



BAR
STANDARDS
BOARD

REGULATING BARRISTERS

BSB Strategy

2022-2025

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

1. Foreword by the Chair

- 1.1 Since we launched our last strategy in 2019, much has changed for everyone.
- 1.2 For the BSB, in addition to the move to remote working, the pandemic has been characterised by the rising volumes and complexity of core regulatory work and new strategic challenges. We have struggled to deliver the expected service levels across our core regulatory operations and we are committed to rectifying this as the top priority in this strategic plan.
- 1.3 The pandemic, and its aftermath, continues to have an impact on the courts, the efficiency of the whole justice system, and access to justice: exacerbating issues that were already present, including reduced public funding and the associated access to justice issues. We also know that it has had a negative impact on the wellbeing of many barristers: this is bad for clients and also bad for the sustainability and diversity of the profession.
- 1.4 However, the pandemic has also been a catalyst for new ways of working and increased use of technology: we need to harness the benefits of this where possible and look for innovative solutions to address access to justice needs. We also need to ensure that the Bar is equipped to adapt to such technological changes and meets the expectations of future clients.
- 1.5 Whilst the profession becomes increasingly diverse (albeit not uniformly at all levels of seniority or areas of practice) it is also ageing. We need to ensure sustainability and work with others to promote a culture of inclusion, for the benefit of practitioners and clients alike. We also need to help consumers from any background to navigate the complex legal system more easily.
- 1.6 The events of the last two years have meant we have had to prioritise rigorously, and resources have been stretched. In preparing this strategy, we have therefore reviewed our capacity and capability as an organisation and identified areas where we need to strengthen. My Board remains committed to delivering value for money from this new investment, and to delivering an efficient service.

1.7 As a result, our key strategic aims are:

Efficiency	delivering our core regulatory operations quickly, economically and to a high standard.
Standards	ensuring that barristers provide a high quality and responsive service throughout their careers.
Equality	promoting equality, diversity and inclusion at the Bar and at the BSB, and the profession's ability to serve diverse consumers.
Access	promoting consumer understanding of legal services and choice, and good value in using those services (covering both the supply of, and demand for, barristers' services).
Independence	strengthening the BSB's independence, capability, self-confidence and credibility

1.8 As I prepare to leave the BSB after four and a half years as its Chair, I am pleased that I leave the organisation with its independence strengthened and with a clear set of priorities for the next three years. I have very much enjoyed working with colleagues inside and outside the BSB to promote the public interest and I wish my successor all the very best in delivering this Strategic Plan.

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2. Our Vision

2.1 The BSB's vision is as follows:

We will ensure that the BSB regulates the Bar in the public interest by promoting high standards, equality and access to justice.

2.2 In meeting this vision, we want to see a market for barristers' services where:

- barristers provide a range of good value legal services which are well understood by the public, who can access those services either through their solicitors or directly;
- diverse customers are served equally by a diverse Bar, which does not tolerate any form of discrimination, bullying or harassment;
- the quality of legal advice and of customer service is consistently high; and barristers' duties to the Court, to their clients and to the rule of law are upheld.

2.3 To achieve this vision we need to work in collaboration with others (indeed, some of the work we outline in this strategy might be led by others.) It was clear from a number of responses to the consultation that stakeholders feel we should avoid duplicating work (for example, on diversity) that is being undertaken by the profession, and that we should focus on where regulatory intervention is necessary. We completely agree, and will only seek to act where it is clear that we shall add value by doing so.

3. Our Context: the wider legal sector

- 3.1 In common with the other legal services regulators, we have an oversight regulator, the Legal Services Board (LSB). We perform our role independently, but we share common statutory objectives and we perform our role with regard to rules and guidance set by the LSB.
- 3.2 In developing this strategy, we have had regard to the three strategic themes set by the Legal Services Board for the sector, and the challenges that they identify:
- **Fairer outcomes:**
 - Lowering unmet legal need across large parts of society
 - Achieving fairer outcomes for people experiencing greater disadvantage
 - Dismantling barriers to a diverse and inclusive profession at all levels
 - **Stronger confidence:**
 - Ensuring high quality legal services and strong professional ethics
 - Closing gaps in consumer protection
 - Reforming the justice system and redrawing the regulatory landscape
 - **Better services:**
 - Empowering consumers to obtain high quality and affordable services
 - Fostering innovation that designs services around consumer needs
 - Supporting responsible use of technology that commands public trust

