**BSB Regulatory Risk Assessment Policy**

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# INTRODUCTION

# About this policy

This policy outlines the BSB’s approach to assessing risks to our regulatory objectives.

This is an overarching policy which aligns the various assessments that take place across different functions and regulatory processes to support consistent risk assessment across the organisation.

This policy has been developed by our Regulatory Risk team and approved by the Senior Management Team. It will be reviewed on a biennial basis, with updates made sooner where required.

# Assessment principles

The BSB’s approach to risk assessment is shaped by the statutory requirements set out in the Legal Services Act 2007 and Regulators Code 2014, along with what we understand to represent good practice. This approach is also consistent with our over-arching Regulatory Risk Framework.

**a. We strive for consistency across all areas of risk assessment -** Consistency is reflected in the better regulation principles and our risk-based approach is designed to help ensure consistency in decision making across different areas of the BSB, thereby helping to ensure fairness in regulatory decision making and better-informed resourcing decisions.

**b. We are committed to equality and fairness -** We are committed to equality and fairness in our work, and greater consistency around decision making helps to ensure fair outcomes for all. To better understand the impact of our risk assessment on different groups we have undertaken an equality impact assessment. In summary, this policy was found to have no adverse impacts on specific protected groups. The policy helps to reinforce the consideration of discrimination and equality impacts through our regulatory processes, complementing the Equality Impact Analysis procedures already in place.

The audit trail and reporting requirements around those risk assessments should also provide us with improved data to monitor equality and fairness issues within our regulated community.

**c. We focus on impacts in terms of regulatory objectives -** Regulatory risks are defined in terms of risks to our regulatory objectives (set out in section 1 of the Legal Services Act 2007[[1]](#footnote-1)). The way in which we describe impacts in our consideration of risks is aligned to those concepts and the groups reflected in those objectives, such as the public, consumers and legal providers.

**d. We take a proportionate approach -** Another better regulation principle - proportionality - should guide all our activities as a regulator. Whilst this may primarily relate to proportionality of regulatory outcome, we also apply this to our use of resource at earlier stages of the regulatory process. The depth of scrutiny and extent of that assessment should be proportionate, i.e. fit for purpose to inform the specific decisions required. It therefore follows that the information required to conduct an initial assessment will be to a lower threshold than that required when considering a final decision. Our approach to risk assessment supports us in ensuring the action we take as a regulator is proportionate. Through taking a consistent approach to risks across all areas of regulatory activity, we can focus a proportionate level of resource across the organisation on specific risks, rather than exhaustively considering the whole range of risks within each distinct process.

**e. Transparency -** We are committed to transparency as a regulator, so that our approach is understood by those who are impacted by it, hence we publish our approach to risk assessing information on our website.

**f. Assessments will be quality assured and auditable -** Risk assessment activity will be subject to regular quality monitoring. Staff undertaking assessments will be trained to do so on a consistent basis. Assessments will be kept as part of the record of the relevant regulatory decision and will be available for review.

# Our approach to assessment in practice

Our approach to risk management recognises both risks and issues:

* Risks are events or circumstances **which may occur in future** and could have a negative impact on our objectives
* Issues are events or circumstances **which have already arisen** and could have a negative impact on our objectives.

So, an issue is evidence of a risk having materialised. There is, therefore, a close relationship between the two and we need, therefore, to be consistent in the way we handle our assessment of both. **For ease in presenting our policies, we will use “Risk” consistently to mean both risks and issues**.

**b. Risk assessment at key regulatory decision points**

Risk assessment is not an end in itself, but a tool to inform our regulatory decision making. We undertake assessment at key points of our regulatory activity and update our view of risk as we build our understanding of a matter. We will also review the outcomes that result from any action that we take and update our view on the remaining risks.

**c. Micro and macro assessment**

The BSB needs to consider risk to our regulatory objectives on several different levels, requiring micro and macro level risk assessments:

* ***Micro*** – Is used to denote regulatory risk management that relates to specific individuals, chambers or BSB entities. We have two types of micro-level assessment as we undertake this on a case by case basis, but also when we carry out holistic risk profiling of BSB entities, such as chambers.
* ***Macro*** - refers to the larger scale or bigger picture assessment of risks. This includes assessment across the whole market, or for a segment of the market based on a given theme or topic. For example, as part of a thematic review into a market sector or client type. This also includes identification of trends across multiple individuals or organisations which may merit further attention.

