**Regulatory Return 2020 – Sole Practitioners**

**About this Regulatory Return**

We are issuing a Regulatory Return to a selection of around 350 chambers, BSB entities and sole practitioners. This is the second time that we have conducted this exercise – the last time being in 2015-16, which you may have been involved in (we called it a “Supervision Return” then).

In the Return, we have asked a range of questions including your views on the risks that your practice faces, information about the processes and controls you have in your practice, and some questions on specific topics that are currently a priority in our strategic plan.

We are mindful that the current health crisis will have impacted barristers in different ways. We are interested in understanding more about that. For example, whether new risks or opportunities have arisen from COVID-19, what modifications you’ve made to your working practices or whether it has led to changes in how you have utilised technology in your work.

We have explained below why you have been selected and how we will use the information that you provide. We know it takes valuable time to respond to these Returns, but a number of participants last time told us that they found it useful in prompting them to review their policies and processes and think about where they could be improved, so we hope that you will find it a useful exercise too.

**Why you have been selected**

Our selection is based on an “impact assessment” of all chambers, BSB entities and sole practitioners. This assessment gives us an indication of where the most serious consequences would arise in the event that things go wrong. It shows us the extent of the impact that a risk would have, were it to materialise. For example, inadequate complaints handling processes would have more significant consequences at a practice with a large number of vulnerable lay clients.

Our impact assessment is drawn from information declared by barristers at Authorisation to Practise, and is based on the following criteria:

* Size of chambers. Larger practices will have inherently higher impact.
* Proportion of public access work and the number of barristers registered for public access work. Lay clients do not have the additional protection of another legal professional involved in their case and there are additional rules in the BSB Handbook for this area of practice.
* Chambers that have a larger practice in crime, immigration or family law. These areas of practice involve the most vulnerable consumers. Crime and family work generate the highest proportion of complaints to the Legal Ombudsman. Our work in immigration services, on the other hand, indicates that consumers are reluctant to complain.
* Number of barristers declaring that they do work in the Youth Courts. We consider this to be a high-risk area of work. Some of the most vulnerable people within the criminal justice system can be affected if they are not adequately represented. You can read more about this on our [website](https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/what-do-i-have-to-report-or-tell-to-the-bsb/registration-of-youth-courts-work.html).
* Number of barristers declaring that they do work under the Money Laundering Regulations. This is an area of focus by the Government and so the impact of non-compliance is high. Again, you can read more about this on our [website](https://www.barstandardsboard.org.uk/for-barristers/compliance-with-your-obligations/anti-money-laundering-counter-terrorist-financing.html).

In some cases, our selection is also based on our current assessment of risk, taking into consideration our recent regulatory engagement by the Supervision and Enforcement teams.

**How we will use the information that you provide**

This is an opportunity for you to explain how effectively potential risks are being managed in your practice, how you ensure compliance with the BSB Handbook and how you ensure high standards in the services that you deliver.

We will use the information that you provide as follows:

1. We will carry out a risk assessment of your practice based on your responses. This will reflect whether you have been able to demonstrate effective management of risk and compliance with the BSB Handbook. Our Supervision assessment categories are as follows:

High Risk

There is a significant probability that issues identified may have a fundamental impact on your ability to meet the Core Duties and Outcomes set out in the Handbook. We are not satisfied that the practice is managed competently and in such a way as to achieve compliance with legal and regulatory obligations. Immediate action should be taken by you to mitigate the risks identified. You will be subject to further monitoring by the Supervision Team as specified.

Medium Risk

A number of important issues were identified and you should address these promptly in order to meet the Core Duties and Outcomes set out in the Handbook. You should report progress to the Supervision Team as specified. In other areas, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Low risk

In the areas covered in the Return, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations. Some issues where controls could be strengthened may have been identified and you should follow these up. No further monitoring by Supervision is planned based on the outcome of this review unless other information comes to our attention.

If we do identify anything specific within a practice which gives us cause for concern, then we will always seek to work collaboratively to make sure that controls are strengthened. Usually, this means that we will agree specific actions and a timeframe for implementation.

1. Some of the questions are on specific topics that are currently a priority in our strategic plan. Your responses will help us gather information that will contribute to our evaluation of recent policy changes or to development of our regulatory policy.
2. Other questions will help us to stay up to date on changes in the profession, which will influence our assessment of risk in the market. You can read more about our approach to risk-based regulation on our [website](https://www.barstandardsboard.org.uk/about-us/how-we-regulate/our-risk-based-approach.html).

Last time we conducted this exercise, we found that it provided a very rich source of information that enabled us to direct our regulatory attention to where it was most needed and to shape our regulatory policies.

**How to answer the questions**

We have provided some guidance for each question, explaining why we are asking the question and explaining the type of information that we want you to include in your response.

