

**BAR
STANDARDS
BOARD**

REGULATING BARRISTERS

Immigration Thematic Review Report

May 2016

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Executive Summary

The Bar Standards Board (BSB) began a thematic review into immigration advice and services in 2015. The purpose of the review was to understand and analyse the risks in the immigration advice and services market with reference to the BSB's remit.

The review involved gathering and analysing evidence and developing an understanding of the market in this area. Our evidence gathering consisted of:

- A roundtable with consumer organisations and other regulators of immigration advice services to understand more about an immigration client's journey;
- Visits to barristers and chambers who supply immigration advice and services. A range of questions were asked around the types of immigration services provided, how they provided these services and risks to clients in accessing good quality legal services;
- Consultation with a Reference Group consisting of immigration- focussed consumer organisations and regulators; and
- Desk research into barristers supplying immigration advice and services and clients experiences of receiving such services.

In order to do this we took a specific approach for this review. We ensured a member of staff from each BSB department was included in the development of this project and we utilised the BSB's Policy Development Framework, Risk Framework and Index and Consumer Engagement Strategy.

We identified three themes in light of the evidence gathered. The three themes are access to justice, poorly informed consumers and quality of advice and standards of service.

- Access to Justice – This theme outlines the barriers the public face when accessing the legal help that they need. These barriers include: the increased demand for immigration services, the large amount of work that public access immigration cases require, inconsistent client care, cost and geographical location.
- Poorly Informed Consumers – This theme is about immigration clients and potential clients who lack proper understanding of how to identify the type of advice or provider they need, choose which provider to use, follow progress of their legal issue once they have chosen a provider, or seek redress when things go wrong.
- Quality of Advice and Standards of Service - This theme is about the standards of immigration advice and services being provided by different practitioners (eg barristers, solicitors, immigration advisers regulated by the Office of Immigration Services Commissioner (OISC)). It is acknowledged that the service provided by barristers is, in many cases, the last link in the supply chain and that may also have an effect on the ability to provide a competent service.

The themes were assessed against the BSB's Risk Framework and Index, to ensure we understood how the issues we had identified could impact on the market for barristers' services. The key risks that were identified across the three themes were:

- Failure to meet consumer demand;
- Poor public perception of legal services;
- Excessive barriers to supply of legal services;
- Lack of cultural competence and people skills;
- Lack of public awareness of legal rights and duties;
- Lack of accessible, quality market information to inform consumer choice;
- Affordability or value concerns;
- Failure to give clear information about fees;
- Inadequate training and preparation for practice;
- Supply chain risks; and
- Failure to provide a proper standard of service.

Following this we began to develop options to control the risks we had identified. We developed and refined options in consultation with BSB staff, consumer organisations, other immigration service regulators and the BSB Board.

The recommendations for understanding, promoting and protecting consumer interests are presented below. The BSB currently has controls in place to manage some of the risks identified, these controls feature in existing projects and initiatives. We propose that the evidence and analysis gained from the Immigration Thematic Review will contribute to the BSB's current projects, these are:

- The forthcoming review of client care letters with other regulators;
- Engagement with consumer and immigration frontline organisations that provide assistance to those seeking legal advice;
- The current review of the public access and licensed access regulatory arrangements;
- Development and dissemination of the BSB's online consumer guidance;
- The youth courts advocacy proceedings review and the development of education and training on vulnerability; and
- The future Bar training programme and the new continuing professional development (CPD) regime.

We have identified three new controls that we recommend the BSB implements, which will complement the existing controls identified above, these are:

- Development of "good" and "poor" practice case studies which will be incorporated into the current online consumer guidance;
- Continue working with other immigration services regulators to create joint guidance which outlines responsibilities when instructing a barrister; and
- Build on existing guidance in conjunction with key consumer organisations to develop a framework that all barristers can use to assess and manage client vulnerability.

Introduction

1. The Bar Standards Board (BSB) is responsible for establishing and implementing a range of regulatory measures to ensure that standards at the Bar are maintained and the interests of consumers are understood, protected and promoted. The BSB regulates 15,915 barristers in England and Wales.
2. It is a criminal offence for a person to provide immigration advice or services in the UK unless they are a “qualified person” as defined in section 84 of the Immigration and Asylum Act 1999. A practising barrister is a “qualified person” and able to provide immigration advice and services; approximately 700 barristers list immigration as one of their main practice areas.
3. Currently the BSB does not place any specific requirements on barristers wishing to provide immigration advice and services. All barristers who have a practising certificate are automatically authorised to undertake this type of work.
4. In July 2015, the BSB began a thematic review into immigration advice and services provided by barristers.

Objectives of the Project

5. The objectives of the immigration thematic review were to:
 - (a) Collect evidence from immigration barristers and organisations that engage consumers seeking immigration legal advice and services;
 - (b) Map and understand the immigration advice and services market, and the different client journeys;
 - (c) Collate evidence gathered and divide into distinct themes;
 - (d) Undertake a prioritisation exercise whereby the issues to be addressed are chosen with reference to the BSB’s remit, sphere of influence and the relative risk level of the issues identified;
 - (e) Identify areas of risk by analysing the key themes that have developed, identifying linkages with the BSB Risk Index; and
 - (f) Produce a report for the Board, with recommendations as to how this work should be progressed.
6. This report outlines how these objectives have been achieved.

Background

7. In May 2012 the Legal Services Board (LSB) released a discussion document concerning the regulation of immigration advice and services, seeking comments from regulators and others. The LSB was concerned that there were significant problems with the overall architecture governing the provision of immigration advice and services. To address these problems, the LSB considered that all qualifying regulators must implement coherent, evidence-based approaches to manage the risks to

consumers and the public interest.

8. The BSB responded to the discussion paper, and later in 2013 submitted a report to the LSB outlining a programme of work that had been undertaken to assess whether our regulatory arrangements were fit for purpose for the regulation of immigration advice and services.
9. The report to the LSB specifically gathered evidence through the following means:
 - Liaison with agencies such as the UK Border Agency, the Asylum Immigration Tribunal, the prisons estate and others who have first-hand experiences of those needing immigration advice and services, to obtain evidence of performance, problems and issues;
 - Discussion with service providers and representative groups (for example, Immigration Law Practitioners' Association (ILPA)) to obtain evidence of performance, problems and issues;
 - Targeted consumer research on experiences with barristers providing immigration advice and services; and
 - Liaison with Legal Services Commission (now the Legal Aid Agency) specifically in regard to performance issues.
10. As a result of the evidence gathered the BSB specifically considered whether we should:
 - Have specific authorisation arrangements in place for those that provide immigration advice and services;
 - Use consistent accreditation schemes in conjunction with other regulators
 - Introduce targeted CPD requirements;
 - Put in place peer review of quality and consistency of advice; and
 - Use feedback to drive up quality and identify those who should not be allowed to provide immigration advice and services.
11. At the time, the BSB considered that there was insufficient evidence to make any specific alterations to regulatory arrangements. However, a specific action list was prepared to address any on-going issues. In this action list the BSB committed to undertaking a thematic review of immigration advice and services in 2015. This undertaking is the basis for the current review.

Our Approach

12. The BSB used a number of different approaches in carrying out the review into immigration advice and services. These included use of the BSB's Policy Development Framework, the Risk Framework and Index, Consumer Engagement Strategy and cross-organisational working. The BSB has committed to using these tools in our projects in order to become a more evidence and risk-based regulator. This project was an opportunity to test these new approaches and review them to provide valuable learning for applying these approaches in future BSB projects.