# OUR ASSESSMENT APPROACH

# Micro assessment on a case by case basis

We receive a wide range of information that helps us to build a picture of regulatory risks. We might, for example receive:

* Information from a Barrister self-reporting something they have done;
* A query from a pupil who is struggling with the behaviour of their supervisor;
* Intelligence picked up by our Supervision team relating to concerns about a Chambers’ information security, or
* Information from a member of the public concerned by the behaviour of a Barrister.

How we treat new information, through allocation to any relevant departments and their handling of a given matter, is set out below:

**Allocation**

**Full assessment & Response**

**Monitoring &**

**re-assessment**

**Assessment**

Identify potential risks and assess our confidence in the information available and the harm caused

Use the risk assessment to guide allocation to the appropriate departments

Risks and issues within all available information assessed to help determine regulatory response

Review of outcomes and new risk levels following implementation

**micro:**

**case by case**

Wherever the information comes from, we need to be able to form a consistent view of where we need to act. Whether we are looking at an individual barrister, a BSB entity or the profession as a whole, we need to assess risks consistently, so that we can compare the relative importance of quite different issues.

In doing so, we need to ensure we have a balanced view to avoid being driven by extreme worst-case scenarios that are unlikely to occur, while also avoiding being distracted by minor issues that have minimal impact on our regulatory objectives.

To help us achieve this, there are two elements to our assessment of risk:

* ***Substance*** - what substance is there to the information we have been provided?
* ***Harm*** - what harm has been or could be done?

More information on this can be found at *10. Micro- Assessment scales*below.

It is important to realise that risk assessment is not necessarily a one-off exercise and will be conducted and updated as new information comes to light.

# Micro level risk profiling

We may also need to undertake the assessment of risks relating to a specific organisation: chambers, BSB entity, or training provider. We refer to this as ‘risk profiling’.

In line with the Assessment Principles[[2]](#footnote-2) stated previously, the BSB will **not** commit to risk profiling universally across our entire regulated community on a continuous basis. We will instead adopt a more flexible approach.

* ***Individuals***- We will **not** risk profile at all in relation to individuals - we will only assess risks on an individual basis in relation to a specific matter, such as an application, supervisory spot-check or conduct investigation.
* ***Organisations*** - we undertake periodic risk assessment of chambers and BSB entities. Also, for entities and Authorised Education and Training Organisations (AETO) we do it upon authorisation and then update as info is received

We do not consider that universal risk profiling of organisations on a highly frequent basis would be a proportionate or necessary use of regulatory resources, nor represent a justifiable regulatory burden in terms of the data requirements this could generate from firms and individuals. We will, instead, draw on new and relevant issues in our assessment of risks, ensuring relevant regulatory history is used to inform risk-based decision making, either in relation to an individual or an organisation as part of our case by case risk analysis.

Our approach to risk profiling organisations involves the following key stages:

**micro:**

**org. profiling**

**Profile completed**

**Follow up identified**

**Monitoring &**

**re-assessment**

**New risk indicator data**

New risk indicators come to light, e.g. through intelligence, trend analysis or BSB info requests

Risk profile populated based on regulatory history and org. data submitted

Areas requiring further attention are identified, follow up actions set and diarised for review

Review to update profile as and when relevant indicators change

# Macro assessment of themes, sectors and at market level

As with our micro approach, our view of risks across the market is similarly fuelled by information. The BSB has a risk register for the regulatory risks in the index. Any market insight and intelligence is categorised against the relevant risk, and is used to inform our overall assessment of that regulatory risk. More information on how we do this can be found at *13. Macro-Assessment Scales* below.

The identification and assessment of risks at a market level, forms part of the ‘problem definition’ stage of our policy development framework, which provides a clear process for developing policy or undertaking any thematic reviews. The analysis undertaken as part of the risk identification and assessment stage enables us better to understand the nature and extent of any problems as well as the potential drivers and consequences which sit behind those problems. Option development then builds on this to establish potential means of addressing the risks identified, aligned to our regulatory strategy and priorities.

**macro:**

**market & thematic**

**Problem definition**

**Option development**

**Monitoring &**

**re-assessment**

**Market insight & analysis**

Potential topics are identified through trend analysis, market insight, PESTLE3 analysis etc.

A full analysis of relevant issues and risks informs our problem definition stage.

