consultation by the end of quarter 3 of the 2018/19 business year.
29. To help build an evidence base, last year we carried out a survey on the use and function of qualified persons. The results of this survey will be published in quarter 1 of the next business year and will be fed into the work on the authorisation and practising requirements theme.

Immigration Thematic Review

30. The Vulnerability Guide will be published following Board approval this month. An evaluation framework is currently being developed in collaboration with the Research Team which will guide our evaluation of the impact of the project's deliverables. Work on the third control identified in the Thematic Review report (joint guidance with other regulators) will commence in the next business year.

Regulatory Risk***Consolidated Risk Report***

31. We continue to refine our assessment of the risks in the Risk Index and are working with Research colleagues to assess the quality of evidence we have for each risk.
32. The team held a further review session with the GRA Committee, giving them the opportunity to consider the remaining sections of the report and to provide a steer for the level of detail we should include in future risk reports to the Board.
33. We are now updating the report with data to the end of February. This report will then be considered by the SMT, before presenting the Report formally to the GRA in April and the Board in May.

Development of Risk Outlook 2019

34. We have commenced planning for the Risk Outlook 2019 and the work we have done on risk assessment for the Consolidated Risk Report provides a strong foundation for this process.
35. We are also fully engaged with the Corporate Support team as they work on developing the next Strategic Plan, to ensure consistency between the Risk Outlook and the Strategic Plan.

Research

36. Work continues on a number of research projects that will deliver evidence to support and inform key projects across the business.
37. We have been working with the Regulatory Assurance department to define and clarify the approach to evaluating the new CPD scheme, which has now been in place for one year. An evaluation framework has now been prepared.
38. ICPR has completed research commissioned by the BSB and SRA on judicial perceptions of advocacy, consisting of 50 qualitative interviews with Crown Court judges. The final report is due to be published in April.
39. We are currently evaluating tender responses received to conduct research into price and service transparency to inform our response to the CMA recommendations. The research provider will be appointed and work start on the project by the end of March. Further research to inform the CMA response is also being undertaken internally, with analysis carried out on interviews with legal service providers and a survey of barrister's clients.
40. The final research report based on the Women at the Bar workshops conducted in 2017 is being externally peer reviewed, in advance of publication.

41. Work has started on the annual update to the BPTC Key Statistics report – the data has been received from all providers and is currently being quality assured.
42. We are currently scoping a research project with the Equality and Access to Justice team to look into discrimination at the Bar, in order to identify any issues and positive action to address those issues.
43. Our regular ‘Research Roundup’ has been updated and published on ‘verity’. The roundup summarises recently published research in the legal sector that is relevant to the work of the BSB.

Equality and Access to Justice

44. Additional EIA trainer training for Equality and Access to Justice Officers has been delivered. E&AJ officers have commenced pilot training for their teams.
45. E&AJ team have drafted responses for the Equality and Human Rights Commission on their forthcoming report and recommendations on the use of Non-Disclosure Agreements, and for the House of Commons Women and Equalities Committee - request for evidence in relation to Sexual Harassment in the Workplace.
46. A report of the Race Equality event ‘Heads Above the Parapet’ has been finalised and will be published shortly.
47. The Head of Equality and Access to Justice has spoken at two diversity events: Westminster Legal Policy Forum and Middle Temple Students’ Association.
48. A draft rule change consultation paper on Sexual Orientation and Religion and Belief Monitoring within Chambers and Entities has been prepared - to be presented at the March Board meeting for approval.
49. E&AJ team have input into the equality impact assessments for each element of the ‘role of the Inns’ Future Bar Training work-stream.
50. In conjunction with civil practitioner, Sara Ibrahim, the E&AJ team delivered an E&D teaching session at Lincoln’s Inn as part of the pupillage Practice Management course.

Professional Conduct Department

Legal Services Board Enforcement Review

51. On 27 February, the PCD hosted a meeting with a Regulatory Associate and a Project Manager who are leading on a Legal Services Board thematic review of the Approved Regulators’ enforcement systems. The project seeks to increase the LSB’s understanding of the regulators’ enforcement functions and provide greater assurance in this area to support their oversight work. One of the project aims is to identify trends and best practice in enforcement procedures.
52. As part of the review, the LSB is conducting a one-off, in-depth data analysis of the BSB and Solicitors Regulation Authority’s enforcement processes and historical performance data covering the period 2015-17. It will also carry out a desk research exercise in relation to the processes operated by the other ARs. The LSB will also be approaching the Bar Tribunals and Adjudication Service for information on the disciplinary processes.

53. The meeting with the LSB covered the enforcement process from complaint to sanction, including the interim suspension and administrative sanction processes. The LSB were also informed of the current consultation on Modernising Regulatory Decision Making and the proposals in the consultation paper.
54. The LSB is intending to report on the outcome of the thematic review in July 2018.