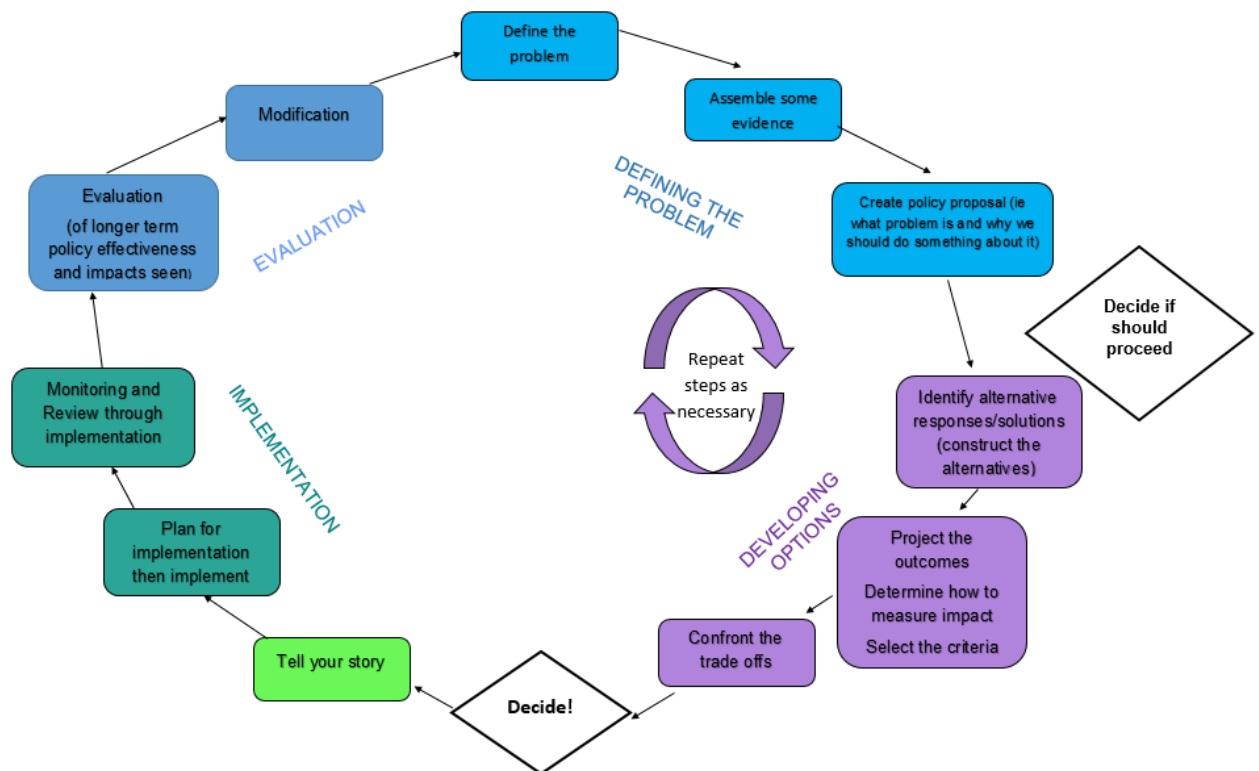
Policy Development Framework

13. The Policy Development Framework is a tool to undertake policy analysis in a more systematic and consistent way throughout the BSB. In devising the framework, the BSB drew on good practice in policy analysis, using components from various models to develop a process for the BSB. It is designed to offer a method of policy analysis that is systematic but flexible. It is one way in which we can draw together a number of different strands of work we undertake, from evidence gathering to the regulatory risk framework. It gives an “end to end” of policy analysis, including the full life cycle from identification of a possible problem to consideration of whether or not an intervention has worked in practice. The framework has four main stages:

- Problem definition
- Developing options
- Implementation
- Evaluation

BSB POLICY FRAMEWORK

(as agreed by the Bar Standards Board July 2014)



14. In undertaking the Immigration Thematic Review, the BSB followed each step of the Policy Development Framework. Separate project plans were developed for the first two stages – “problem definition” and “developing options”. This ensured the BSB did not start developing solutions prior to completing a systematic and comprehensive problem identification process. Internal and external stakeholders were identified, and each person involved in the project had a clearly defined role. The identified themes and options the BSB has developed in this review are therefore based on research

and stakeholder engagement that has been undertaken. The three identified themes were tested with BSB staff and external stakeholders to ensure they had been accurately defined and could be easily understood. Major project decisions were made by an internal Project Board to check at various points whether to continue with the project.

15. Utilising the Policy Development Framework helped individuals involved in the project to understand the process of the project. The framework provided a clear process for policy development and analysis, but was also suitably flexible to allow for the individual nuances of this project. The framework helped us to ensure a robust and systematic approach was used to policy development.

Consumer Engagement

16. The BSB aims to embed the consumer perspective in all aspects of our work and our strategic plan 2016-2019 commits to nurturing a deeper dialogue with consumers. During the Immigration Thematic Review, the BSB has engaged with consumer organisations at each stage of the Policy Development Framework, starting with the BSB Roundtable event in July 2015. The Roundtable helped us to understand the immigration market and was an opportunity to hear a range of consumer perspectives. A summary of the Roundtable event is provided at paragraph 55.
17. A Reference Group was also formed with membership sourced from consumer organisations and other regulators of immigration legal services. The Reference Group helped the BSB to map the legal journey from an immigration consumer's perspective. It helped us to identify what the barriers are to getting immigration advice and representation, and where a barrister fits into the process. The group assisted the BSB in evaluating potential policy options and made suggestions about organisations we could work with if the options were to be implemented. A summary of the work undertaken and evidence collected from the Reference Group is at paragraph 83.
18. The BSB has found engagement with consumer organisations to be extremely valuable in enabling us to gather evidence and as a means to develop our understanding of a client's legal journey. The Reference Group has acted as an effective auditor of the issues and options we have identified and many of the representatives on the Reference Group have links to other organisations which may prove to be useful in implementing solutions.

Risk Framework and Index

19. The Risk Framework¹ outlines the BSB's approach to identifying and managing risks in the legal system and the Risk Index categorises those risks². These tools were used throughout the Immigration Thematic Review. The 2015 Supervision Report evaluated the evidence gathered from visits to chambers based on the regulatory Risk Index. A summary of the Supervision Report is at paragraph 25.
20. Templates based on those used in developing the BSB's Risk Outlook were used throughout the project. This helped to align the issues we had identified with the Risk Index and the BSB's regulatory objectives.
21. Following the Risk Framework and using the Risk Index gave structure to the process of critically assessing the evidence we had collected. It also helped the Project Board to understand the relevance and potential impact of the issues we had identified. The Risk Index has subsequently been updated to include risks which have been newly identified by this project, for example, Risk 5.5: lack of accessible, quality market information to inform consumer choice.

Cross-organisational working

22. In order to ensure that the project adopted a cross-organisational way of working, and utilised knowledge from different parts of the organisation, a Project Board was created for the review with representatives from each department at the BSB. The Project Board met regularly throughout the project to discuss the identified themes, share ideas, refine each other's work, help assess risk and conduct desk research.
23. This cross-organisational style of working meant that new insights and different perspectives were captured throughout the policy development process. Knowledge from across the organisation, both from the work that the teams do and drawing on prior experiences of staff in other fields, was able to be utilised.

Research and Evidence Collection

24. The research we conducted was part of the "problem definition" stage of the Policy Development Framework. A supervision exercise with immigration barristers and chambers, a roundtable event, a Reference Group and desk research were part of the BSB's evidence gathering activities to inform the immigration thematic review.

Supervision Report

25. As part of the Immigration Thematic Review, the Supervision department carried out a number of chambers visits between July and September 2015. The chambers were asked a series of questions around the types of immigration services provided, how they provided these services and risks to clients in accessing good quality legal

¹ BSB Risk Framework

https://www.barstandardsboard.org.uk/media/1751663/bsb_risk_framework_16pp_5.4.16_for_web.pdf

² BSB Risk Index

https://www.barstandardsboard.org.uk/media/1751667/bsb_risk_index_12pp_5.4.16_for_web.pdf

services.

26. The Supervision department was able to gather data about the market factors affecting the provision of immigration advice and services. They found that it was evident from the visits that the amount of immigration work itself is increasing. Most barristers spoken to noted that there was no shortage of work in the immigration area, but that the type of work might be changing as a result of recent changes in the rules (e.g. more judicial reviews being requested).
27. The Supervision department identified the following key themes from the information gathered from the visits:
 - Understanding the types of client and the regulatory risk;
 - Vulnerable clients;
 - Assessing the quality and value for money of the service provided;
 - Accreditation, training and continued professional development (CPD);
 - Access to Justice; and
 - Other concerns chambers expressed.
28. A summary of each of the key themes identified is provided below.