Option evaluation includes view as to how well each proposal addresses root causes of risks

Review of outcomes and new risk levels following implementation of chosen options

This ensures that any policy change or market intervention is directed at areas of risks to our regulatory objectives and we can be strategic in our use of resources to best address areas of unacceptable risk. Where possible we would direct our efforts at the drivers or root causes of those risks if we have been able to determine these through our risk analysis.

# Relationship between the three elements of our assessment approach

These three elements are used to inform each other and our overall aggregate picture of risk which will be monitored by the Senior Management Team and Board. For example,

Any issues or other risk indicators identified as part of a specific matter may inform overall profile of an organisation

Case specific assessments and organisation profiles will be analysed in aggregate for trends

**macro:**

**market & thematic**

**micro:**

**org. profiling**

**micro:**

**case by case**

An organisation’s profile may inform how we handle specific cases which relate to that organisation

Developments in our understanding of risk indicators based on macro analysis can be used to adapt and improve our approach to micro level risk assessment

# OUR RISK METHODOLOGY

# Assessment scales and scoring

Having set out our approach to assessing risk information, and how we use that to help inform regulatory decision making, we need to ensure we are consistent in assessing risk. The following sections set out the BSB Risk Assessment methodology, including the scales we will use to measure risks at the Micro and Macro levels.

The basic principles behind all risk assessment are as follows:

* Consists of two elements: Substance or Likelihood and Harm or Impact
* Conducted on a five-point scale.
* Categorised into bands using a five-point RAG (Red / Amber / Yellow / Green/ Light Green) rating.

# Micro- Assessment scales

Micro-assessment of risk consists of assessing two elements: Substance and Harm, these will generate a risk score which will assist us in determining an appropriate regulatory response.

* **the person**
* **legal rights**
* **public confidence**

**HARM TO…**

**SUBSTANCE**

* **Evidence**
* **Source**

**MICRO RISK SCORE**

# Substance assessment

The substance assessment allows us to consider how confident we are that the risk we are assessing could have, or has had, an impact on our regulatory objectives.

We do this by considering the reliability of the evidence available taking into account both its nature and its source.

1. **Reliability of the evidence available**

Using the information provided, and any **further** information we can readily collect at this stage, we will assign one of the following classifications.

|  |  |
| --- | --- |
| **Reliability of Evidence** | **To be used when…** |
| **Known directly to the source and supported by appropriate evidence** | This classification will apply where the source has obtained this information first-hand, and where a degree of supporting evidence has been identified. For example: We receive information from our Records team that a barrister has been practising without a practising certificate between two dates. Records provide evidence that they have no record of any correspondence from this barrister to suggest they have attempted to apply for a practising certificate for the period in question.  |
| **Known indirectly to the source but supported by appropriate evidence**  | This classification applies where the source did not witness the events, however there is some supporting evidence identified.For example: We receive information anonymously stating that a pupil is being harassed by their pupil supervisor. The anonymous informant states that their information comes from the pupil, who does not wish to talk to the BSB directly. They provide us with copies of aggressive emails from the supervisor. |
| **Known directly or indirectly to the source, but not supported by appropriate evidence** | This classification applies where the source provider has obtained the information first-hand or from someone else, but where we have been unable to identify any supporting evidence.For example: A solicitor informs us that a barrister misled the court in a recent case. They state that whilst they do not have evidence currently, the transcript will prove that the barrister was misleading. |
| **Not known**  | This classification will apply when we have no means of assessing the reliability of the information. We expect this category to be used very rarely. In most cases we would expect some information to be available, and we will only use this category after relevant enquiries have been considered. For example: A client informs us that their opposing barrister was rude in a recent conference and does not provide any supporting information. |
| **Appears to be inaccurate**  | This classification will apply where there is reason to believe that the information provided is inaccurate or implausible. We expect it will be rare that we will select this option. However, it is likely to occur when the information is inherently contradictory or has demonstrable inaccuracies, or the concerns raised are so extreme or beyond reasonable possibility that they are unlikely to be accurate.For example: A source claiming to be a judge provides us with information that a barrister is paying referral fees. The source does not use an official email address or a judicial title. Having checked with Courts and Tribunals Judiciary, there is no person holding judicial office with the source’s name.  |

1. **The source**

This is a secondary consideration, but we also take into account the likely reliability of the information provider.