4. Our Context: the Regulatory Objectives

4.1 At the heart of everything we do as an organisation are the Regulatory Objectives in the Legal Services Act 2007. They are:

- *protecting and promoting the public interest;*
- *supporting the constitutional principle of the rule of law;*
- *improving access to justice;*
- *protecting and promoting the interests of consumers;*
- *promoting competition in the provision of services;*
- *encouraging an independent, strong, diverse and effective legal profession;*
- *increasing public understanding of citizens' legal rights and duties; and*
- *promoting and maintaining adherence to the professional principles.*

4.2 The professional principles are that:

- *authorised persons should act with independence and integrity;*
- *authorised persons should maintain proper standards of work;*
- *authorised persons should act in the best interests of their clients;*
- *persons who exercise before any court a right of audience, or conduct litigation in relation to proceedings in any court, by virtue of being authorised persons should comply with their duty to the court to act with independence in the interests of justice; and*
- *that the affairs of clients should be kept confidential.*

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

4.4 The Legal Services Act also requires us to regulate in a way that is transparent, accountable, proportionate, consistent and targeted.

4.5 The BSB (as the independent body through which the General Council of the Bar carries out its regulatory functions) is a public body for the purposes of the Equality Act 2010 and is bound by, and committed to, meeting the requirements of the general, and specific, public sector equality duties. We will expand on how we will respond to these duties in a separate Enabling Strategy for Equality.

5. Risks and Opportunities

- 5.1 We base our regulatory activities on risk, taking an evidence-based approach to determining the priority risks, and allocating our resources where we think they will be most effective in addressing those priority risks.
- 5.2 To achieve this, we are constantly monitoring the market for barristers' services. We seek to identify all the potential risks that could prevent the Regulatory Objectives from being met and focus our attention on those risks that we think pose the biggest threats to the public interest.
- 5.3 Our Regulatory Risk Framework describes how we approach the delivery of our Regulatory Objectives. We have then categorised those things which can go wrong in the delivery of these services in our Regulatory Risk Index.
- 5.4 Our strategy is driven by a clear vision of the role of regulation in improving outcomes for consumers, in supporting the administration of justice and in strengthening the profession itself. In developing our new strategy we have therefore considered the risks and opportunities in the market for barristers' services that affect our ability to meet our Regulatory Objectives. We have summarised below the risk analysis that supports each of our strategic objectives.

Efficiency

There is a risk that public and professional confidence in core regulatory operations is damaged if the BSB fails to deal with work in a timely way, or fails to maintain the quality of its decisions.

- 5.5 Our top priority is to fulfil our core regulatory responsibilities efficiently and effectively. Much has changed for the BSB over the course of the health emergency: volumes of core regulatory work have risen sharply, complexity has risen, and new strategic challenges have emerged. We are currently missing our timeliness service levels in turning around requests for authorisations, in handling reports of alleged professional misconduct and in taking forward investigations. Those seeking authorisations or those making, or being the subjects of, reports deserve a faster service.

- 5.6 As we have developed this strategy, we have undertaken a root and branch review of the resources needed to regulate the Bar efficiently and effectively in the public interest, maintaining high standards, promoting equality and furthering the interests of consumers. It represents a step change for the BSB and we expect to see a commensurate improvement in our performance.

Standards

There is a need for barristers to be supported in maintaining and developing a range of skills, knowledge and competences to meet consumers' needs.

- 5.7 Most barristers are self-employed. This places the burden on individual barristers to identify whether they require support or training, for example to adapt their advocacy to remote hearings or to support vulnerable witnesses and clients. The employed Bar, by contrast, operates in a very different environment, sometimes with different challenges and ethical dilemmas.
- 5.8 We believe that chambers and employers have an important role to play in supporting barristers to meet the challenges of what is a very decentralised profession. There is a need to clarify our expectations of both chambers and employers in overseeing standards (and equality – see below.) We believe that there is good practice in both parts of the Bar that can be shared to improve standards across the profession.
- 5.9 Chambers and employers have an important role to play in:
- delivering feedback to individual barristers from judges, solicitors and consumers on their professional competence
 - supporting pupils and junior barristers
 - supporting barristers in maintaining and developing a range of skills, knowledge and competences.

Equality

There is a continuing need to improve the culture at the Bar, tackling discriminatory practice in all its forms and ensuring a supportive environment for all barristers and pupils.