Project work

55. The PCD continues to be heavily involved in a range of projects: ongoing development of the centralised assessment team and independent decision-making proposals; development of the detailed interventions procedures and guidance; compliance with the General Data Protection Regulations; consideration of future systems for providing representation and litigation support; APEX recruitment for an Information Law specialist; and the publication and disclosure of disciplinary findings.

Training

56. The PCD managers have been working to finalise the departmental training plan for 2018-19. As in 2017-18, these sessions will be offered more widely to colleagues across the BSB where appropriate, in the event of places being available. The full programme will be published internally on verity in due course.
57. On 22 February the Head of Conduct Assessment and Head of Investigation & Hearings gave a briefing session on BSB enforcement processes to the staff of the Bar Council Ethical Enquiries Service. The aim of the session was to ensure the representative body has a greater understanding of the enforcement processes, to assist them in dealing with enquiries from barristers which touch on this area of the BSB's work.
58. On 23 February two Assessment Team staff members attended a complaints handling training course provided by the Legal Ombudsman "Remedies and Learning from Complaints for lawyers". The course discussed common complaints that LeO deal with and how these could be prevented. In addition, some of the common issues that lawyers face when handling complaints were explored using case studies. The course also focussed on the importance of complaints, learning from analysis of the root causes, first tier complaints processes and remedies.
59. On 7 March the PCD received its annual Disclosure in Regulatory Proceedings refresher training. These sessions ensure that staff are kept up-to-date with case law in this important aspect of our work.

Litigation

60. The PCD is currently handling three legal cases, with one case before the Employment Tribunal having concluded.
61. The matter that was before the Supreme Court is still to be considered by the High Court. No date has been set as yet.
62. The discrimination claim brought by a disbarred barrister before the Employment Tribunal has been struck out. We received confirmation of this on 28 February.
63. The other matter before the Employment Tribunal, involving the lay representative in the above case is still ongoing. Representations of a lack of jurisdiction have been made and we await a decision by the Tribunal.

64. Finally, a claim before the county court for discrimination arising from an alleged failure to provide reasonable adjustments, which was received last year but stayed, has now resumed and the BSB has submitted a defence.

Regulatory Assurance Department

Anti-Money Laundering and Counter Terrorist Financing

65. The joint guidance for the legal sector has now been approved by HM Treasury and has been published on our website.
66. The Financial Action Taskforce (FATF) assessors are now in the country for the UK's Mutual Evaluation Peer Review. The BSB is not scheduled to meet the assessors, but we have been advised that they may request a meeting as the visit progresses. The visit is scheduled to end on 22 March.
67. HM Treasury have published their Supervision Report for 2015-17, which reflects the returns of all the supervisors, including the BSB. This report provides analysis along with quantitative and qualitative data and case studies illustrating how supervisors manage risk. It shows improvements in several areas and recognises that the UK's AML/CFT supervisors remain committed to further strengthening their approach.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/685248/PU2_146_AML_web.pdf
68. Authorisation to Practise has commenced. The data that we collect will enable us to meet our obligations under the Regulations to carry out sectoral risk assessment and to provide a register to HMRC of barristers and BSB entities acting as trust or company service providers. A Memorandum of Understanding is being agreed with HMRC to support this.

Youth Court Advocacy

69. The requirement to register for Youth Court work is now in place for barristers and pupils. A letter has gone to all pupils and Heads of Pupillage Training Organisations to ensure there is clarity about registration and what a declaration of competence means. To support this, we are reinforcing these messages with the pupil supervisors network and at pupil supervisors training. Whilst it is too early to say how many barristers and pupils are undertaking this work, early signs indicate registration is being taken seriously.
70. We continue to engage with the Future Bar Training Programme to integrate our work into the programme. We will be engaging with examiners and providers over the coming months.
71. We have now completed all of the visits to Youth Offending Team managers across the country. We continue to engage with external stakeholders, and intend to present at a conference for intermediaries shortly.
72. We continue to develop the video aimed at young people. The script for the video has been reviewed by SMT and external stakeholders for their comments and is currently being revised.

Quality Assurance

73. The paper which the Board will receive in private session has been the focus of our work during the last month.

Authorisations

74. The Review Panel sat on 20 February and considered 1 application for review. The first instance decision was upheld, with no amendments to conditions being made. Assurance measures and robust information gathering mechanisms are in place to ensure the consistency and standard of decision-making is maintained.
75. Since the last report, the APEX adviser has been used on 1 occasion. The advice being sought and the expertise provided is being captured to ensure knowledge is passed onwards to the executive.
76. An action plan for the first quarter has been implemented following Internal Audit Report earlier in the year.
77. CRM is being used more broadly and the transition from the more manual process is underway. Workflow is operational, it is envisaged that once the reporting function is implemented evidence of improved performance will be available.
78. Online applications are currently being developed, which will further streamline the service.