|  |  |
| --- | --- |
| **Likely to be reliable** | This will only be used when we have reason to assess the source as probably reliable. The findings of a court would be a good example.  |
| **Untested** | Most of the sources of information we assess will be untested. This does not mean that we consider them unreliable, rather that we cannot judge their reliability. Most reports from third parties will fall into this category. |
| **Unlikely to be reliable**  | This category should be used rarely. It applies when there is a sufficiently clear evidential basis to consider that we should be cautious about the reliability of the information provided. An example might be someone who has previously and repeatedly submitted unsubstantiated information about regulated persons, particularly where the information relates to the same person/people.  |

1. **Substance score**

Once the reliability of the information provider and the reliability of the available evidence have been determined, the substance assessment is complete. The two classifications are combined and assigned a score as outlined in the table below.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Reliable** | **Untested** | **Not Reliable** |
| **Known directly to source** **(Supported by appropriate evidence)** | **5** | **4** | **3** |
| **Known indirectly to source** **(Supported by appropriate evidence)** | **5** | **4** | **3** |
| **Known directly or indirectly to source but not supported by appropriate evidence** | **4** | **3** | **2** |
| **Not Known**  | **3** | **2** | **1** |
| **Appears to be inaccurate**  | **1** | **1** | **1** |

As explained, the substance assessment provides an opportunity to say how confident we are in the information, based on our view of the source and the evidence we have available, that an issue / risk could have had an impact on consumers / our regulatory objectives.

It follows that only where we are confident there is the possibility that the information supports there being or having been some degree of impact, will we undertake an assessment of harm. To this end, we will only proceed to an assessment of harm if our Substance assessment is greater than 1. There will usually be **no regulatory action for information that receives a substance score of 1.**

# Harm Assessment

The harm assessment evaluates the harm that the issue has had, or could have, on individuals or groups in three different ways:

* Harm to legal rights
* Harm to the person
* Harm to public confidence

The harm assessment will also consider factors such as how many people were affected, their vulnerability as well as the regulatory history of the barrister, entity or Chambers concerned.

Examples of when there may be increased vulnerability include:

* If the person harmed was a child.
* If there was an imbalance of power between the barrister and the person harmed, such as in a pupil/supervisor relationship.

Every risk assessment must contain an assessment of at least one area of harm. However, we will only complete an assessment for those areas of harm that apply, by evaluating the possible impact on the BSB’s ability to meet the Regulatory Objectives. This will be done on the following scale.

|  |  |
| --- | --- |
| **Very Low** | Objectives fully met |
| **Minor** | Some impact, but objectives achievable |
| **Moderate** | Starting to impact ability to achieve objectives |
| **Significant** | Objectives only partially met |
| **Very Serious**  | Unable to meet objectives |

1. **Harm to legal rights**

We will consider the potential or actual harm to legal rights that the issue has or could cause. The types of harm that we will consider might include (but are not limited to):

* Restriction of access to justice/legal representation
* Denial of immigration rights
* Denial of liberty

Harm to legal rights will be classified on the following scale:

|  |
| --- |
| **Harm to Legal Rights** |
| **Very Low** - Regulatory Objectives fully met | Very little legal harm or effect on individual(s) rights |
| **Minor** - Some impact, but Regulatory Objectives achievable | Minor effect on individual(s) legal rights |
| **Moderate** - Starting to impact ability to achieve Regulatory Objectives | It is now clear that the individual(s) legal rights are being adversely affected |
| **Significant** – Regulatory Objectives only partially met | Significant loss of rights |
| **Very Serious** - Unable to meet Regulatory objectives | Denial of rights. Causing very serious legal harm, likely to include injustice resulting in long-term loss of liberty. |
| **Don’t know** | Unable to say based on the information provided  |

For example:

We receive a report from the Legal Ombudsman arising from an allegation made by a claimant in a civil case that their barrister had failed to file their claim form on time, which resulted in their case being dismissed for being out of time, the claimant is now not able to bring their case against the defendant in the future. This is likely to result in a significant loss of legal rights to that individual.

By comparison, a barrister who has failed to file key documents on time, leading to hearings being unnecessarily delayed, might result in a minor or moderate effect on the claimant’s legal rights.