- 5.10 There is a significant amount of evidence telling us that bullying, discrimination and harassment have been experienced by many at the Bar. Barristers who are female, from a minority ethnic background, LGBT+ or who have a disability are particularly likely to encounter such behaviour. Discrimination can arise in many forms, and may be the unintended consequence of unexamined practices. It can particularly occur during the recruitment and training of pupils and in the allocation of work.

- 5.11 Culture and working practices can perpetuate these issues and we are committed to working with the profession to play our role in challenging those aspects of culture at the Bar that are discriminatory and exclusive. In particular, chambers and employers have a significant role to play in helping us to deliver our vision of a Bar that is diverse, accessible, independent, knowledgeable, skilled and inclusive.
- 5.12 Equality, diversity and inclusion issues differ across the Bar. The self-employed Bar has particular challenges associated with the decentralised nature of practice and the ability of chambers to address these issues. Meanwhile, the employed Bar is more diverse and operates in a different context. Indeed, the employed Bar may offer helpful lessons to chambers in how to be more inclusive.
- 5.13 As with access to justice, the continuing impact of the pandemic may affect equality, diversity and inclusion in the profession. Extended court hours can affect those with caring responsibilities; the backlog in court cases and the lack of barristers available to tackle it are affecting working conditions and wellbeing, especially in criminal work.


Access

There is a continuing need to support improvement in consumer education in navigating legal services.

- 5.14 Although there is now greater price transparency, individuals and businesses with legal problems usually have a poor understanding of their legal rights and duties and of the full range of services offered by barristers, particularly the scope to access barristers' services directly and the potential to unbundle services. Consumers may also be daunted by the prospect of contacting chambers.
- 5.15 Where individuals and businesses are referred to barristers by solicitors or other legal professionals, our evidence is that they are often offered no choice.

There are continuing pressures on public funding and a need for innovative solutions to meet consumer demand.

- 5.16 The impact of reductions in public funding continues to be felt, with a consequent impact on the ability of large numbers of clients to afford legal advice. Increasingly, people are forced to represent themselves or are unable to seek a legal remedy at all.

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- 5.17 Technology and innovation have an important role in helping to deliver for consumers, especially around improving access to justice, and in helping to deliver transparency for consumers to navigate legal services. But the take up of new technology depends on individual barristers, chambers and employers, and cannot improve access to justice for the digitally excluded.
- 5.18 We also know that there is unequal access to justice across the country – not only do some people live in ‘advice deserts’ or otherwise struggle to access legal services, but we know that clients from minority ethnic backgrounds are likely to be less satisfied with the quality of any legal services that they purchase. This could be exacerbated in the aftermath of the pandemic, with backlogs in court cases, scheduling and listing issues likely to lead to inefficiencies, clashing cases and delays.
- 5.19 In addition, the legal profession faces political challenges. Lawyers have an important role to play in protecting citizens’ rights and the rule of law and must continue to do so fearlessly despite the risk of criticism from government or other sources.

There is a need to ensure the sustainability and resilience of the Bar to meet consumer demand.

- 5.20 Research shows that the Bar is ageing, which could create real challenges in terms of future barrister provision and an exacerbation of access to justice concerns for consumers. The problems are likely to be most acute within the publicly funded Bar where the number of pupillages available may also come under pressure. They could also unevenly affect women and those from minority ethnic backgrounds, which could in turn affect our aim of achieving a more diverse Bar. We also know that there are concerns about wellbeing in certain parts of the Bar, which could have consequences for (for example) the future supply, and diversity, of criminal barristers in particular. The challenge is not simply to train more barristers, but to understand what will be needed by consumers in future years and how that maps to the pipeline of new practitioners. The BSB needs to be agile in responding to changes in consumer expectations and facilitating innovations that are in the public interest.
- 5.21 We must also work with the employed Bar and others to explore how we can remove barriers to establishing more innovative forms of pupillage and ensuring equal access to professional development opportunities.

There is an ongoing impact of the pandemic, including its accelerating effect on court reform and the increase in remote hearings and remote working.

- 5.22 Evidence from the Regulatory Return shows that chambers have set themselves up to deal with remote working, while some chambers have responded well to clients' concerns and have supported hybrid hearings by bringing clients without digital access into chambers. However, concerns remain that some clients find the online experience leaves them feeling removed or isolated from the process.

