

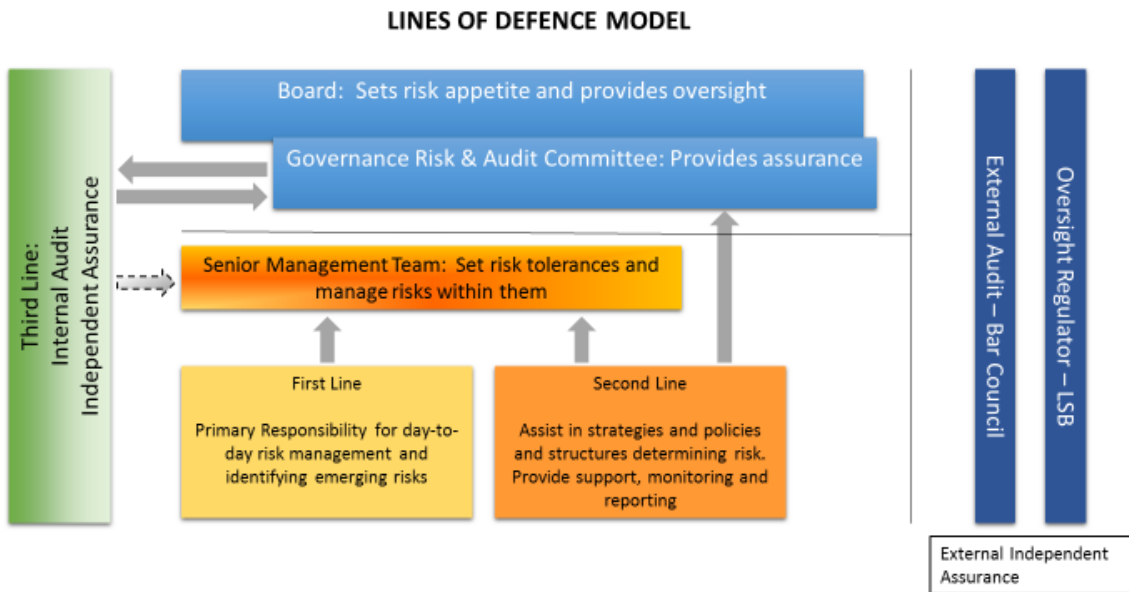
**Regulatory Risk Update**

**Background**

1. The BSB’s assurance framework intends to provide evidence based assurances on the management of risks that threaten the successful delivery of the BSB regulatory and strategic objectives including the effectiveness of our activity in the wider legal services marketplace.
2. Following the publication of the BSB’s key risk documents (Risk Framework, Index, and Outlook) in 2016, the Regulatory Risk Team has been working to deliver the elements that will contribute to the Assurance Framework. This has included:
  - Agreeing roles & responsibilities by applying the four lines of defence model;
  - Agreeing the Board’s risk appetite and its use in prioritising activity;
  - Development of a single impact / likelihood assessment for regulatory and corporate risk; and
  - Introduction of consolidated risk reporting.

**Roles and responsibilities**

3. We have applied the four lines of defence model as follows:



4. This exercise provided an opportunity to align processes for management of corporate and regulatory risk and to define the process going forward for consolidated risk reporting to the Board.
5. Having applied this model to the BSB, responsibilities for each stage in the risk management process are summarised in the table below.