1. **Harm to the person**

We willalso consider to what degree the risk might have caused mental/physical/social/employment/financial or commercial harm to those affected (or who could be affected). The sorts of harm that might be considered include:

* Frustration
* Worry
* Distress
* Inconvenience
* Health
* Ongoing or increased threat of exploitation
* Impact on family or relationships
* Inadequate training
* Damage to career
* Actual or estimated financial cost

Harm to the person will be classified on the following scale:

|  |
| --- |
| **Harm to the Person**  |
| **Very Low** - Regulatory objectives fully met | Very little inconvenience, frustration or worry has been, or could be, caused. Very little financial impact or commercial disadvantage can be identified  |
| **Minor** - Some impact, but Regulatory objectives achievable | Some recognisable inconvenience or frustration has been, or could be, caused. Up to £100 per party or very limited commercial disadvantage  |
| **Moderate** - Starting to impact ability to achieve Regulatory objectives | Distress, impacting upon well-being / relationships / employment prospects. £100 to £5,000 per party or moderate commercial disadvantage / effect on business reputation  |
| **Significant** - Regulatory objectives only partially met | Significant impact on individual, their relationships and / or employment £5,000 to £100,000 per party or major commercial disadvantage / effect on business reputation |
| **Very Serious** - Unable to meet Regulatory objectives | Very serious effect on individual, their relationships, and / or their employment Over £100,000 per party or significant commercial disadvantage / effect on business reputation  |
| **Don’t know** | The assessor is unable to say.  |

For example: A barrister reported another barrister for serious misconduct, stating that they had been holding client money. The total amounts were unknown, but likely to be around £4,000. Upset clients had been calling Chambers, asking for their money back, but the barrister had refused to return the money. This is likely to result in a moderate impact in terms of harm to the person, but we would expect a higher assessment of harm when considering harm to public confidence (*See C. Harm to Public confidence below)*

By comparison, information from a coroner reporting that a barrister was inappropriately adversarial in a coroner’s court causing a witness to appear upset, might only be considered minor for harm to the person. However, were the coroner to say that the barrister had appeared in front of them several times, behaving in this way, then the assessment of harm to the person might increase to moderate.

1. **Harm to public confidence**

To assess the harm to public confidence, we will consider the extent to which public confidence in the barrister, the Bar or the BSB might be affected by the issue/ risk.

For example, the assessor may consider the seniority of the applicable person or whether they hold a designated role, such as those listed in the BSB Handbook: would public confidence be affected by whether the individual was a Head of chambers, Head of legal practice, or Head of finance and administration in a BSB entity or other designated role such as an Equality and Diversity Officer or a QC ? Would an individual’s experience as a practitioner play a part in affecting public confidence? An action by a Head of Chambers might have more serious impact on the public’s confidence than similar action by a newly qualified barrister.

We may also consider the length of time since the incident in question took place. Some information could give rise to significant harm to public confidence, regardless of when the incident took place, for example information relating to allegations of serious misconduct. In other cases, an incident which occurred a long time ago may be less likely to have an impact on public confidence if it has not done so already.

A range of matters can be considered in relation to harm to public confidence and these examples are not exhaustive. Some factors that may be considered are:

* + Conduct amounts to criminal behaviour
	+ Dishonesty on behalf of the barrister
	+ Discrimination or harassment by a barrister
	+ Conduct should have been self-reported by the barrister
	+ A lack of compliance with regulatory obligations
	+ Adverse (or potential adverse) impact upon legal proceedings
	+ Inappropriate behaviour in court.

It is important to note that just because something is widely reported in the press, it does not follow that this, on its own, would lead to increased harm to public confidence.

The harm to public confidence will be classified as follows:

|  |
| --- |
| **Harm to Public Confidence** |
| **Very Low** - Regulatory objectives fully met | Very little actual / potential damage to public confidence in the barrister, the profession, or the BSB |
| **Minor** - Some impact, but Regulatory objectives achievable | Minor actual / potential damage to public confidence in the barrister, the profession, or the BSB |
| **Moderate** - Starting to impact ability to achieve Regulatory objectives | It is clear that there has been some moderate actual / potential damage to public confidence in the barrister, the profession, or the BSB |
| **Significant** - Regulatory objectives only partially met | Significant, or potential for significant, damage to public confidence in the barrister, the profession, or the BSB |
| **Very Serious** - Unable to meet Regulatory objectives | Very serious actual / potential damage to public confidence in the barrister, the profession, or the BSB |
| **Don’t know** | Unable to say based on the information provided.  |

For example: Previously we suggested that a barrister being reported for holding £4,000 of client money might result in a moderate assessment of harm to the person. However, we would expect an allegation of serious misconduct such as this one to have a significant harm to public confidence

A pupil alleges that they have been subjected to racist treatment by their pupil supervisor, and that their complaints about the behaviour within Chambers had not been taken seriously. This could have a potentially significant effect on public confidence.