Understanding the types of client and the regulatory risk

29. A key point that chambers stressed is that there are different types of clients requiring immigration advice and that it is important not to generalise when considering the regulatory risks. This is consistent with the message from the roundtable session for consumer organisations that the BSB facilitated in July 2015.
30. Chambers that engage in work on visa applications for students and more experienced clients who tend to be well educated and able to use the internet and personal or business contacts to research the market. These clients may have developed an understanding of the legal system and how to find good quality advice.
31. In contrast, the chambers that are located close to major immigration centres and carry out predominantly appeals, entry clearance, asylum and human rights work, say that their clients are often vulnerable for a range of reasons. These clients have less time and less ability to locate the best quality advice, and less access to choice.
32. Some barristers thought that asylum seekers who are entitled to legal aid are more likely to access good quality services than those not entitled to legal aid. Given that access to legal aid has been removed for most consumers of immigration legal services, these people now represent a minority of cases.

Vulnerable clients

33. Vulnerability can arise from a number of factors including:
 - the underlying reasons for seeking asylum;

- gender-based persecution;
 - trafficking: both those who have escaped trafficking and those who are currently being trafficked);
 - fear of sudden deportation;
 - fear of children being taken out of school;
 - financial hardship and lack of access to legal aid;
 - language barriers;
 - cultural barriers;
 - mental health issues;
 - trauma experience;
 - family conflict or separation;
 - unaccompanied minors;
 - age (young or old), etc.
34. It was noted that in the field of immigration, often these vulnerabilities come in combination.
35. The Supervision department found that all barristers they spoke to were acutely aware of the vulnerabilities of their clients. Barristers saw it as in their interests to identify vulnerability, as that tends to be central to the legal case that is made, as well as central to their personal interest in practising in this area of law. It was also evident from their visits that assessing and effectively dealing with a vulnerable client is key in the provision of good quality immigration advice and services. There was less clarity around whether clients are currently being assessed for vulnerability in a consistent manner and, what happens if they are assessed as vulnerable.
36. The general consensus was that the majority of less experienced clients seeking immigration advice will be vulnerable in some way. Where the case is not engaged via the public access scheme, often the barrister will not see the client until the day of the hearing. This can mean that barristers are not best placed to make this assessment as by that stage it will be too late to make adjustments. It was seen as critical for the solicitor/professional client to assess vulnerability and make suitable arrangements, where necessary.
37. Some barristers expressed concern that even if vulnerability is identified, the action that can be taken may be limited by financial factors. It was noted that, as legal aid is no longer available to the majority of immigration clients, expert reports or additional support that may have been commissioned in the past now has to be privately funded.
38. There was a perception that there is currently no specific training for barristers on vulnerability and a number of barristers said that this would be helpful to their work in the immigration area.

Assessing the quality and value for money of the service provided

39. Concern was expressed that clients might not be able to establish whether they are likely to receive, or indeed have received “good quality” service as there is no

transparent way for them to ascertain this. Chambers said that in the absence of other measures, price is often taken as a sign of good quality – the perception being that the more expensive something is, the better the quality. This could compound the effect of poor service by allowing unscrupulous providers to charge higher fees to vulnerable clients.

40. The withdrawal of legal aid has led to risks to the quality of the service delivered and what was referred to as a “race to the bottom” for the level of fees charged. It has made it very difficult for some barristers to provide “good quality” legal services, the focus being on getting through as many cases as possible, as quickly as possible.
41. Barristers are placed in the position of having to choose to work for little or no fee, because the client has a valid claim, or turn them away. They are increasingly under pressure to do more work for less money, or even for free. This puts at risk the quality of services delivered by barristers, as well as the viability of their immigration practices.
42. There appears to be a contradiction between the view that immigration work is deemed to be high risk and is, therefore, likely to generate more complaints compared to other areas, versus the observation of the BSB that actual complaints levels are low. Chambers visited said that various factors may reduce the likelihood that immigration consumers in particular will make a complaint or question the service that they are receiving. For example:
 - Certain cultures hold legal professionals in very high esteem and are unlikely to question them;
 - Vulnerable consumers at risk of deportation may be afraid that making a complaint will bring them into conflict with the authorities who will deport them;
 - Other types of vulnerability described above means that the client is completely dependent on the barrister and solicitor to direct the case and keep them informed, so they are likely to be unable to hold them to account; and
 - Clients are unlikely to complain after they have been deported.
43. In most cases, the client’s contact with the barrister is at the final stage of the “client journey”. There seemed to be a unanimous and strong opinion from chambers that they repeatedly experience poor standards of service from solicitors, including:
 - The quality of work/files is often poor and papers are often missing;
 - Solicitors (and OISC representatives) tend to send papers to chambers very late in the day before the hearing;
 - There were concerns raised about the level of client care provided by solicitors, in preparing the client for the court process; and
 - Delays and outright failure to pay barristers, including legal aid money which, as public money, should be handed over promptly.

Accreditation, training and CPD

44. A number of chambers highlighted the risk that the law in this area is particularly complex and fast-changing, yet any barrister, with no specific training, can start an immigration practice. Standard legal training does not necessarily equip a newly qualified barrister to handle immigration work.
45. However, the barristers spoken to did not support the idea of specific accreditation, querying why immigration should be singled out for an additional regulatory burden compared to other areas of the law. They placed greater weight on effective pupillage training, support from more experienced barristers and CPD.
46. All chambers said that a considerable number of major changes to the law have been made over recent years and the Home Office changes its rules on a regular, and sometimes daily basis, but they are poorly disseminated. Given that the law is changing so quickly, chambers underlined the importance of training and ongoing CPD, and ensuring that practitioners keep up to date with the law.
47. There was seen to be limited post qualification specialist training available. Some chambers commented in particular about the lack of training on immigration law outside of London. They were of the view that London had plenty of courses to offer but this made it difficult for practitioners from other parts of England and Wales to access training.

Access to Justice

48. The Supervision department found there is a clear correlation between the way that immigration advice and services are provided, the current market factors and access to justice.
49. The closure of key support agencies in recent years and the cuts to legal aid have meant that loss of access to justice is a major concern to immigration barristers. There is unmet demand for good quality free advice. Those who are unable to afford a barrister are now representing themselves as litigants in person, which increases the risk that they do not get equality of access to justice.
50. However, it was evident from the visits that there is no shortage of immigration work for barristers. The unanimous view was that the amount of work is increasing. Chambers who receive their work through solicitors find that there is a good supply of work. A number who were public access accredited expressed reluctance actively to promote that option because they felt that the work is less profitable (because clients need more “hand-holding” by both barrister and clerk) and carries more risks. Those engaging primarily in public access work find that they get enough work through word-of-mouth recommendations and they do not need to advertise their services.
51. Consequently, chambers said that there was no motivation actively to market their services. This means that vulnerable consumers trying to navigate their way through the legal system for the first time are unlikely to see services by good quality barristers publicly advertised.

52. Chambers that carry out immigration work tend to be clustered around the towns and cities where the Immigration Tribunals are located. Some chambers said that vulnerable people who found themselves in need of urgent immigration services, but who were not located in one of these centres, might find it hard to locate good quality advice.
53. Chambers said that community connections are regarded as a key source of information for consumers about where to find immigration advice. It is therefore crucial to ensure that these communities are well-informed about how to access good quality services.

Other concerns chambers expressed

54. The Chambers that were visited raised a number of other issues which may have an impact on some immigration clients and the provision of advice and services. These included:
 - Difficulties with Home Office Presenting Officers not turning up for hearings;
 - The quality of OISC representatives;
 - Receiving work from people who are not in fact regulated solicitors; and
 - The unregulated market for immigration advice, with non-expert, non-qualified persons operating abroad and providing potentially incorrect immigration advice.

Roundtable Report

55. The BSB hosted a Roundtable event for organisations involved in the immigration sector in July 2015. A number of themes emerged from the discussions with the roundtable participants. These were as follows:
 - Terminology;
 - Users of immigration services;
 - Access/barriers to access;
 - Direct access;
 - Geographical issues;
 - Information provision;
 - Choice;
 - Cost/funding;
 - Use of intermediaries/interpreters; and
 - Competent service/standards.
56. A summary of each of the key themes identified from the views of those attending the discussion is provided below.

Terminology

57. It was seen as necessary to distinguish between immigration work and asylum work and see these as two distinct categories. It was noted that asylum work consists of a

very specific sub-set of immigration with its own unique issues. The use of the term “consumers” in relation to legal services implies having a choice, which is largely not present for many immigration clients, and even less so for asylum clients.