There is a limit of 15,000 characters to the length of your response. This roughly equates to 2-3,000 words, which is more than enough for you to provide a full response and we do not expect you to use the full amount available. However, very brief answers will not provide us with enough information to carry out an assessment of your practice. When we reviewed the Supervision Returns in 2015-16, we found that the practices most likely to be assessed as high risk were those who provided the most limited answers. Follow-up Supervision visits were required to gather more information. We appreciate the time that it takes to provide comprehensive responses, but if you are able to do so, illustrating it with examples, we are less likely to need to conduct a follow-up visit.

You do not need to provide any other documents, but we may ask you for further information when we review your Return.

If you need clarification or help with any of the questions or submitting your completed Return, please email supervision@barstandardsboard.org.uk and a member of the Supervision team will be pleased to help you.

**How to submit your completed Return**

You must complete the Return using the form on MyBar. This enables us to assess and collate the responses efficiently. The Word version that follows has been provided solely for your own use, in case you want to use it to assist you when preparing your responses.

**Deadline for submitting your Return**

The deadline for submitting your completed Return to us is **4 January 2021**. We appreciate that the health emergency (COVID-19) has affected the Bar in a range of ways and for many this has been a very difficult time. Indeed, your responses to some of the questions will help us to understand this better. If this deadline is going to be difficult for you to meet because of the impact of COVID-19 (or indeed for any other reason), please contact us by emailing supervision@barstandardsboard.org.uk so that we can discuss it with you.

**Confidentiality of information that you provide to us**

When exercising our regulatory functions, we may be in control of various types of private or sensitive information, including commercially sensitive information about chambers, entities and their bank accounts; personal or sensitive information about individual barristers or their clients; and documents which would be covered by legal professional privilege. The BSB is under a range of legal duties to keep confidential the information in its control or possession that is of a private nature. These duties restrict our powers to share data with third parties. However, in exceptional circumstances where it is in the public interest, information may be shared with other regulators or agencies.To find out more about how we handle personal data, please see our [privacy statement](https://www.barstandardsboard.org.uk/footer-items/privacy-statement/).

**When you can expect to hear from us and what happens next**

We will be reviewing the Returns as they are submitted and you can expect to hear from us by the second quarter of 2021, depending on when you submit your response. We will contact you to tell you whether your practice has been assessed as high, medium or low risk, and agree with you any follow up actions that may be required. We will call the contact you have given us and follow up in writing.

**Contact details**

If someone that you employ has completed the Return on your behalf and you would like us to liaise with them, please provide the name of the person we can contact about the Return.

**Name:**

**Job title or role:**

**Email address:**

**Telephone number:**

**Is the above contact the person that has been appointed to liaise with the BSB under** [**rule C89.2**](https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=&audience=&q=rC89) **of the BSB Handbook?**

**If you have not completed the Return yourself, have you reviewed it?** Yes/No

**Governance arrangements**

1. **Please tell us how your practice is organised.**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response will help us to understand how your practice is organised so that we can assess how well you meet rC87.1.

*Guidance to assist with your response*

This question is about how your practice has been set up and how it is run. In your response, you should tell us about the following:

* where relevant, what staff you employ and what their roles are; and
* whether you work from home, from a serviced office or from dedicated premises.

**Risk management**

1. **Please summarise the key information security risks that you have identified and describe how these risks are managed/ controlled.**

*Relevant rules and guidance*

Core Duty 6 says that you must keep the affairs of each client confidential.

Rule C89.5 says that proper arrangements must be made for ensuring the confidentiality of clients’ affairs.

Core Duty 10 says that you must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

Barristers must comply with the [Data Protection Act](http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted).

The Bar Council has produced a range of guidance in this area on its [Ethics and Practice hub](https://www.barcouncilethics.co.uk/subject/it/).

*Why are we asking this question?*

Risks range from the rising number of cyber-attacks to the more traditional risks, such as leaving papers on a train. Barristers and their staff handle highly sensitive personal data daily so the potential consequences for barristers and the profession of failing at data protection compliance are significant. The damage that can be done to the reputation of a practice can be significant.

Your response will also help us to assess how well you meet your obligations under the BSB Handbook and in legislation, as set out above.

*Guidance to assist with your response*

We want you to tell us how you ensure that you meet these Core Duties and obligations.

You should describe the key controls that you have in place:

* as part of case management processes; and
* in managing data security inside and outside of the premises that you practise from.