A member of public writes to the BSB unhappy that a barrister for one of the other parties involved in a case was rude and abrupt when they met outside of court. This is unlikely to result in more than a minor effect on public confidence.

1. **Harm score**

Each assessment of harm will be given a score from 1 to 5. Where we simply do not know if there has been any harm, or where we believe a particular assessment of harm is not applicable that harm will score 0.

These scores will be added together and divided by the number of harms which have been assessed.

So, for example:

* Harm to legal rights: Significant = 4
* Harm to the person: Minor = 2
* Harm to public confidence: Moderate = 3

 Total score for harm = (4+2+3) / 3 = 3

Alternatively,

* Legal rights: Minor = 2
* The person: Minor = 2
* Public confidence: Don’t Know = 0

Total score for harm = (2+2) / 2 = 2

**Regulatory History –** Evidence of previous regulatory history can exacerbate the impact on our regulatory objectives. Evidence of previous regulatory history which meets the occurrence criteria below will result in the overall assessment of harm being revised up (unless it is already at 5).

It is important to recognise that the assessment of regulatory history will only ever increase the impact of a risk, where there is no relevant recorded regulatory history, the harm score will not reduce.

|  |  |  |  |
| --- | --- | --- | --- |
| **Regulatory History** | **Occurrence criteria** | **Example…** | **Effect on Assessment of Harm**  |
| *Previous disciplinary history in relation to conduct which is similar or the same*  | A barrister was sanctioned for holding client money previously and we receive a report that they are holding client money again.  | +2 |
| *Previous imposition of administrative sanctions for conduct which is similar or the same assessment.*  | A barrister has been late applying for a practising certificate for several years in a row and is late this year, despite receiving an administrative sanction last year.  | +1 |
| *Supervision has previously set an action for the barrister, chambers, BSB entity or AETO in relation to this issue and the report indicates that they have not complied* | A chambers was set an action to establish processes to ensure all barristers hold practising certificates before being allocated work by the clerks. They confirmed that they had done so, but another case has been identified of a barrister practising without a practising certificate. | +2 |

# Micro Risk Score

Table 1

After the substance and harm assessments are completed, our case management system will automatically generate a risk score, either green, yellow, amber or red, using the grid at Table 1.

The assessor will review the risk score and, if they disagree with the risk score, they may revise the score based on their experience and judgment. However, the assessor should be reluctant to make a large manual increase or reduction of the risk score (e.g. red amended to green). Before doing so they should normally speak to a senior officer or a team head. Reasons for all revisions will be recorded on the system.

The BSB will undertake regular assessments of this process to ensure consistency and improve the quality of our risk assessment process.

# Macro-Assessment Scales

At *6. Macro assessment of themes, sectors and at market level* we set-out how we use information to fuel our view of risks across the market. We do this by assessing the evidence we have for the impact on our regulatory objectives and the likelihood of that impact occurring.

The *BSB Risk Index* presents the risks to our regulatory objectives, and we will assess these risks at a Macro level using a Risk Register, again see *6. Macro assessment of themes, sectors and at market level.* The Risk Register pulls together a variety of information, including details of the evidence available, the evaluation of the evidence by the research team, consideration of the controls available and work in place to manage or mitigate risks.

1. **Evidence evaluation**

The Research Team will undertake regular evaluations of the evidence being used to assess our Regulatory Risks. They will do this by evaluating:

* the evidence quality and
* the evidence findings.

Each evaluation will be given a score from a three-point scale:

|  |  |
| --- | --- |
| **Evidence Quality Score** | **Evidence Findings** |
| 1. Little to no reliable or relevant evidence  | 1. Evidence suggests risk occurs rarely  |
| 2. Some relevant or reliable evidence  | 2. Evidence suggests risk occurs occasionally  |
| 3. Substantial evidence that is relevant and reliable  | 3. Evidence suggests risk occurs often  |

1. **Impact Assessment**

To support the development of consistent risk reporting across a variety of risks, we have developed an impact table (See Annex A) which provides examples relating specifically to three of the eight regulatory objectives as a means of guiding users to consider the appropriate level of impact on our regulatory objectives.