Entity Regulation

79. The Entity Regulation Scheme continues to operate as business-as-usual. There are 23 applications pending assessment. There are 81 authorised and 7 licensed bodies currently regulated by the BSB to provide reserved legal activities.
80. No applications have been refused or decisions reviewed or appealed.
81. The Entity Application portal is now fully interfaced with the CRM.
82. The annual renewals process is underway and includes a declaration relating to Anti-Money Laundering.
83. The Entity Regulation Policy is currently under review. The proposed amended Policy Statement should be available in May 2018.

Training Supervision and Examinations

84. Several members of the team have been spending much of their time on project work for FBT as reported above. Business as usual has included a visit to the University of Law's Leeds centre where an application for an increase in validated numbers from 36 to 48 was considered and approved. There are two remaining annual monitoring visits left to do for this year. All Annual Reflective Reviews from providers have now been received and the data that forms part of this will be used to produce this year's Key Statistics report.
85. Planning for the BPTC Providers' Conference on 13 July 2018 has commenced and it is likely to include some discussion on the research that has been done on differential attainment.
86. The Examinations team has been conducting paper confirmation meetings and preparing for the next diet of assessment which commences on 23 March 2018.

Communications and Stakeholder Engagement

87. Since this report was last prepared for the February Board, the following press releases and news announcements have been issued:
- 12 February: News announcement about seeking new members for APEX;
 - 22 February: Press release about an unregistered barrister disbarred for dishonest conduct when practising as a solicitor;
 - 23 February: Press release about the Board’s decision to agree an approach to improve transparency for clients of the Bar;
 - 26 February: Joint press release with the Bar Council about the launch of the MyBar self-service portal for barristers and chambers and the opening of the Authorisation to Practise process for 2018; and
 - 28 February: Press release about an unregistered barrister disbarred for falsifying information in a pupillage application.
88. The Board will have seen the fortnightly media coverage that the above announcements generated.
89. We also published a new leaflet for presentation to new barristers at Call Night introducing them to the work of the BSB and reminding them of their core duties.

Work in Progress

90. In addition to business-as-usual activities, at the time of writing, the following pro-active communications are scheduled over the next few weeks and months:
- Launch of the consultation to modernise the BSB’s regulatory decision-making and to streamline the way in which incoming information is assessed;
 - Publication of the common protocol with the SRA about the future of the academic stage of training;
 - Publication of proposals in relation to the BSB’s scope of practice review;
 - Publication of new immigration vulnerability guidance;
 - Communication of the Board decisions following the recent consultation on Future Bar Training; and
 - Publication of the BSB’s 2018-19 Business Plan which has been prepared by the Communications and Corporate Services teams.
91. The team is also working on the following projects:
- Working with the Corporate Services Department on the design and production of the 2018/19 Business Plan;
 - Updating the “Qualifying as a barrister” webpages; and
 - Developing a medium to long-term communications plan to support the decision-making and implementation phases of the FBT programme.

Online and social media

92. During February, 28,949 users visited the BSB website. At the time of writing, we have 18,958 followers on Twitter, 2,930 followers on LinkedIn and 478 followers on Facebook.

Corporate Services

Governance

93. Recruitment has commenced for two independent (non-Board) members of the Governance, Risk and Audit (GRA) Committee with advertising opening in the week commencing 12 March. One member is to commence immediately, to fill a current vacancy, and the second is to commence from 1 January 2019.
94. The annual review of members of the Advisory Pool of Experts (APEX) concluded in the latter part of February. A paper based exercise was deemed sufficient and proportionate given the extent of member's engagement (to a maximum of ten days per year). A summary of key themes and suggestions for enhancement to process was prepared from review of forms returned by members and circulated to all members as the conclusion of the review process. Overall, the mechanisms of engagement are working well, with interactive workshops preferred as the most effective (and enjoyable) mechanism for contribution.

Corporate Support

95. The team finalised work on the 2018/19 business plan in collaboration with the Communications Team. Development work on the next 3-year strategy has continued, with various analyses undertaken with a group of staff from across the organisation.
96. The Internal Auditors (Crowe Clark Whitehill) have begun an audit of the purchasing and accounts payable department in Resources Group. The team are supporting the auditors with documentation and logistical support. The final audit report will be submitted to the Governance Risk and Audit Committee in due course.
97. During February work began on scoping and modelling for the new fees and charges related to the Future Bar Training Programme. The Corporate Support are team working with the programme team to apply the full economic cost recovery methodology and give financial modelling support.

Vanessa Davies
Director General BSB
March 2018