Fourth Line	Board	<ul style="list-style-type: none"> <li>• Overall responsibility for risk management</li> <li>• Define overall risk strategy and approve high level policies</li> <li>• Set risk appetite</li> <li>• Consider significant risks escalated by the GRA Committee</li> </ul>
	GRA Committee	<ul style="list-style-type: none"> <li>• Assists Board in carrying out its risk management responsibilities</li> <li>• Foster a risk culture that emphasises the benefits of a risk-based approach</li> <li>• Make recommendations to Board on risk strategy and policies</li> <li>• Monitor implementation of risk strategy</li> <li>• Provide assurance to Board that risks are adequately understood, managed and mitigated</li> <li>• Identify significant risks the Board needs to consider in detail</li> <li>• Review risk profile and challenge on risks outside appetite and adequacy of action plans</li> </ul>
Third Line	Internal Audit	<ul style="list-style-type: none"> <li>• Internal Audit</li> </ul>
Second Line	SMT	<ul style="list-style-type: none"> <li>• Overall responsibility for identifying, evaluating and controlling risks</li> <li>• Ensure risk management is embedded in all processes</li> <li>• Foster a risk culture that emphasises the benefits of a risk-based approach</li> <li>• Review risk profile</li> <li>• Set detailed risk tolerances and ensure risks are managed within these</li> <li>• Identify emerging risks</li> </ul>
	Regulatory Risk team	<ul style="list-style-type: none"> <li>• Design and maintain risk framework, policies and tools</li> <li>• Provide training on risk management processes</li> <li>• Maintain regulatory risk register and lead assessment of regulatory risk</li> <li>• Monitor risks against appetite and escalate out-of-tolerance risks to SMT</li> <li>• Receive departmental risk reports</li> <li>• Collate data and prepare reporting to SMT, GRA Committee and Board</li> </ul>
	Corporate Risk team	<ul style="list-style-type: none"> <li>• Maintain corporate risk register</li> <li>• Receive departmental risk reports</li> <li>• Monitor risks against appetite and escalate out-of-tolerance risks to SMT</li> <li>• Collate data and prepare reporting to SMT, GRA Committee and Board</li> </ul>
	Risk Forum	<ul style="list-style-type: none"> <li>• Identify new risks</li> <li>• Review of Risk reports to validate assessment</li> <li>• Identify trends in departmental risk data</li> </ul>
First Line	Departments, led by departmental risk officer	<ul style="list-style-type: none"> <li>• Departmental risk reporting and identify trends in data</li> <li>• Maintain departmental risk registers (if required)</li> <li>• Monitor progress with agreed actions</li> <li>• Monitor projects and risk improvements</li> </ul>

### **Risk Appetite and Prioritisation**

6. The purpose of prioritising risks for action is to focus on those risks likely to have the greatest impact on our regulatory objectives. In July 2017, the Board set the risk appetite for the risks in the Risk Index, this was the starting point to being able to prioritise risk activity. Risk appetite defines our tolerance for a risk and the amount of

risk we are willing to accept before we consider acting. It is therefore, essential to being able to prioritise the action we might take. We have been working with the SMT to consider how we apply this at a micro (case-by-case) and a macro (market) level.

### Micro level prioritisation for action

- Micro (case-by-case) level risks relate to the occurrence of our regulatory risks within the information the BSB receives daily, for example information relating to the conduct of a Barrister or the management of a Chambers. Micro level priorities are set relative to appetite. The lower the tolerance for the risk, the higher the priority.

#### Risk Priority

Risk Appetite	Priority (based on appetite)
Very Low Tolerance	High
Low Tolerance	Medium High
Tolerate if Strongly Justified	Medium
Tolerate if Justified	Low

- As priorities are set relative to the appetite, they will remain static until the Board next reviews risk appetite. Our recommendation is to review appetite annually or earlier if there is a major change in BSB activities.
- At the micro level, applying the priority to the assessment of the risk within a given piece of information, allows us to determine an appropriate level of response. To apply this prioritisation, we need first to assess the level of risk posed by a case or an event. The approach will assess Impact & Substance, with ratings for each plotted on a table to provide a level of net risk as red, amber or green:

#### Risk Rating Table

IMPACT	5	Green	Amber	Red	Red	Red
	4	Green	Amber	Amber	Red	Red
	3	Green	Green	Amber	Amber	Red
	2	Green	Green	Green	Amber	Amber
	1	Green	Green	Green	Green	Green
		1	2	3	4	5
		SUBSTANCE				

- Whether we take action is then a combination of the action priority and the net risk rating for that piece of information, as shown follows:

#### Response

Action Priority	Risk Assessment		
	Red	Amber	Green
High Priority	Always	Always	No
Medium High Priority	Always	Always	No
Medium priority	Always	Sometimes	No
Low Priority	Sometimes	No	No

"Sometimes" = judgement required, depends on the nature of the case.