1. **Likelihood assessment**

The way we assess likelihood will depend on the specific situation we are examining, accordingly, there are three scales we can use to help our evaluation of likelihood.

It is important to realise that these are not separate assessments of likelihood, they are different ways of making a single assessment of likelihood. In some cases, we will assess how likely it might be that a specific event occurs in future. In other cases, we might be able to consider the percentage likelihood that an issue has or will impact our regulatory objectives.

Where relevant, we can also consider the anticipated time-criticality for a given risk (or expected impact of an issue) which helps us to reflect the urgency of the situation.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **1 Remote** | **2 Unlikely** | **3 Possible** | **4 Fairly likely** | **5 Highly likely** |
| May only occur in exceptional circumstances | Expected to occur in very few circumstances | Expected to occur in some circumstances | Expected to occur in many circumstances | Expected to occur frequently and in most circumstances |
| <1% - Only in exceptional circumstances likely to result in impact to regulatory objectives. | 1% - 5% - In a few circumstances, expected to result in impact to regulatory objectives.  | 5% - 50% - In some circumstances expected to impact regulatory objectives.  | 50% - 90% - In many circumstances expected to impact the regulatory objectives.  | >90% - Expected to impact regulatory objectives in most or all circumstances.  |
| Expected more than two years from now | Expected within the next two years | Expected within the next six months or Unknown | Expected within a matter of weeks | Expected to occur within a matter of days |

So, for example, we might be struggling to decide whether a specific event is likely to occur in “very few circumstances” or in “some circumstances”, in which case it might be helpful to consider if we were looking at percentages. So, we could ask ourselves whether it is less than 5% likely or between 5% and 50%?

Table

# Macro Risk Score

The result of the assessment is plotted on the same grid as used at Micro level, shown again here at table 2, resulting in a risk score of either green, yellow, amber or red.

**Annex A – Macro Assessment – Impact Table**

| **Impact / Harm** | **Negligible - Regulatory objectives fully met**  | **Minor - Some impact, but Regulatory objectives achievable**  | **Moderate - Starting to impact ability to achieve Regulatory objectives**  | **Significant - Regulatory objectives only partially met**  | **Very Serious - Unable to meet Regulatory objectives**  |
| --- | --- | --- | --- | --- | --- |
| **Access to justice** | Poses some challenges or additional challenges to accessing justice for an individual or small group of consumers | May prevent access to justice for individual consumer or poses additional barriers and challenges to several consumers, including protected characteristic groups | May prevent or pose significant barriers to access justice for a proportion of legal service consumers, including protected characteristic groups | Prevents access to justice for a large demographic, socio-economic, geographic or vulnerable group of the public, including protected characteristic groups | May result in widespread inaccessibility to justice, availability, affordability and quality of advice / representation, including protected characteristic groups |
| **Competition and consumer interest** | Highly competitive market. Acting in the best interests of the consumer.Consumer can make fully informed choices | Market is competitive. Market acts largely in consumer interest. Significant information available to consumer | Partial competition in market. Market takes limited account of consumer interest. Some choices available to consumer | Little competition in market. Market actions have some detriment to consumers.Consumer has limited information, which limits choice | No competition in market. Not in the consumer interest.Consumer has no information to make choices |
| **Effective legal market** | Diverse and representative profession. Professional Independence and transparency of market operation. Full understanding of consumer needs. Very high confidence in the Bar  | Largely diverse and representative. High degree of independence, relevance and transparency. High degree of understanding of consumer needs. High confidence in the Bar | Moderate diversity and representativeness. Significant degree of independence and transparency. Significant understanding of consumer needs. Some issues regarding public confidence in the Bar | Limited diversity and representativeness. Limited independence and transparency. Limited understanding of consumer needs. Very Limited confidence in the Bar | Profession is unrepresentative. Influenced by government and unable to challenge. No transparency. No understanding of consumer needs. No confidence in the Bar  |

1. <http://www.legislation.gov.uk/ukpga/2007/29/contents> [↑](#footnote-ref-1)
2. Risk Framework 2016 – Regulatory principles are for us to be: Transparent; Accountable; Proportionate; Consistent; Target cases where action is needed. [↑](#footnote-ref-2)