

BAR
STANDARDS
BOARD

REGULATING BARRISTERS

Regulatory Risk Index 2019

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

About this document

We publish this catalogue of regulatory risks so that those we regulate, and everyone else with an interest in our approach, can better understand the rationale behind our activities.

The Index sets out the things that we have identified in the market that could result in poor outcomes for the public and consumers. Where these problems arise in the market, they get in the way of us delivering our regulatory objectives and are therefore known as regulatory risks.

Our Index helps us to structure our regulatory priorities. These priorities inform our strategy and our corporate objectives.

Regulatory Risk Index – individual risks by category

The risks in the Index are split evenly between two categories:

Risks which arise from the action or inaction of a member of the regulated community

1. Failure to provide a proper standard of service
2. Unethical conduct
3. Lack of professional competence
4. Failure in the management of an individual practice or chambers

Risks which are markers of the health of the market for the regulated community

5. Failure in training provision
6. Profession fails to reflect the diversity of society
7. Access to justice failures
8. Commercial and other external pressures are detrimental to the consumer and / or the public interest

Beneath these risks, there could be many indicators which we will want to consider or monitor, in order to help inform our assessment of that risk. Some examples have been included in the table on the next page.

Risk No.	General Risk	Risk Description	Examples of indicators
1	Failure to provide a proper standard of service	The risk that a member of the regulated community fails to provide a proper standard of client care or quality of work to clients	<ul style="list-style-type: none"> Failure to provide a proper standard of client care Failure to give clear information about fees Failure to handle complaints appropriately Failure to maintain client confidentiality Failure to close a practice in a proper and orderly manner
2	Unethical conduct	The risk that the conduct of a member of the regulated community falls below the ethical standards expected of them	<ul style="list-style-type: none"> Acts in a dishonest way Acts in a way that demonstrates a lack of integrity Fails to act independently in the interests of justice Acts in a deliberate or reckless way which is misleading to a court, client, or third party Acts regardless of a conflict of interests Discriminates, harasses, bullies or victimises consumers, employees, members of chambers, pupils and others Fails to co-operate or comply with relevant regulators or ombudsmen Is unlawfully involved in financial crime or impropriety, such as money laundering, terrorist funding, or unlawful activities in relation to fees
3	Lack of professional competence	The risk that a member of the regulated community lacks the levels of competence expected of them or is otherwise unfit to provide a proper standard of client care or quality of work	<ul style="list-style-type: none"> Lacks legal knowledge, skills or attributes Lacks practical knowledge, skills or attributes Lacks the necessary competence to manage financial or administrative matters appropriately Unfit to deliver legal services as a result of physical, mental or other condition Fails to act in accordance with the authorisation requirements in the Handbook or the Legal Services Act 2007
4	Failure in the management of an individual practice or Chambers	The risk that ineffective or inadequate practice management gives rise to regulatory concerns	<ul style="list-style-type: none"> A practice is de-stabilised by organisational, financial or governance events Operational systems and controls are ineffective or do not meet relevant legal requirements Unauthorised use, loss, damage, disclosure or modification of information Recruitment and promotion practices are unlawful or are contrary to regulatory requirements Inadequate supervision of workforce, resulting in a lack of quality assurance, limited feedback or unfair allocation of work Supply chain problems impact client services An unhealthy workplace culture encourages or enables poor behaviours impacting upon dignity, respect or well-being

Risk No.	General Risk	Risk Description	Examples of indicators
5	Failure in training provision	Training is not available or is not of sufficiently high standard to prepare barristers for practice	<p>Insufficient places available for training</p> <p>Training is not of sufficiently high standard to prepare barristers for practice, this could include vocational training and pupillage</p> <p>Cost or other obstacles prevent good quality barristers and entities from entering or remaining in the market</p>
6	Profession fails to reflect the diversity of society	Low levels of public confidence due to a profession that is not representative of wider society	<p>An underrepresentation of protected characteristic groups.</p> <p>Discriminatory practices harm diversity in the profession.</p> <p>Clients lack confidence in a profession that is not seen to represent them</p>
7	Access to justice failures	Consumers do not have access to, or do not have confidence in, the profession	<p>Failure to meet consumer need</p> <p>Lack of public awareness of legal rights and duties</p> <p>Poor public perception of the regulated profession</p> <p>Lack of access to affordable legal advice and services</p> <p>Lack of accessible, quality market information to inform consumer choice</p>
8	Commercial and other external pressures are detrimental to the consumer and / or the public interest	Technological innovation, reform of Court Services or changes in the wider provision of legal services, have a detrimental effect on consumers and / or the public	<p>Digital Inclusion Challenges; Consumer exclusion arising from the regulated communities' uptake of digital solutions</p> <p>Poor client service arising from inappropriate or ineffective use of technology</p> <p>Lack of flexibility in profession to respond to innovation</p>