58. The term “market” was also not thought to be useful in this context and potentially misleading, as many consumers don’t have the power to choose that this term implies. It was pointed out that the terms used do not just reflect an issue over language but also a lack of understanding of the underlying issues.

Users of immigration services

59. It was suggested that there are wider political factors influencing the policy framework, which affects the extent to which the system can sufficiently address the complexities and needs of immigration clients. It was also noted that regulatory changes could have a negative impact, intended or otherwise, on consumers (particularly with regard to cost and methods of delivery). There was some concern that aspects of regulation do not properly consider users and the impact on them. There was recognition that focusing on the consumer as opposed to focusing on providers of services is relatively new for regulators.
60. Views were expressed about the “types” of immigration client that exist. Immigration services cover a wide range of clients – including high net worth individuals who have very different needs and issues from the traditional view of “immigration clients”. The immigration client base has considerable depth and complexity and it is important not to ignore elements such as private clients whose needs and level of vulnerability are often very different.
61. Lower socio-economic vulnerable clients may have different barriers to and constraints on accessing of information, advice and services compared to clients who are more affluent, or have a less urgent requirement to access services, or have a better knowledge of the immigration market and the services available.

Access/barriers to access

62. While it was recognised that correct consumer protections need to be in place it was thought equally important that there are not too many barriers to provision of immigration advice as this may drive up costs and adversely impact on users.
63. In the past voluntary organisations provided the route by which many people obtained advice and a referral to a solicitor or barrister. Many of those voluntary organisations no longer exist due to funding issues and areas where legal aid is available have also changed due to government policy.
64. It was pointed out by participants that people in need of immigration advice can be hesitant about seeking such advice due to the circumstances they are in. This level of vulnerability can potentially sway “immigrants” to approach their community in the first instance. This leads to people seeking legal help from those that have been recommended from their networks through word of mouth, rather than directly

approaching barristers or solicitors for legal advice.

65. There was concern that, although participants wanted rogue advisors to be controlled, any sort of control on this could lead to a reduction of legal services available to asylum seekers in particular. It was seen as important to continue to raise standards, without reducing access. Participants did not want to see it made harder for people to access advice when they become part of the immigration system or for access routes to legal representation to be closed off.
66. A general point was made that the problems with many cases were happening before that client ever engaged with a barrister. Participants felt that how well a case progressed often depended on who the client initially went to for advice and how competent they were at providing correct information and/or recommending providers.

Direct access

67. The impact that direct access is having on the market was discussed by participants. They believe that issues raised in previous research are coming into sharper focus as a result of the changes to the traditional solicitor/barrister relationship. This is particularly the case in relation to language, consumer understanding of the barrister's role, and client care and service delivery.
68. It was suggested that there may need to be better support structures around sole practitioners to ensure they are doing a competent job when dealing with immigration clients directly, considering the amount of administration necessary for direct access. An additional risk inherent in direct access was also raised. While solicitors are "repeat clients" and will not offer further work to barristers who provide poor service, individual clients tend to be "single use" consumers of legal services. Therefore market controls over poor service for consumers are weaker when they access a barristers services directly.

Geographical issues

69. It was thought that currently there is not a good spread of high quality immigration advice services and immigration barristers geographically. This can make it difficult for clients in some areas to access good advice, which results in a "postcode lottery". Individuals are forced to use whatever sources of information, advice and services are available locally regardless of their quality.
70. In relation to regional scarcity and variable availability of advice, it was thought that sole practitioners are increasingly filling a gap as demand continues to outstrip supply.

Information provision

71. People are increasingly turning to the internet and social media to source advice, which raises various issues. This is something that is potentially difficult for regulators in this area to control. It was also noted that if services are being increasingly advertised on the internet, those who are in prison/detention centres, or those with low

income, will struggle to access this information.

72. It was suggested that barristers or chambers who specialise in immigration work could be placed on some sort of public register, so those seeking an immigration barrister can find out where and who to go to. There was also a question raised of whether or not it was possible to identify market leaders, so clients have some idea of who the most competent providers are.
73. There was discussion about a potential system of accreditation or assessment of barristers working in immigration. Members of the public could then use this information on which to base any choice of barrister. It was acknowledged that while accreditation was a good idea in principle, as only small numbers of the entire profession work in immigration, introducing any sort of accreditation system for immigration alone might restrict supply.

Choice

74. For the majority of people seeking immigration and asylum services there is little choice of legal representation. There is no “market” for immigration legal advice providers for these people. There was general consensus that making a decision on choice of legal representation is very difficult. Despite this the impact of the decision is very important as it can affect the rest of the client’s life.
75. It was thought that there are a substantial number of people currently operating in the system who are unregulated but are holding themselves out as being regulated. There is a high level of risk associated with these people, and lay clients may not understand who is regulated and who is not, and the difference between them.

Cost/funding

76. The shortage of available immigration advice and/or legal representation was identified as a problem in this area. However, this shortage mostly affects those clients who are unable to pay or who rely on legal aid. The lack of supply in the legal aid sector and at the Bar because of low pay associated with this type of work restricts the choices that lower socio economic clients have in legal representation.
77. The cuts to legal aid in this area have also meant that those who are available to provide advice and services are often over-worked and under-resourced. As a result there is a sense that the best providers are pressured to exit the market, knowing they can’t continue to offer a good service on such limited funding.

Use of intermediaries/interpreters

78. Generally in relation to referrals it was thought that the relationship between the solicitor and the barrister is the most powerful factor behind referral of business. Even direct access work tends to be subsequent to receiving some kind of advice elsewhere, whether through another legal professional or an NGO.

79. In relation to hearings, it was pointed out that interpreters play a key role, but there are significant risks if a substandard service is delivered. Mistakes can be made both in terms of accurate translation and ensuring the nuances of what is said are properly communicated. The problems arising from low levels of funding were also highlighted relating to interpreters.

Competent service/standards

80. There were some conflicting views about the levels of service being provided by barristers. Some participants felt that service is very good and has improved of late particularly with more use of pro bono work and barristers building good relationships with immigration clients and consumer groups.
81. There was some discussion about the standards of other legal professionals providing services in this area. The service from those providing immigration advice, even those who are regulated, does not always meet expectation. Although having more community groups who can help people with their immigration issues is a good thing, if people are not regulated they should not be providing legal advice on immigration. However, it was stated that there is currently a large number of unregulated people operating in the market and providing immigration advice. Concerns were expressed about unregistered barristers in particular, and people who are not legally qualified in any way (e.g. accountants) setting themselves up as “introducer types” and giving legal advice.
82. Client awareness about what constitutes a good service was also discussed. Participants questioned how a client could be expected to know whether they had received competent service or not. They have no way of assessing whether the barrister they are using is competent and there is sometimes a lack of knowledge about what they should expect from their barrister. This means many clients will inevitably judge the service they have received based on the outcome rather than the quality of legal advice or representation they receive. There is often a delay before a consumer realises the legal service they have received has not been to the standard that can be expected. As a result it is often the solicitor or the OISC-regulated adviser that complains rather than the consumers themselves.

Reference Group

83. A Reference Group was set up in September 2015, made up of members who had participated in the BSB's Roundtable Event in July 2015. The members were from the following organisations:
- Race Equality Foundation;
 - Immigration Law Practitioners' Association;
 - Bar Pro Bono Unit;
 - Office of the Immigration Services Commissioner (OISC);
 - Migrant Help;
 - Solicitors Regulation Authority; and
 - Joint Council for the Welfare of Immigrants.
84. The Reference Group met twice, in October 2015 and February 2016, to discuss issues the BSB had identified within the Immigration Thematic Review and to share their insights into the market for immigration legal services.
85. In their first meeting the Reference Group helped the BSB to refine its understanding of a client's journey through the immigration system. While they noted that the client journey could not always be simplified, they provided information on groups using immigration services that may not have previously been considered. They also advised that there was a wider range of issues that affect immigration clients, including housing, banking, welfare, and not just the right for people to be and remain in the UK.
86. The Reference Group was also asked to consider which issues facing immigration clients in accessing services, could be addressed by the BSB. The Reference Group stressed that it should be a priority for all regulators in this area to work together, and to communicate with other organisations working in the area as well. They also emphasised that any approach the BSB took to problems in this area should not be too restrictive, as this may lead to a reduction in access to legal services for consumers. The Reference Group supported work that could raise standards in the immigration legal services market, and noted that clients may not be able to tell what a good standard of service is, or even have much knowledge of what a barrister does. They also noted there is a lack of clarity about what barristers can do with others, that clients face numerous issues to do with money and funding, and that clients in this area are less likely to complain about services they receive.
87. The second session of the Reference Group was focused on options refinement. The group was presented with some of the early stage options the BSB had identified and asked for comment. While the Reference Group was supportive of more information being available to consumers, they felt the key issue was how the BSB would ensure such information made it to the people who needed it. The Reference Group was able to provide the BSB with help in determining possible dissemination routes for consumer information.