In responding, you should describe the following:

* Your approach to identifying the risks which you are subject to.
* Whether you have identified any new risks arising from the impact of the COVID-19 pandemic.
* How you ensure that you and your staff understand what their obligations are and what they need to do to comply with the Data Protection legislation, including your approach to training.
* What agreements and protocols you have in place with third parties. For example, how do you ensure secure transfer of data and physical files between locations and organisations?
* Your approach to managing data breaches.
* Your approach to implementing appropriate technical and practice security measures.
* Details of any relevant accreditations you or your staff have achieved. Examples might include:
* ISO 27001
* ISO 9001
* [Cyber Essentials](https://www.cyberessentials.ncsc.gov.uk/) or Cyber Essentials Plus
* [GDPR Certification for Barristers](https://www.briefed.pro/gdpr-certification-for-barristers)
1. **Please tell us about any data breaches you reported to the Information Commissioner’s Office (ICO)?**

*Relevant rules and guidance*

Rule C65 of the BSB Handbook requires you to report to the BSB if you are the subject of any disciplinary or other regulatory or enforcement action by another regulator, which would include the ICO, and to report serious misconduct to the BSB.

The obligation to report a personal data breach to the ICO is set out in [section 67](http://www.legislation.gov.uk/ukpga/2018/12/section/67/enacted) of the Data Protection Act.

*Why are we asking this question?*

The legal sector typically makes over 200 [reports to the ICO](https://ico.org.uk/action-weve-taken/data-security-incident-trends/previous-reports/) each quarter. Very few breaches are reported to the BSB under rC65. Your answer to this question, when combined with the responses of others, will help us to understand the extent of data breaches in the Bar and why they are not reported to the BSB.

Information security incidents and data breaches have the potential to destabilise your practice. Your answer to this question, when combined with the responses of others, will help us to understand the extent to which this risk affects the Bar.

*Guidance to assist with your response*

Your response should address the following for the period since 25 May 2018 (which is when the Data Protection Act came into effect):

* Details of any data breaches reported by you to the ICO, regardless of the ultimate ICO decision, including any assessment of lessons learned.
* Details of any “near misses” i.e. a data breach that you decided not to report to the ICO, including any assessment of lessons learned. Please tell us the reasons why you decided not to report the matter to the ICO.
* Please tell us if these incidents were reported to the Bar Standards Board. If not, please tell us whether you considered doing so and why you decided not to.
1. **Please tell us about any instances of fraud, irregularity or “near misses”.**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Fraud is the most commonly experienced crime in the UK, with an estimated overall cost of £190 billion according to the National Crime Agency. Reported fraud continues to increase in volume. According to the Office for National Statistics, reports of fraud rose by 12% in 2018 but is significantly underreported. In 2017/18, only 3% of reported fraud led to criminal charges or actions such as cautions.

Your answer, when combined with the responses from others, will help us to assess the extent to which the Bar is affected by fraud and irregularity.

*Guidance to assist with your response*

In your response please tell us the following:

* The details of any fraud, suspected fraud, cyber-attacks, scams or other irregularity that have resulted in a loss (financial or reputational) including any assessment of lessons learned.
* If these incidents were reported to the Bar Standards Board. If not, please tell us whether you considered doing so and why you decided not to.
1. **Are you currently using, or are you planning to introduce, new and innovative technology? If yes, please provide details of the technology. If no, why is this?**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

One of the three themes in the [BSB’s Risk Outlook](https://www.barstandardsboard.org.uk/uploads/assets/6bb68426-03bf-4e97-86c6cb4780c76743/bsbriskoutlook2019.pdf) is that “innovation and disruption in the legal services market offer threats and opportunities for the profession and for the public.” Available evidence, although relatively limited, suggests that technologically driven changes have already started to affect the profession. Further technological developments could bring the potential for significant changes in the way barristers’ services are delivered. The legal services market is likely to be facing a period of considerable change and adjustment. However, research also suggests that a lack of

flexibility in how barristers’ services are delivered may make it more difficult for the Bar

to adapt to a changing market and respond to changing consumer needs.

This is reflected in the [BSB’s 2019-2022 strategic plan](https://www.barstandardsboard.org.uk/uploads/assets/4b599307-da48-4e4e-a8e2ff3bf83934bd/bsbstrategicplan2019-22.pdf). Our third strategic aim is “advancing justice in a changing market”. Through this strategic aim we will develop our understanding of the way in which technology and other innovations are changing the way in which legal services are provided and the administration of justice is delivered, and how that affects the public and barristers.

Your response to this question, when combined with responses from others, will help us to understand the extent, and impact of technological change, and will inform our view of risk in this area.

*Guidance to assist with your response*

Your response should address the following:

* Whether any innovative technology has been introduced or is planned for introduction (an example might be the use of artificial intelligence).
* If your answer is yes, please provide details of the technology.
* Has the COVID-19 health emergency led to any changes in the use of technology?
* What risks, if any, have you have recognised around the use of technology, either for yourself or for clients, and how you are seeking to manage them?
* If you considered introducing technology but decided not to, why is this? For example, is there any aspect of regulation that currently hinders your use of technology?
* Do you have any suggestions as to how the BSB could enable you to make greater use of technology or innovation?
1. **Please summarise other key risks that you have identified and describe how you manage/ control these risks.**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response will help us to assess how well you meet rC89.8. It will also help to inform our understanding of risks that are facing the profession and our [approach to risk-based regulation](https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-risk-based-approach/).