- a. Red risk = action is always taken, although there is some flexibility on low priority actions depending on the nature of the case.
  - b. Amber risk = only act for risks with a high and medium high action priority, applying judgement of the individual case to Medium Priority actions.
  - c. Where an individual case has a low risk rating (green) - regardless of the priority, we would not expect to act, as the overall risk is low.
11. The prioritisation process only determines whether we should take action. The type of action taken will depend on the nature of the case. It does not automatically follow that enforcement action is mandatory where we rate a risk and the action priority as high, since taking Supervision action may prevent the risk from crystallising and so avoid the need for enforcement activity.

**Macro level prioritisation**

12. To assess risk at the macro / market level our assessment of regulatory risks reflects the accumulation of evidence and activity across the regulated community, including research, BSB activity, trend data from micro level information, etc.
13. To begin with, we have defined the maximum acceptable level of risk for each appetite rating.

Appetite	Level of risk we would tolerate
Very low tolerance	Very low
Low tolerance	Low
Tolerate if strongly justified	Medium
Tolerate if justified	Medium high
Accept	High

So that for any risk with an appetite of “Very Low Tolerance”, we would want it to be assessed no higher than very low risk, while for “Tolerate if strongly justified” we would want any risks to be assessed no higher than a medium risk.

14. Macro level prioritisation then depends on the extent to which the risk assessment exceeds the risk appetite; the further risks are from their acceptable level, the greater the priority for action.
15. We will continue to refine this process over the next year as we improve the data and develop the reporting process.

**Alignment of corporate and regulatory risk reporting**

16. To support the development of a consolidated risk report, bringing together corporate and regulatory risk to give a holistic view of risk, we have developed a single methodology for assessing risk.
17. We have worked to develop a single consolidated impact and likelihood table, to allow consistent measurement of risk. This has included a refresh of impact and likelihood definitions – see table at Annex A. The examples are not meant to be definitive, but to provide sufficient examples of the scale as to make comparative assessment possible.

## ANNEX A

Impact		BSB Objectives fully met	Some impact, but BSB objectives achievable	Starting to impact ability to achieve BSB objectives	BSB Objectives only partially met	Unable to meet BSB objectives
		Negligible	Minor	Moderate	Significant	Very serious
		1	2	3	4	5
Reputational	Public perception	None	Mildly Embarrassing Legal media interest Bar Council/profession concern	Embarrassing Extended legal media interest Extended Bar Council/profession concern	Damaging National press interest / Significant social media interest Significant public/political concern Independent external enquiry	Extremely damaging Continual national press interest / Social media campaign Major public/political concern Full public enquiry
	Legal	No regulatory consequence Risk of legal action very low	Informal advice by LSB, Bar Council or other agencies	Warning by LSB, Bar Council or other agencies Possibility of successful judicial review or other legal action	Threat of intervention by LSB, Bar Council or other agencies Strong likelihood of successful judicial review or other legal action	Actual intervention and/or takeover of BSB functions Successful Judicial Review or other legal action.
Financial	P&L	below £1K	£1K - £5K	£5K - £50K	£50K - £500K	£500K plus
	Projects	<5% over budget	5 – 10 % over budget	10 – 25% over budget	25 – 50% over budget	>50% over budget
Operational	Personal Injury	None	First aid	Severe injury/hospitalisation	Permanent avoidable disability	Death
	Staff/ Organisation	Short term staffing issues temporarily reduces service quality	Continuing staffing issues / reallocation of staff reduces service quality on a continuing basis Loss of key personnel within a single team	Lack of staff / restructuring causes late delivery of key objective Loss of talent and expertise in or across a department with challenges in recruiting like for like replacement. One department significantly under resourced.	Uncertain delivery of key objectives / service due to lack of staff or significant restructuring Unable to recruit / retain key staff. More than one department significantly under resourced.	Failure to deliver key objective / service due to lack of staff or major restructuring BSB significantly under resourced.
	Assets / infrastructure	None	Minor damage, but no effect on functionality	Moderate damage, requiring remedial action	Major damage leading to significant loss of functionality	Massive damage leading to complete loss of functionality and inability to deliver
	Business disruption	Prevents a business process from being completed with insignificant local disruption.	Prevents a business process from being completed with significant local disruption.	Prevents a critical business process from being completed causing significant internal disruption	Prevents a critical business activity from being completed causing limited external disruption	Prevents a critical business activity from being completed causing extensive external disruption