Desk Research

88. During the “problem definition” stage of the policy development process we conducted desk research to check whether the risks we had identified from our own research were prevalent in other research into immigration legal services.

Barriers to accessing immigration advice

89. Our desk research found that clients were experiencing barriers to accessing immigration legal advice. The Ministry of Justice’s 2015 report on the early impacts of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) on onward immigration appeals³ stated that stakeholders observed adaptations that clients had to make because of LASPO changes, such as opting for self-funding or self-representation for all, or part, of their case. The report also found that there had been an increase in case processing times in relation to the First-tier Tribunal, which causes delays in the immigration system. In 2014, Bail for Immigration Detainees (a charity that provides legal advice and representation to asylum seekers and migrants held in immigration detention to secure their release) surveyed detainees on access to legal advice in detention⁴. Their report found a key barrier to accessing immigration legal advice in detention centres is delays to getting appointments for legal advice and that legal advice surgeries were often unable to keep up with demand for advice. Toynbee Hall (a charity based in Tower Hamlets that provides a number of services, including free legal advice) conducted research to examine the impact of legal aid cuts on people’s lived experiences and found reports of clients taking months to find a specialist barrister⁵. They suggested that legal processes could take longer than necessary involving extra court administration costs.

Client care

90. We found that immigration clients require support and considerable client care in addition to the legal advice they need. Toynbee Hall’s data suggests there is an impact on mental health among people seeking justice without legal aid⁶. This was highlighted in their interviewee’s narratives and evidenced by the fact that 78% of survey respondents experienced high levels of anxiety. In their survey participants emphasised that a free legal advice services advisor was not just a lawyer but also a friend and counsellor. Over half (61%) of the respondents considered free legal advice services as their main support to confide their worries in. A report on access to early legal advice for asylum seekers found that trust and confidence between the legal advisor and the asylum seeker were seen an essential component of the process⁷. The report stated advice and support given by the legal advisor reduced the fear of the

³ “Monitoring the early impacts of the Legal Aid, Sentencing and Punishment of Offenders Act (2012) on onward immigration appeals” – https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/449626/monitoring-early-impacts-of-LASPO-act-2012-onward-immigration-appeals.pdf

⁴ <https://detentioninquiry.files.wordpress.com/2015/02/bail-for-immigration-detainees-access-to-legal-advice-bid1.pdf>

⁵ “Sleepless nights: Accessing justice without legal aid” - http://www.toynbeehall.org.uk/data/files/Reports/Sleepless_Nights_digital_version.pdf

⁶ *Ibid*

⁷ “Providing Protection - Access to early legal advice for asylum” - <http://www.asylumaid.org.uk/wp-content/uploads/2014/08/Providing-Protection.pdf>

unknown for the asylum seeker and ensured they were an active participant in the process.

Demand for immigration advice

91. Our research confirmed that there are a limited number of voluntary organisations providing immigration advice, often due to closure of services, and many are unable to meet demand. Toynbee Hall produced another report about immigration services and the demand for such advice, entitled “Trusting the Dice”⁸, and found voluntary sector providers of immigration advice in the borough were increasingly few in number and under considerable pressure. This was translating into difficulties for clients who were trying to access increasingly oversubscribed services, often with inadequate or inaccurate information about the quality and scope of the services they provide. We found several sources of evidence about the increased demand for immigration advice. The Citizens Advice Bureau found that there was an 11% increase in immigration advice sought in October- December 2015 compared to the same quarter in the previous year. The biggest increases were from refugees (increase of 31%) and national/citizenship (increase of 14%)⁹. In 2015, the Legal Advice Centre at Queen Mary University closed its centre temporarily because of a surge in enquiries, which they felt had been caused by the cuts to legal aid¹⁰. In 2013, the Bar Standards Board held a roundtable with consumer stakeholders and found evidence that more successful barristers with established reputations often experience an inability to meet demand and cannot accept the volume of instructions that could readily come their way. This is especially the case in relation to tight deadline / short notice work e.g. with deportations, charter flights etc.

Geographical location

92. The practice of dispersal in immigration was found in our research, whereby an asylum seeker is moved away from the location of the legal advisor before the first decision which can make it difficult, if not impossible, to provide the support that is needed at this crucial stage¹¹. The BSB Roundtable in 2013 also stated clients in detention centres were likely to be moved around which meant links with their legal advisor and community could be severed leading to problems with continuity and quality of service received.

Inaccurate information provision

93. We found several pieces of evidence to suggest that inaccurate information provision is a barrier to a client accessing immigration advice. The BSB Roundtable in 2013

⁸ “Trusting the Dice” -

http://www.toynbeehall.org.uk/data/files/Immigration_Advice_in_Tower_Hamlets_KEY_FINDINGS_2.pdf

⁹ “Advice Trends” -

<https://www.citizensadvice.org.uk/Global/Public/Advice%20trends/Advice%20trends%202014-15/Advice%20trends%20Q3%202015-16.pdf>

¹⁰ <http://www.lawgazette.co.uk/law/advice-centre-struggles-with-demand-surge/5051482.article>

¹¹ “Providing Protection - Access to early legal advice for asylum seekers” - <http://www.asylumaid.org.uk/wp-content/uploads/2014/08/Providing-Protection.pdf>

stated there were concerns that clients were not being provided the right information at the right time. Word of mouth recommendations and Internet search engines were common tools used to find immigration advice, but clients had limited understanding to inform their choice. Research commissioned by the Bar Standards Board and conducted by IFF Research on the experiences of immigration clients found a lot of misinformation circulated within communities and that this put those needing immigration support at risk of exploitation and being exposed to poor quality advice and services¹². The “Trusting the Dice” report by Toynbee Hall found clients frequently have very little accurate information on which to base choice, often paying over the odds for advice which is sometimes either futile or inaccurate. The “Trusting the Dice” report by Toynbee Hall found that cost is a significant barrier to accessing the advice and there was vague and/or inaccurate information about fees.

94. Our desk research found a large amount of information available online for people who are seeking immigration legal advice. There were some organisations that signposted legal providers and the legal profession as suppliers of immigration advice, however it was apparent that information about barristers was either missing or minimal. As well as clients receiving information from communities and through internet searches, there are online discussion forums where information and advice is being circulated.

Limited Knowledge

95. The Solicitors Regulatory Authority’s report on the “Quality of Legal Services for Asylum Seekers” found asylum clients struggle to understand the difference between provider types and regulatory protections¹³. Our 2013 research stated consumer organisations felt that there was a general lack of understanding among clients about their legal circumstances, the stages of an immigration case and particularly at what stage representation may be required. The immigration clients interviewed were not entirely sure of the differences between a barrister and a solicitor even after having been through the process of seeking immigration advice/services.

Quality of immigration advice

96. Our desk research confirmed that clients often associate the quality of immigration advice with cost, which is highlighted in the “Trusting the Dice” report by Toynbee Hall. The BSB’s Immigration Roundtable in 2013 highlighted that immigration, asylum and nationality work are very complicated and challenging areas of the law. It was not uncommon for less experienced advisors to get out of their depth. The IFF research commissioned by the BSB in 2013 reported positive views about the advice clients received from their barrister. However, several clients felt the amount of advice they had received was minimal and that they would have appreciated more detail or explanation. Consumer organisations also stated in the IFF research that clients had a tendency to judge the quality of advice received purely on the basis of the outcome

¹² “Immigration Client Experience Research” – IFF:
https://www.barstandardsboard.org.uk/media/1525842/iff_report_immigration_client_experience_research_final.pdf

¹³ “Quality of legal services for asylum seekers” - <https://www.sra.org.uk/sra/how-we-work/reports/asylum-report.page#findings>

achieved in their case. A report on “Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers” explains that although there is regulation of asylum advice, unscrupulous advisers continue to operate. Reductions in legal aid have made it more difficult to deliver good quality advice. The report states that the damage done by poor advice early on is, in some cases, irreparable¹⁴.