*Guidance to assist with your response*

We want you to tell us what the most important risks are that you have identified and the action you are taking to manage them. Some examples might include:

* Financial: the ability to win enough good quality work to make your practice financially viable.
* Market risks: the ability to adapt to a changing market.
* Reputational: the risk that your reputation is damaged by your actions or those of your staff, for example due to lack of competence.
* Health and well-being: the impact this might have on your practice.

Please specifically include the following information:

* What are your key financial risks?
* Have any new risks arisen as a result of the COVID-19 pandemic, that are not covered elsewhere in this Return?
1. **Do you foresee any other changes in external factors over the next 12 months in the environment in which your practice operates?**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response will help us to assess how well you meet rC87.1. It will also help to inform our understanding of risks that are facing the profession and our [approach to risk-based regulation](https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-risk-based-approach/).

*Guidance to assist with your response*

If your answer is yes, please tell us what changes you anticipate, how you think they will impact your practice or the wider profession, and what plans you are making to deal with the changes.

We are particularly interested in the ongoing and longer-term impact of the COVID-19 health emergency for your practice and the profession as a whole, e.g.:

* impact of remote working
* the impact on pupillages
* whether barristers will leave the profession or certain practice areas
* the pressures of the crisis for the well-being of barristers and the risks that gives rise to.
1. **Are you planning any other significant changes to your practice in the next 12 months?**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response, when combined with responses from others, will help us to understand how the profession may be changing and will help us to plan our approach to risk-based regulation. In particular, it will support our evidence for delivering [our third strategic aim](https://www.barstandardsboard.org.uk/uploads/assets/4b599307-da48-4e4e-a8e2ff3bf83934bd/bsbstrategicplan2019-22.pdf), advancing access to justice in a changing market.

*Guidance to assist with your response*

This could include expansion, collaboration, merger, closure, setting up an entity, becoming authorised to take pupils, changes to practice areas or administration. You should outline what changes are planned and how you are preparing for them.

1. **What are your financial projections for the year ending 31 March 2021?**
2. **What is** **your projected percentage change in fee income?**
3. **What is your projected percentage change in working hours?**
4. **Do you expect to renew your practising certificate in 2021/22?**

*Relevant rules and guidance*

Every practising barrister has to renew their practising certificate annually and is required to pay a Practising Certificate Fee (PCF), which is based on their declared income.

*Why are we asking this question?*

A proportion of the PCF is spent by the BSB on regulation and a proportion is spent by the Bar Council on some of its functions (as permitted under s51 of The Legal Services Act). The PCF also pays for the Bar’s share of the costs to run the Legal Services Board and The Legal Ombudsman. Further details are provided in our [Annual Report](https://www.barstandardsboard.org.uk/news-publications/publications/annual-reports-and-enforcement-reports.html).

Given the extraordinary conditions this year, as a result of Covid-19, we need to gather information that will help us to prepare our financial projections for 2021/22. Your answers, when combined with responses from others, will help us to do this.

When combined with the information we hold about your areas of practice, your response will also help us to understand how the profession may be changing and will help us to plan our approach to risk-based regulation. In particular, it will support our evidence for delivering our [third strategic aim](https://www.barstandardsboard.org.uk/uploads/assets/4b599307-da48-4e4e-a8e2ff3bf83934bd/bsbstrategicplan2019-22.pdf), advancing access to justice in a changing market.

*Guidance to assist with your response*

The information that you provide will be used by our Finance function to model the impact of Covid-19. We may share this data in an anonymised state with the Bar Council, however it will not be shared with any other third parties. If you have any concerns about this information being provided to the Finance function, please do contact us.

1. **Is there any other information that you would like the BSB to be aware of in considering risks associated with your practice?**

*Relevant rules and guidance*

In the BSB Handbook, rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response, when combined with responses from others, will help us to understand how the profession may be changing and will help us to plan our approach to risk-based regulation.

*Guidance to assist with your response*

You can use this question to give us any other information that you think is relevant to our assessment of your chambers or our approach to risk-based regulation.

**Client Service and Delivery**

1. **Are you compliant with the price, service and redress transparency rules?**

*Relevant rules and guidance*

Rules C103 and C159-169 of the BSB Handbook set out the information that you must provide to clients directly or via your website in order to meet the price, service and redress transparency rules, which came into force on 1 July 2019.

Guidance on the rules is available on our [website](https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html).

*Why are we asking this question?*

It is just over a year since the Bar transparency rules came into force. The rules were introduced to improve the information available to the public before they engage the services of a barrister by helping consumers understand the price and service they will receive, what redress is available, and the regulatory status of their provider.