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	<b>Technology (availability)</b>	Available immediately	Systems restored within day	Systems out of action for > day	Systems out of action for > week	Systems out of action for long term
	<b>Project Management</b>	<5% schedule slippage.	5 – 10 % schedule slippage.	10 – 25% schedule slippage.	25 – 50% schedule slippage.	>50% schedule slippage
		Minor reduction in quality or change of scope	Reduction in quality or change of scope	Failure to meet secondary objectives	Does not meet primary objectives	Failure to meet several cross cutting objectives
	<b>Information security</b>		Disclosure of confidential information - no significant impact	Disclosure of confidential information - embarrassment for BSB  Loss of data but not confidential	Disclosure of confidential information impacting individual or chambers / entity, with significant impact on BSB reputation and potential for fines / censure.  Cyber-attack penetrates BSB systems but is detected before data can be extracted.  Denial of service attack which halts BSB systems for < 1 day	Disclosure of confidential information with wider impacts on the legal market or affects the way we operate.  Cyber-attack penetrates systems and extracts data.  Denial of service attack halts BSB systems for > 1 day.
<b>Outsourcing and Suppliers, including Resources Group</b>		Supplier disruption or failure leading to minor disruption of non-critical process or minor disruption of business-critical process	Supplier disruption or failure leading to moderate disruption of business-critical process or system  Impacts relationship with supplier	Supplier disruption or failure leading to severe disruption of several business-critical processes or systems  Loss of key supplier, alternatives costly	Supplier disruption or failure leading to severe or sustained impact on objectives  Loss of key supplier, no alternatives	
<b>Regulatory</b>	<b>Access to justice</b>	Poses some challenges or additional challenges to accessing justice for an individual or a few consumers	May prevent access to justice for individual consumer or poses additional barriers and challenges to a small group of 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 inaccess to justice, availability, affordability and quality of advice/representation, including protected characteristic groups
	<b>Competition and consumer interest</b>		Market is largely competitive.  Market acts largely in consumer interest.	Partial competition in market.  Market takes limited account of consumer interest.	Little competition in market.  Market actions have some detriment to consumers.	No competition in market.  Not in the consumer interest.

ANNEX A

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		1	2	3	4	5
			Significant information available to consumer, but still some issues	Some choices available to consumer	Consumer has limited information, which limits choice	Consumer has no information to make choices
	Effective legal market		Largely diverse and representative Market largely independent, relevant and transparent, but some issues High degree of understanding of consumer needs, but some issues High confidence in the Bar	Moderate diversity and representativeness Significant degree of independence and transparency Significant understanding of consumer needs Some issues in the 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
	Prevalence (Micro-level)	Isolated incident	Impact localised to a small group	Moderate sized group, or several localised instances	Widespread across large portion of the market	Systematic, deeply rooted problems

Likelihood		Remote	Unlikely	Possible	Fairly likely	Highly likely
		1	2	3	4	5
Likelihood of specific event		May only occur in exceptional circumstances	May occur in a few circumstances	May occur in some circumstances	May occur in many circumstances	May occur frequently and in most circumstances
Time criticality		Long term - Likely to occur in excess of two years from now	Medium to long term Likely to occur within the next two years	Medium term OR Not known Likely to occur within the next six months OR Unknown	Short term Likely to occur within a matter of weeks	Imminent Likely to occur within a matter of days
Likelihood of event happening over a period of one year		<1%	1%-5%	5%-50%	50%-90%	>90%

**Guidance Notes**

The above provides examples but cannot cover every eventuality. Not all items in the impact / likelihood boxes need apply - assessors can select the most relevant. In all cases, if no example appears relevant, consider the impact on our regulatory objectives and refer to the top line. If likelihood is not known, assessors should apply level 3, as the point at which there is a possibility the risk will affect our regulatory objectives.