Standards of service

97. The IFF Research commissioned by the BSB in 2013 stated some individuals felt they had a lack of contact with their barrister and the barrister had not made much effort to find out about the details of their case. There were no protocols for providing updates to the client and many clients felt that having regular updates was an important part of the service and they had to chase the barrister for updates. A lack of support from the barrister was also reported in the research, with some barristers only talking to the client when they requested money. Asylum Aid’s report entitled “Rethinking Asylum Legal Representation” outlines their concern of about the dearth of competent and trustworthy legal representation across the country¹⁵.

Risk and Themes

98. Once the evidence gathering stage had been completed we progressed onto analysing the evidence collected. We identified key themes and risks and this was the final part of the “problem definition” stage of the Policy Development Framework.

99. We identified common issues across each report and assessed the frequency and severity of the issues facing immigration clients seeking legal advice and barristers supplying immigration legal advice and services. The issues that were identified were then grouped into themes using the immigration client journey. The three themes are:

- Access to justice;
- Poorly informed consumers; and
- Quality of advice and standards of service.

100. The BSB Risk Index is a catalogue of risks that can be a barrier to delivering our regulatory objectives. The themes and evidence were assessed against the BSB’s Risk Framework and Index, to ensure we understood how the issues we had identified could impact on the market for barristers’ services.

¹⁴ “Models of immigration advice, advocacy and representation for destitute migrants, focusing on refused asylum seekers” - <http://www.naccomm.org.uk/wp-content/uploads/2015/09/models-of-immigration-advice1.pdf>

¹⁵ “Rethinking Asylum Legal Representation” - http://www.asylumaid.org.uk/wp-content/uploads/2013/02/AsylumAid_report_V3.pdf

101. The key risks that were identified across the three themes are:

- Failure to meet consumer demand;
- Poor public perception of legal services;
- Excessive barriers to supply of legal services;
- Lack of cultural competence and people skills;
- Lack of public awareness of legal rights and duties;
- Lack of accessible, quality market information to inform consumer choice;
- Affordability or value concerns;
- Failure to give clear information about fees;
- Inadequate training and preparation for practice;
- Supply chain risks; and
- Failure to provide a proper standard of service.

102. The three themes were issues the BSB identified in the light of the evidence gathered. The following is a summary of the themes and the risks associated. The risks identified as part of this review cover the whole of an immigration client's journey through the legal process, not just their interaction with a barrister. It is important to note that the themes cannot be viewed in isolation and should be considered altogether in the context of the wider immigration legal services market.

Access to Justice

103. This theme is about the barriers the public face to accessing legal help that they need. These barriers include the following:

- The increased demand for immigration advice, which is outstripping supply of advice by barristers.
- The large amount of non-legal support and help a client often requires, with many support services closing and voluntary organisations that previously supplied access to advice or referral to a barrister or solicitor no longer existing.
- Delays to immigration legal advice and services mean that the system has been blocked, often by process delays and clients who are prompted at the "last minute" to access legal advice for example by enforcement action. Appeal routes have been reduced and there is no automatic right to appeal. As a result judicial review is being increasingly used and this is a more complex system, which contributes to further delays.
- Immigration legal advice can be labour intensive work for public access barristers, particularly sole practitioners, as they often do not have capacity to deal with the administration required. Public access barristers have often been unwilling to advertise their services because they have enough work.
- There has been a poor spread of immigration advice and barristers across the country as well as more cases being reallocated to tribunals in other locations outside London. There has also been a growing market overseas from people seeking legal help once they have left the UK.

- There has been a reduction in legal aid funding for immigration clients, meaning clients have to pay for legal services. There has been a lack of clarity around costs and evidence of overcharging. Clients have had to adapt to a lack of legal aid by self-funding or self-representation for all, or part, of their case.
- The majority of non-professional clients seeking immigration advice will be vulnerable in some way; this may be due to languages, financial or cultural barriers. Clients may have been exploited before reaching a barrister, sometimes due to poor levels of client care. There was confusion about who is responsible for assessing and managing vulnerable clients and whether a consistent approach was being used.

Risks associated with the access to justice theme

104. Key risks have been identified in the BSB Risk Index in relation to this theme. The access to justice theme particularly relates to our regulatory objectives of protecting and promoting the public interest, the interests of consumers and improving access to justice.

105. The key regulatory risks identified in this theme were:

- Affordability or value concerns and failure to give clear information about fees

This theme identified the reduction in legal aid for immigration cases and the risk that legal services were unaffordable, were perceived to be unaffordable or perceived not to represent sufficient value for money. As well as the risk that clients may not be given the correct or clear information about fees.

- Failure to meet consumer demand

This theme has identified clients were often unable to access the services they require, many first points of contact were unavailable due to closures and legal aid no longer funds access to support services. This highlights that the legal services market might not understand or adequately provide for consumer needs. Clients who are unable to access legal advice might be forced to represent themselves or access the unregulated market and be susceptible to poor advice and services.

- Poor public perception of legal services

This theme raised concerns about the inconsistent approaches taken to client care across the legal providers, which could affect public confidence. If access to profession becomes increasingly limited this could also significantly impact the profile of the profession.

Poorly Informed Consumers

106. This theme is about immigration clients and potential clients who lack proper understanding of how to identify the type of advice or provider they need, choose which provider to use, follow progress of their legal issue once they have chosen a

provider, or seek redress when things go wrong.

107. The causes of this theme were identified as:

- Limited understanding and knowledge of the law and the legal services market is widespread among the general public, and this can be a particular problem for immigration clients; immigration clients often have multiple vulnerabilities that are exacerbated by limited understanding, leading to substantial disadvantage in the market.
- Immigration clients can often access or be provided with inaccurate information either due to multiplicity of information sources, unintentionally due to the complex and changeable nature of immigration law, or deliberately on the part of unscrupulous providers.
- Limited understanding contributes to high levels of support being required when engaging with the legal system (which providers are often poorly equipped to provide), this harms access to an appropriate service, and can contribute to additional burdens on legal services in terms of time and cost.

Risks associated with the poorly informed consumers theme

108. This theme significantly impacts on the regulatory objectives of improving access to justice, protecting and promoting the interests of consumers and increasing public understanding of citizens' legal rights and duties.

109. Key risks have been identified in the BSB Risk Index in relation to this theme. These were:

- Lack of public awareness of legal rights and duties

This theme raised the risk that consumers have limited understanding of the legal system and therefore could be more susceptible to poor advice and services. Focusing on this risk could address the disadvantages faced by immigration clients in accessing legal services, result in better decision making both from clients and courts, reduce the time taken to obtain fair outcomes, and reduce appeals and time pressures on courts and providers.

- Lack of accessible, quality market information to inform consumer choice

This theme highlighted that consumers do not have timely access to reliable information by which to identify their legal needs and choose an appropriate provider to meet those needs. If a consumer does not have access to information they need they may be exploited by unscrupulous providers, they may face delays in their case and potentially have to appeal a decision.

Quality of Advice and Standards of Service

110. This theme is about the standards of immigration advice and services being provided by practitioners. Possible causes of poor standards of service and quality of advice have been identified as:

- The pace of change in immigration law over recent years and changes to Home Office rules on a regular basis, presented considerable challenges to barristers in keeping up to date with the law, which might impact on the quality of advice and service being provided.
- Barristers were increasingly under pressure to do more work for less money, or even for free. This puts at risk the quality of services delivered by barristers, as well as the viability of their immigration practices. Cuts to legal aid available for immigration cases have meant that those who provide immigration advice are often over-worked and under-resourced.
- The service provided by barristers is, in many cases, the last link in the supply chain. Poor standards and advice is often given at the outset of a case by an intermediary, which may have an effect on the ability to provide a competent service. As a result the client may not receive appropriate client care in the supply chain before reaching the barrister and it may be too late for the barrister to rectify.
- Clients often judge the quality of legal advice they received by the cost and perceive a negative result in their case as receiving poor quality advice.
- Regulators are not always aware when incompetent or poor service has been provided; there are low numbers of complaints in this area and this means that issues are not being detected or resolved.