Earlier this year, we carried out a review to assess the progress made so far by the profession in implementing the rules. 75% of those assessed during our review were found to be either compliant or partially compliant, which represents good progress but there is more work to be done to ensure that everyone is compliant.

Your response will help us to assess the extent to which the Bar is now fully compliant with the rules.

*Guidance to assist with your response*

If we were in contact with you as part of the review earlier this year and you were assessed as compliant, you simply need to say that in your response.

If were in contact with you as part of the review earlier this year and you were assessed as partially compliant or non-compliant, please tell us if you have addressed the areas if non-compliance in the feedback that we gave you and are now compliant.

If we have been not in contact with you on this subject, it means that you were not part of the sample that we reviewed. Before you respond to this question, please look at our [report](https://www.barstandardsboard.org.uk/uploads/assets/3359c36e-ef3e-449d-883e18c5ebeabad6/202006-External-Transparency-spot-check-report.pdf) on the common themes that emerged from the review, in conjunction with our guidance, and take another look at the information you are providing to check whether it is compliant with the rules.

1. **What changes have you made in response to the new transparency rules, and what (if any) impact have you observed since these changes have been introduced?**

*Relevant rules and guidance*

Rules C103 and C159-169 of the BSB Handbook set out the information that you must provide to clients directly or via your website in order to meet the price, service and redress transparency rules, which came into force on 1 July 2019.

Guidance on the rules is available on our [website](https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html).

*Why are we asking this question?*

Your response, when combined with responses from others, will help us to evaluate the impact that the new rules have had both in your practice and on consumer understanding. It will also help us to evaluate how easy or difficult it has been for the Bar to comply with the rules.

*Guidance to assist with your response*

Your response should address the following:

* Any challenges or barriers that you faced implementing or complying with the rules.
* How useful you found the BSB information and [guidance](https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html) about the new rules.
* Any positive or negative impacts on your practice that you have noted.
* Any positive or negative impacts on clients or prospective clients that you have noted.
1. **Do you have any clients that you engage with in a retainer arrangement? If so, please provide details.**

*Relevant rules and guidance*

The following rules in the BSB Handbook may be relevant. When answering, you should have regard to compliance with the following:

* Rules C29-30, the “cab rank” rule.
* Rule C73, which states that “except where you are acting in your capacity as a manager or employee of an authorised (non-BSB) body, you must not receive, control or handle client money apart from what the client pays you for your services.”
* Rule C87.1, which says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response, when combined with responses from others, will help us to understand any trends in the way that barristers engage with clients.

*Guidance to assist with your response*

By “retainer arrangement”, we mean any arrangement whereby you have an agreement with a professional or lay client to provide agreed services or time for a fixed or ongoing period. If there are any retainer arrangements in place, please tell us the following:

* how many such arrangements you have in place;
* how many clients you have such agreements with;
* the type of clients that are party to such agreements and whether they are engaged on a public access basis;
* the areas of practice;
* the typical duration of such retainers;
* the financial arrangement;
* the typical retainer fee;
* contingency arrangements in the event that the retainer cannot be serviced (eg. if you were not available, for any reason).
1. **How do you ensure that lay clients who want to complain feel able to complain, know how to complain and feel confident that their complaints will be taken seriously?**

*Relevant rules and guidance*

The BSB has a number of outcomes in relation to client complaints:

* Outcome C19 of the BSB Handbook requires that clients understand how to bring a complaint and complaints are dealt with promptly, fairly, openly and effectively;
* Outcome C26 requires that clients are provided with appropriate information about redress, know that they can make a complaint if dissatisfied, and know how to do so; and
* Outcome C27 requires that complaints are dealt with promptly and the client is kept informed about the process.

The complaints rules in the BSB Handbook are rules C99-109.

The following guidance is available:

[BSB guidance on first tier complaints handling](https://www.barstandardsboard.org.uk/media/1666549/first_tier_complaints_handling_-_may_2018_final.pdf)

[BSB guidance on consumer feedback](https://www.barstandardsboard.org.uk/about-bar-standards-board/resources/june-2018-engaging-with-feedback-from-consumers-of-legal-services/)

*Why are we asking this question?*

Your response to this question will help us to assess how well you meet the complaints rules and outcomes in the BSB Handbook.

Your response, when combined with responses from others, will also help us to understand how well the profession takes action to prevent there being “silent sufferers” (see the guidance to this question).

*Guidance to assist with your response*

As part of your response, please include the following information:

* How you ensure that lay clients know how to complain if they need to.
* How you ensure that lay clients who want to complain feel able to complain and feel confident that their complaints will be taken seriously. In your response, please consider the following statement by the Legal Services Board to the regulators: “the number of consumers who could be termed “silent sufferers” appears to remain relatively high. These are people who understand how to complain but are unwilling to do so due to lack of confidence that their provider will resolve their complaint”.
* How many complaints you have received over the last 12 months and what percentage of cases this represents.
* Whether you provide opportunities for lay clients to provide you with feedback (including positive feedback) outside of your complaints process.
* Whether and how you monitor trends in feedback and complaints.
* Whether you have identified themes from feedback and/or complaints which have resulted in changes to the service you provide.
1. **Please tell us, where applicable, which software you use to manage cases.**

*Relevant rules and guidance*

Rule C87.1 of the BSB Handbook, which says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response to this question will help us to understand the resources that you have in chambers that support you in meeting your obligations under rule C87.