Independence

There is a risk that the BSB's own capacity and culture does not support its effectiveness as an independent regulator.

- 5.23 We must undertake a full review of the current governance arrangements, under which we share certain services with the Bar Council, after two years of operation. Incorporating the BSB as a separate legal entity might bring benefits in terms of transparency, accountability and operational freedom that should be explored.

6. Our Strategic Priorities 2022-2025

- 6.1 A number of activities from our previous strategic plan will continue into the next period. These include, for example, our work on assuring competence, equality, diversity and inclusion, greater transparency for consumers and updating the Handbook. These continue to be compatible with the priorities that are identified in this paper.
- 6.2 For the next three years, our strategic aims are:

Efficiency

delivering our core regulatory operations quickly, economically and to a high standard.

Key areas of activity include:

- Increasing capacity to support our people in developing the skills and capabilities they need both to deliver current and future organisational goals as well as develop their own careers
- Reviewing our operations to ensure we are efficiently and effectively meeting service levels
- Reviewing the effectiveness of our enforcement regime
- Reviewing the regulatory status of unregistered barristers.

Standards

ensuring that barristers provide a high quality and responsive service throughout their careers.

Key areas of activity include:

- Regulating the training of barristers and ensuring continuing high standards
- Completing our programme of assuring competence, to satisfy ourselves and others that we have appropriate systems in place to ensure that standards are maintained throughout a barrister's career
- Taking supervision or enforcement action where necessary to promote standards
- Continuing the review of the BSB Code of Conduct, to ensure it remains fit for purpose
- Strengthening our ability to reach out and to engage with chambers, employers, the profession and the public so that we can identify and promote good practice in the way the profession operates to provide effective services, to sustain high professional standards, to develop barristers and to ensure diversity
- Improving and deepening the intelligence we have and our research evidence bearing on professional competence, standards of service and the operation of the market for barristers' services.

Equality

promoting diversity and inclusion at the Bar and at the BSB and the profession's ability to serve diverse consumers.

Key areas of activity include:

- Setting out clearly our expectations of the profession and holding it to account
- Continuing to promote equality, diversity and inclusion at the Bar with the support of our Race Equality, Disability, and Religion & Belief Taskforces
- Working with chambers and employers to promote good practice, including by completing the review of our Equality Rules, reporting on the Regulatory Return and implementing changes and undertaking research into pupillage recruitment, to understand how better to promote diversity and inclusion
- Monitoring differential attainment in Bar training and progression at the Bar, and whether certain groups are over-represented in our disciplinary processes: developing action plans to eliminate any disparities
- Leading by example, demonstrating that the Bar Standards Board is itself diverse and inclusive and committed to understanding the equality impacts of its policies, services and interventions.

Access

promoting consumer understanding of legal services and choice and good value in using those services (covering both the supply of, and demand for, barristers' services).

Key areas of activity include:

- Providing information to the public about barristers in partnership with consumer organisations, the profession and other legal regulators
- Continuing to develop and implement our strategy for public legal education in partnership with other regulators and organisations working directly with those in legal need, in order to improve our understanding of how best to identify those in legal need, the nature of that need and how best to help them
- Ensuring compliance with, and evaluating, our transparency rules: considering what additional regulatory action will be needed on transparency in the light of that evaluation
- Enhancing our understanding of consumers' needs and experiences in using barristers' services
- Undertaking research better to understand how solicitors choose clients on behalf of their clients and reviewing whether regulation is needed to ensure greater transparency or choice
- Examining the role of new technology in promoting access to justice.

Independence

strengthening the BSB's independence, capability self-confidence and credibility.

Key areas of activity include:

- Keeping our independence under regular review and considering whether our independence would be further enhanced by legal separation from the Bar Council by incorporating a separate corporate entity (albeit wholly owned by the Bar Council)
- Regularly reviewing our governance and completing our 'Well led action plan', ensuring we comply with the performance standards set by the Legal Services Board
- Improving our engagement with stakeholders
- Reviewing the reward and recognition framework, and our learning and development strategy for our people: promoting our values of fairness and respect, independence and integrity, excellence and efficiency
- Promoting equality, diversity and inclusion.

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.

Contact us:

Bar Standards Board
289-293 High Holborn
London
WC1V 7HZ

Tel: 020 7611 1444

Email: ContactUs@BarStandardsBoard.org.uk

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

Youtube: [/barstandardsboard](https://www.youtube.com/barstandardsboard)

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