Risks associated with quality of advice and standards of service theme

111. This theme significantly impacts on the regulatory objectives of protecting and promoting the public interest, the interests of consumers, improving access to justice and promoting and maintaining adherence to the professional principles.

112. Key risks have been identified in the BSB Risk Index in relation to this theme. These are:

- Inadequate training and preparation for practice

Varying standards of advice and services could have serious consequences for the client. It might be caused by insufficient training to prepare barristers to be competent and delivering the services required of them. If this issue is left unaddressed then poor practices may continue to exist.

- Lack of cultural competence and people skills

The evidence we collected highlighted that barristers or other individuals engaged in the provision of services might demonstrate lack of social and cultural insight, interpersonal communication skills or empathy.

- Failure to provide a proper standard of service;

The evidence collected highlighted some of the possible causes of a barrister's failure to provide a proper standard of client care and quality of work to clients.

- Supply chain risks

In our research with barristers and consumer organisations concerns were stated about the performance and conduct of other professional providers instructing barristers.

Barristers and the Immigration Legal Services Market

113. Barristers represent a small proportion of the supply of immigration services. Around 5-6% of the Bar (approx. 700 practitioners) listed immigration as a practice area during the Authorisation to Practise process, but this is not necessarily their main practice area¹⁶. There are currently 5,388 barristers registered to undertake public access work and 582 of those barristers listed immigration as one of their practice areas (11% of public access barristers).

Total number of practising barristers	15,915
Barristers practising immigration	Approx 700
Public access barristers	5,388
Public access barristers practising immigration	582

114. Research commissioned by the BSB and LSB into the current provision of legal services through public access barristers found that one in ten respondents practised in immigration. Of those one in ten, 78.9% of immigration public access practitioners had accepted instructions over the past 12 months, which was a high acceptance percentage compared to other areas of the law¹⁷.

115. Our research found that immigration advice and services is often needed with other legal services. Other legal issues may be tied up with immigration or be required on top of immigration advice, most notably family law and housing law.

116. Although a relatively small proportion of barristers supply immigration advice and services, the evidence we found covers a range of issues that are not limited to immigration. The majority of the recommendations at paragraph 126 will help to address similar problems in other areas of the law.

117. This review has captured evidence and identified risks throughout the immigration legal process which have the potential to impact the services provided by a barrister, who is often the last link in the supply chain. The themes we have identified can also

¹⁶ Practice area data is self-submitted by Barristers as part of their application to renew their practising certificate and is not quality assured by the BSB. Barristers can list as many practice areas as they wish, and it is common for barristers to list a number of different practice areas – as a result the total listing any given practice area may not represent only barristers who specialise or spend the majority of their time on a particular area of work, but also barristers who do a certain amount of this work alongside other areas which take up more of their time.

¹⁷ "Research into the Public Access Scheme" <https://www.barstandardsboard.org.uk/media/1754315/public-access-final-report.pdf>

impact the quality of interaction a client has with a barrister.

118. A barrister's engagement in an immigration case is often at a crucial point in the legal process (eg where potentially final decisions are being made on a client's case). Although barristers working in this area are a relatively small proportion of the overall market, poor practices by barristers could significantly impact a client, particularly vulnerable clients.

Option development

119. Once the risks and three themes had been identified we progressed to the "option development" stage. This is the second stage of the Policy Development Framework.
120. In order to think about this stage of the project more creatively and collaboratively we held an internal workshop, to which all BSB staff were invited. 40 people voluntarily attended the session. At the workshop, roleplay was used to illustrate the relationship between an immigration lay client and barrister, and the various challenges such a client might face. It was made clear to staff that the roleplay was not intended to cover all the lived experiences of immigration clients, but it was intended to provide a snapshot of the issues and risks that we had encountered through our research. BSB staff were invited to discuss the problems that had been identified and encouraged to be creative in suggesting potential policy solutions.
121. Following the all staff workshop, we collated all the options that were suggested for each of the themes. There were between 20-40 potential options for each theme, they were refined by considering the following:
 - Whether there was enough evidence to take the option forward;
 - The level of required regulatory intervention and proportionality / feasibility of the option;
 - The possible benefits and adverse consequences; and
 - Whether it addressed the problems we had defined for each theme.
122. The list of options were narrowed down to a list of thirteen options, these were then explored and the following was considered:
 - The practicalities of the option and what the BSB would need to do;
 - The resources required for the option;
 - Whether the option required input from external organisations;
 - The projected timescales for implementing the option; and
 - The advantages and disadvantages of the option.
123. The options were then presented to the Reference Group for consideration along with specific questions for each of the options. The options were then refined to seven options based on the feedback from the Reference Group. These options were then checked with the Project Board.

124. One of the final stages in the option development process was a workshop with the BSB Board in April 2016, which provided an opportunity for members to feed in their views on each of the options. At the workshop the Board was invited to consider the BSB's role in undertaking the options.
125. Our approach to option development has ensured that we articulated the risks accurately in relation to immigration advice and services. We have tested each of the potential options to ensure they are addressing the risks and problems we had found through the evidence we collected. We consulted a large number of staff and key stakeholders to shape and refine options.

Recommendations

126. In this section we draw on the evidence produced by this review and the risks identified to present recommendations for improving the experience for consumers accessing and barristers supplying immigration legal advice and services.
127. It was clear from the feedback on the options from each of the stakeholders and the evidence we collected that any recommendations should not pose a disproportionate regulatory burden on immigration practitioners, because this could impact supply in the market.
128. The risks identified as part of this review cover the whole of an immigration client's journey through the legal process, not just their interaction with a barrister. Therefore it will be important for the BSB to work other regulators and organisations where appropriate.
129. The recommendations are focused on how the BSB will address the risks we have identified as part of this review and what the outcome of the recommendation would be. We have focused on projects in the BSB that are currently on-going and we can expand on, in order to start embedding the learning from this project as soon as possible. We have outlined if recommendations would require a new programme of work.

Risk 1 and 2: Affordability or value concerns and failure to give clear information about fees

130. There is a requirement in the BSB Handbook that all barristers when accepting instructions must confirm in writing the terms and/or basis on which they will be acting, including the basis of charging¹⁸. The Office of the Immigration Services Commissioner requires an organisation that charges for its immigration advice or services to charge a reasonable fee that directly relates to the work done. The organisation must not charge a fee for work that is unnecessary or unauthorised by the client¹⁹. The Solicitors Regulation Authority requires that clients receive the best

¹⁸ BSB Handbook, Rule C22 -

https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf

¹⁹ OISC Code of Standards - <https://www.gov.uk/government/publications/oisc-code-of-standards-commissioners-rules-2012>

possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter. This information must be provided in a clear and accessible form that is appropriate to the needs and circumstances of the client²⁰.

131. Although there are regulations currently in place about fees, serious concerns have been expressed by barristers about providers of immigration legal services attracting clients with an initially low fee offer and then raising the fee and there is evidence of “marking up” fees²¹. This means that genuine providers are subject to fee pressures to remain competitive. This creates difficulty for barristers to stay in the immigration market as well as confusion for clients who may perceive immigration legal services by certain providers as wholly unaffordable.
132. The BSB has committed to conducting a review of client care letters with other legal services regulators through the Regulators Forum to ensure they are fit for purpose.
133. Therefore it is recommended that the findings from this review are included in the review of client care letters to ensure clarity of fees is included. This would be to ensure that the following risks are minimised:
 - The “marking up” of barrister fees- where an intermediary charges the client more money than the barrister requested.
 - Confusion about subsequent or additional costs – if a provider originally charges the client less money to appear attractive and increases the fees.
 - Unexpected costs to the client – for example the client is still charged if their hearing date changes.
 - Confusion about what a barrister can and cannot provide depending on what the client can afford – due to the reduction in legal aid, many clients cannot afford to meet their barrister as often.
 - Confusion about the outcome of case – a client who pays for immigration legal services may assume that their case will be successful, which is not necessarily the case.
 - Confusion about unbundling of services and what constitutes a fair fee.
134. The BSB currently has consumer guidance on its website and one of the sections covers how a consumer can pay a barrister. It is recommended that this guidance is expanded to cover questions clients could consider asking their barrister about fees. In order to do this we will need to continue our engagement with consumer organisations to develop the key questions that consumers want to know about fees. The BSB’s consumer guidance is available online but dissemination to consumer organisations still needs to be planned. Therefore this will be an excellent opportunity to work with consumer organisations to use the guidance with their clients and help to develop this further.