*Guidance to assist with your response*

Practices that use market-standard, off-the-shelf applications (ie. software designed for barristers’ practices, that is widely used) are likely to be best placed to ensure effective and secure management of cases and client information.

When answering this question, please tell us which application(s) you use to manage cases, what risks you have identified and how the risks are managed.

1. **Other than solicitors, licensed access instructions and public access instructions received directly from clients, do you receive instructions from other sources?**

*Relevant rules and guidance*

The rules relating to associations with others are covered by rC79-85 in the BSB Handbook. An association is where barristers or BSB entities share premises, costs and/or a vehicle for obtaining or distributing work (e.g. a virtual/online referral service) with any person or body not regulated by the BSB.

From 2020, barristers are required to declare at Authorisation to Practise if they are supervising immigration advisors. We have published [guidance for barristers that are supervising immigration advisors](https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html).

*Why are we asking this question?*

We are asking this question because there are a growing number of online referral platforms that barristers are able to sign up to, particularly in the area of public access instructions. These platforms are not registered as chambers with the BSB. Your response, when combined with responses from others, will help us to understand the extent to which traditional sources of instructions are changing and whether our approach to regulation and supervision remains fit for the future.

In addition, we are aware that some barristers supervise individuals and businesses that are not otherwise regulated, in the areas of immigration services and claims management. Such work should be engaged on a public access basis and declared as an association.

We are aware that the associations rule is not well understood and consequently not consistently adhered to.

*Guidance to assist with your response*

Please list any association arrangements that you have and describe the financial and contractual arrangements that are in place.

**Practice management**

1. **How do you ensure, where applicable, that staff working for you are competent to do so?**

*Relevant rules and guidance*

Rule C87.1 of the BSB Handbook says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

Rule C89.6 says that you must take reasonable steps to ensure that all non-authorised persons are competent to carry out their duties.

*Why are we asking this question?*

Your response will help us to assess the controls that you have in place to ensure that non-authorised persons (ie. people who are not barristers, pupils or authorised by another approved regulator) are competent.

*Guidance to assist with your response*

In answering this question, you should consider the following:

* What do you do to ensure the competence of staff?
* How do you assess the competence of staff before they join (eg. reference and vetting checks) and during their employment (eg. appraisal processes)?
* What do you do if issues relating to competence of staff are identified?
1. **Have any pupils or staff (where applicable) raised a grievance in the last 12 months?**

*Relevant rules and guidance*

Rule C87.1 of the BSB Handbook, which says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Your response will help us to assess how well you meet rule C89.1.

*Guidance to assist with your response*

If you employ staff or take pupils, please tell us if you have a grievance/internal complaints policy and process. If so, please describe it. Also, please provide a summary of any grievances raised and any changes made as a result of reviewing the outcome.

1. **Does your practice have an up to date, documented Disaster Recovery/ Business Continuity Plan?**

*Relevant rules and guidance*

Rule C87.1 says that you must take reasonable steps to ensure your practice is efficiently and properly administered.

*Why are we asking this question?*

Major incidents including natural disasters, major power failures, major cyber-attacks and terrorist attacks have the potential to disrupt a practice, which could impact access to justice. Your answer to this question will help us to understand whether your practice could continue functioning if faced by such a disaster, and to understand the overall resilience of the Bar.

As a sole practitioner, there are risks to clients in the event that a barrister suddenly becomes unable to continue to service a client, for example due to serious ill health.

The COVID-19 health crisis has been a real-life test for the effectiveness of business continuity plans. Your answer to this question, when combined with the responses of others, will help us to understand how the COVID-19 health crisis has influenced business continuity planning.

*Guidance to assist with your response*

In your response, please tell us:

* Whether you have considered what could prevent your practice from continuing to function (i.e. what the risks are) and what plans are in place to manage your response and ensure business continuity, should a disaster occur.
* If you have documented a plan.
* Whether you have tested your plan.
* What lessons you have learned from the impact of the COVID-19 pandemic and what changes you have or will be implementing as a result.
* Whether you have arrangements in place in the event that you were suddenly unable to continue practising. For example, do you have a documented plan in place that is accessible by others? Is your filing system and computer capable of being accessed and understood in the event that an intervention is required by the BSB? Do you have reciprocal arrangements with other barristers or solicitors who could continue to service clients with work in progress? Do you hold any files that should be returned to solicitors or clients?
1. **How do you monitor for changes in the BSB Handbook and make sure that you are up to date with regulatory requirements?**

*Relevant rules and guidance*

Core Duty 10 states that you must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

*Why are we asking this question?*

Your response to this question will help us to assess how well your practice meets CD10.

*Guidance to assist with your response*

In answering this question, you should consider the following:

* When did you last review the Handbook for changes?
* How do you learn about new regulatory requirements?
1. **What feedback do you have on the Code of Conduct in the BSB Handbook?**

*Relevant rules and guidance*

The Code of Conduct forms Part 2 of the BSB Handbook, which has set the standards of conduct for barristers since 2014. It serves as the key regulatory tool through which we can ensure that the effective administration of justice is served.

*Why are we asking this question?*

As part of our Strategic Plan, we are conducting a review of the Handbook. We are prioritising the review of Part 2 of the Handbook – the Code of Conduct.

We want the Code of Conduct to be accessible for barristers, users of barristers’ services, and the general public. Our aim is that the Code should allow consumers to understand what to expect from barristers as well as providing clarity about the regulatory regime with which barristers must comply. Your response to this question will help to inform our review.

*Guidance to assist with your response*

Thinking about how your practice and the environment in which you operate is changing, or will change, we want you to tell us whether there are any aspects of our regulations which are inflexible or limit your ability to adapt, or you think remain fit for purpose and why. It may be also helpful to think about which parts of the Code of Conduct you would most like to change if you could.

We are also interested to hear your feedback on:

* How the Code of Conduct is presented, including whether you think the outcomes set out are correct;
* How the Code is structured; and
* How easy you find the Code to use.

**Areas of practice**

1. **If applicable, please describe the key controls that are in place for public access instructions.**

*Relevant rules and guidance*

The following outcomes are listed in the BSB Handbook:

oC30: Barristers undertaking public access work have the necessary skills and experience required to work on that basis.

oC31: Barristers undertaking public access work maintain appropriate records of such work.

oC32: Clients only instruct via public access when it is in their interests to do so and they fully understand what is expected of them.

The public access rules are set out in rC119-131 of the BSB Handbook.

[Guidance](https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/code.html) is available on our website.

*Why are we asking this question?*

Your response will help us to assess how well you meet these rules.

*Guidance to assist with your response*

In your answer you should refer to:

* Training and experience (rules C120-121).
* The process that you have for assessing the suitability of a client for public access work (rules C122-123).
* Information provided to the lay client (rules C125-127).
* Record keeping (rules C128-129).
1. **If applicable, what systems do you have in place to enable you to conduct litigation?**

*Relevant rules and guidance*

Rule S47 requires that the relevant administrative systems and procedural knowledge must be in place to provide legal services direct to clients and to administer the conduct of litigation competently.

*Why are we asking this question?*

Your response will help us to assess how well you meet rule S47.

*Guidance to assist with your response*

In your response you should consider electronic systems you have in place and the broader administrative support and training available, where applicable, to members of staff who are involved in the conduct of litigation.

1. **Do you undertake or supervise claims management activities in relation to:**
2. **Personal injury (yes/no);**
3. **Financial products and services** **(yes/no);**
4. **Housing disrepair (yes/no);**
5. **Industrial injuries benefits (yes/no);**
6. **Criminal injury (yes/no); and**
7. **Employment (yes/no).**

*Relevant rules and guidance*

Regulated claims management activity, i.e. activity that is normally regulated by the Financial Conduct Authority (FCA), is specified in articles [89G to 89M of the Financial Services and Markets Act 2000 (Claims Management Activity) Order 2018](http://www.legislation.gov.uk/uksi/2018/1253/pdfs/uksi_20181253_en.pdf#page=9%22). This is also set out on the [FCA’s website](https://www.handbook.fca.org.uk/handbook/glossary/G3567r.html). Under [article 89N](http://www.legislation.gov.uk/uksi/2018/1253/pdfs/uksi_20181253_en.pdf#page=9" ), a legal practitioner (including a barrister or BSB entity) is exempted from the requirement to be authorised and regulated by the FCA to carry out any of the regulated claims management activity.

Section 89N(1)(c) extends the legal practitioner exclusion to individuals who are employed by the legal practitioner and are working under the direction or supervision of a legal practitioner.

*Why are we asking this question?*

The [Financial Guidance and Claims Act 2018](http://www.legislation.gov.uk/ukpga/2018/10/contents/enacted) requires the SRA and the Financial Conduct Authority (FCA) to make rules imposing a permanent fee cap which must apply to all claims management agreements and claims management activities relating to financial products or services. The SRA and the FCA also have the power to extend this fee cap to other claims management activities.

The Act also gives us the power to impose a permanent fee cap but, unlike the SRA and the FCA, we are not required to do so.

Your answer to this question will provide us with information about the extent to which barristers engage in claims management activity and therefore inform our regulatory response, if any.

*Guidance to assist with your response*

Claims management activities include:

* seeking out, referrals and identification of claims or potential claims; and
* advice, investigation or representation of claims and the investigation of claims.

We may contact those who have answered “yes”, to request more detail about what type of activity they engage in, but for the moment, a “yes” or “no” response is sufficient.

1. **If you have declared that you do work that falls within the scope of the Money Laundering Regulations, please explain the type of activity that you engage in/services you provide.**

*Relevant rules and guidance*

Rule rS59.7 in the BSB Handbook requires barristers to declare at Authorisation to Practise whether they do work within the scope of the [Money Laundering Regulations](https://www.legislation.gov.uk/uksi/2017/692/contents/made) as [amended](http://www.legislation.gov.uk/uksi/2019/1511/contents/made) (MLRs).

Regulations [11](https://www.legislation.gov.uk/uksi/2017/692/regulation/11/made) and [12](https://www.legislation.gov.uk/uksi/2017/692/regulation/12/made) as [amended](http://www.legislation.gov.uk/uksi/2019/1511/contents/made) set out the types of work that engage the MLRs:

* It does NOT include contentious litigation. Contentious litigation engaged on a public access basis is therefore out of scope of the MLRs.
* It DOES include the following:
* Tax advisers.
* Participating in financial or real property transactions by assisting in the planning or execution of the transaction or otherwise acting for or on behalf of a client in the transaction: (a) the buying and selling of real property or business entities; (b) the managing of client money, securities or other assets; (c) the opening or management of bank, savings or securities accounts; (d) the organisation of contributions necessary for the creation, operation or management of companies; or (e) the creation, operation or management of trusts, companies, foundations or similar structures.
* Acting as a Trust or Company Service Provider.

The full definitions and guidance can be found in the following documents, which are on our [website](https://www.barstandardsboard.org.uk/regulatory-requirements/anti-money-laundering-and-counter-terrorist-financing/):

* Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017 (Regulations 11 and 12).
* FAQs for declaration at Authorisation to Practise.
* Joint Legal Sector Guidance (approved by HM Treasury)
* Bar Council guidance for the Bar (this does not have any regulatory status but is provided by the Bar Council to support its members in complying with the MLRs)

*Why are we asking this question?*

Rule rS59.7 helps us to meet our obligations under the Money Laundering Regulations to carry out risk-based supervision ([Regulation 17](https://www.legislation.gov.uk/uksi/2017/692/regulation/17/made)) as it helps us to identify which barristers are carrying out relevant work.

We are aware that many barristers are not making accurate declarations, so we want to ensure that the information we hold is accurate.

[Regulation 17](http://www.legislation.gov.uk/uksi/2017/692/regulation/17/made) requires us to identify and assess the international and domestic risks of money laundering and terrorist financing to which relevant persons (barristers or BSB entities) are subject. We must develop and record in writing risk profiles for each relevant person. If relevant persons share similar characteristics and risks, we can treat them as a “cluster”. The information that you provide will be used to inform our assessment of risk in the Bar in England and Wales. This, in turn, will be used to inform the National Risk Assessment.

We are required to submit annual reports on our Anti-Money Laundering (AML) supervision activities to HM Treasury and are subject to supervision by the [Office for Professional Body AML Supervision](https://www.fca.org.uk/opbas) (OPBAS), which is the oversight regulator for Professional Body Supervisors under the MLRs.

The Government’s mission is to make the UK a hostile environment for money laundering. The [National Risk Assessment](https://www.gov.uk/government/publications/national-risk-assessment-of-money-laundering-and-terrorist-financing-2017) assesses there to be a high risk associated with abuse of legal services by money laundering.

*Guidance to assist with your response*

You do not need to answer this question if:

* You declared that you act as Trust or Company Service Provider (TCSP) and have already completed our full TCSP questionnaire.
* You declared that you don’t carry out work that engages the MLRs, unless you believe this was incorrect (in which case please tell us).
* You declared that you carry out work that engages the MLRs, but on reflection you believe this was incorrect (in which case please tell us).

In answering this question, you should consider the declaration that you made at Authorisation to Practise.

So, if you declared that you carry out work that engages the MLRs, please tell us the following:

* With reference to the above definitions, the type(s) of activity that you engage in/services that you provide.
* For each category of activity that you report, give an indication of the scale of work that you do as a whole, with reference to the number of clients, annual fee income, the number of transactions annually and/or any other measure you think is relevant, depending on the nature of the activity.
* Are any of these services offered outside England and Wales? If so, please list which jurisdictions you are active in.
* A breakdown of the type of clients that make up most of the relevant instructions.
* A breakdown of the source of the relevant instructions.

Depending on the type and volume of work that you do, we may contact you for further information

If you need help answering this question, please email aml@barstandardsboard.org.uk