²⁰ SRA Code of Conduct - <https://www.sra.org.uk/solicitors/handbook/code/content.page>

²¹ Supervision Fieldwork Report 2015

135. The outcome of this recommendation would contribute to empowering consumers to participate in the legal process and it would enable consumers to receive greater price transparency.
136. These recommendations would contribute to on-going work in the BSB and further development of existing materials for consumers.

Risk 3 and 4: Failure to meet consumer demand and excessive barriers to supply of legal services

137. There are many organisations that are often the first contact for an immigration client seeking advice. Citizens Advice or local community organisations signpost and support clients to access legal advice. In order for consumer organisations to meet consumer demand they would need to be aware of the role of the Bar in the provision of legal services.
138. The BSB has already begun developing relationships with consumer and immigration-focused organisations. The Reference Group stated that organisations would benefit from understanding more about different legal providers and the process of accessing a barrister directly. It is recommended that we continue and expand our engagement with consumer and immigration frontline organisations that provide assistance to those seeking legal advice. We could provide information on the duties and requirements that barristers must meet. This recommendation will allow the BSB to have a more meaningful dialogue with consumer organisation and build our insight into different types of organisations that signpost and support consumers seeking legal advice.
139. This recommendation would build on the existing engagement the BSB has with consumer and immigration- focused organisations. It will contribute to achieving the BSB's first strategic aim in its current strategic plan, by helping the public better to understand the fast-changing and complex market for legal services, so that consumers of those services can make informed choices and have better understanding of their legal rights and duties as citizens. This recommendation would apply only to immigration-focussed organisations at first because they are the organisations that are currently engaged in this project.

Risk 5 and 6: Poor public perception of legal services and lack of cultural competence and people skills

140. The BSB requires all barristers to ensure the interests of vulnerable clients are taken into account and their needs are met. This includes the duty for barristers to consider their ability to work with vulnerable clients before accepting instructions in a case and the guidance to avoid any unnecessary distress to the client²².
141. In the Supervision visits the BSB conducted in 2015, barristers stated that it was in both the barrister and clients interest to identify vulnerability because it was often central to the legal case. Barristers were clear that they would welcome guidance or

²² BSB Handbook, Outcome 14 - https://www.barstandardsboard.org.uk/media/1731225/bsb_handbook_sept_2015.pdf

training on client vulnerability in order to meet consumers' needs.

142. The Legal Services Consumer Panel in its guidance on responding and recognising consumer vulnerability state it is the responsibility of lawyers to adjust their practices and enable vulnerable consumers to use legal services effectively²³. They have created guidance for regulators to use that includes concepts of vulnerability and information on vulnerability in the legal services market. It is recommended that the BSB build on this guidance in conjunction with key consumer organisations to develop a framework that all barristers can use to assess and manage client vulnerability. It would not be immigration specific, although could contain information relevant to different practice areas. The reason being that vulnerable clients exist in many areas of the law and as previously mentioned immigration advice is increasingly being sought in conjunction with other legal advice (eg family and housing). This would be a voluntary framework that barristers could use to help them achieve the regulatory outcome of ensuring the interests of vulnerable clients are considered and their needs are met. It would include:

- Literature on vulnerability;
- Questions the barrister could ask the client;
- Support services the barrister can signpost the client to; and
- Good practice examples.

"It was apparent that all barristers we spoke to were acutely aware of the vulnerabilities of their clients and could articulate this, often passionately. However there is no specific training for barristers on vulnerability and a number of barristers said this would be helpful." (Supervision Report 2015)

143. The BSB is currently implementing a range of recommendations following the review into youth proceedings advocacy²⁴. One of the recommendations taken forward is about expanding training and learning opportunities to advocates on vulnerability. It is recommended that the evidence collected as part of this review and information gathered whilst developing the vulnerability framework is contributed to the development of training on vulnerability for advocates.

144. The recommendation to create a vulnerability framework would be a new area of work for the BSB but it would build on existing relationships with consumer organisations. The recommendation to contribute to the current youth proceedings advocacy project would be supporting an on-going project at the BSB. This recommendation would contribute to the BSB's strategic programme of ensuring that the perspective of the

²³ "Recognising and responding to consumer vulnerability"

http://www.legalservicesconsumerpanel.org.uk/publications/research_and_reports/documents/Guide%20to%20consumer%20vulnerability%202014%20final.pdf

²⁴ "The Youth Proceedings Advocacy Review: Final Report"

<https://www.barstandardsboard.org.uk/media/1712097/yparfinalreportfinal.pdf>

consumer (and especially the most vulnerable) is more central in regulatory policy making and actions.

Risk 7 and 8: Lack of public awareness of legal rights and duties and failure to provide a proper standard of service;

145. Since 2013, when immigration services were first reviewed by the BSB, the public's awareness of legal services and their rights has been a concern. Immigration clients are often unable to judge the quality of the services they receive, therefore they will be unaware if they should seek redress and what the options for redress are.
146. The BSB Handbook requires all barristers to provide a competent standard of work and service to each client. In our Supervision visits barristers raised a concern that clients might not be able to establish whether they are likely to receive, or indeed have received "good quality" service, as there is no transparent way for them to ascertain this.
147. It is recommended that the BSB expand the current consumer guidance to include case studies of what "good" and "poor" service is. This would be specifically for the benefit of immigration consumers to help them to understand what to expect and their legal rights if they do receive "poor" service. Our research suggests the difficulty in assessing the quality of service is a particular concern for immigration clients. In the Roundtable Report 2015, it states that confusing immigration laws act as a barrier to good quality service. It also highlighted that the reduction in legal aid for immigration services has had an impact on a client finding "good" quality services. The geographical issues in accessing immigration advice and services also create another barrier to "good" quality services. Individuals are forced to use whatever sources of information, advice and services are available locally regardless of their quality.
148. A lot of the evidence we have collected as part of this review could be used in the guidance. We would also need to gather further information from the immigration-focused organisations we currently engage with, the Legal Ombudsman, immigration barristers and other regulators of immigration legal advice and services.
149. In the BSB, the Supervision and the Professional Conduct departments will share and check practices.

Examples of good practice

"The barrister asks the lay client to provide the solicitor with feedback about their barristers, in the hope that the client will be more likely to give an honest assessment to the solicitor" (Supervision Report 2015)

"A number of barristers carry a copy of chambers' client information leaflet with them to hand out to lay clients to ensure that the client understands the process and what to expect" (Supervision Report 2015)

150. The recommendation to expand the existing consumer guidance would build on on-going work in the BSB to raise awareness of the public of its legal rights and duties. However it is a new control for the BSB and new content on practices provided by immigration barristers and consumer organisations would need to be created and it would require engagement with key stakeholders to ensure it accurately covered a range of “good” and “poor” practices.
151. By having contributions from both consumers and barristers, these case studies can reflect “good” and “poor” practice in how the two sides communicate with each other. This will help practising barristers become more competent in how to interact with their clients and lead to better overall service to the client.

Risk 9: Lack of accessible, quality market information to inform consumer choice

152. In 2016, the BSB launched its consumer guidance on the website. It helps all past, current and potential users of legal services to understand what a barrister is, what they do and how they may be able to help. It was stressed in our research that consumers should have timely access to reliable information by which to identify their legal needs and choose an appropriate provider to meet those needs.
153. It is recommended that the project team responsible for the online consumer guidance creates a plan to disseminate it to appropriate consumer organisations. We will need to work closely with the consumer organisations currently engaged to formulate dissemination routes that we will promote the guidance to.
154. This recommendation would contribute to an existing project at the BSB and it would draw on the expertise of consumer organisations already engaged.
155. The outcome of this recommendation would be the consumer guidance disseminated to a diverse range of organisations and organisations feedback that the guidance is useful in their role in supporting consumers navigating the legal process.

Risk 10: Inadequate training and preparation for practice

156. The BSB is currently undertaking a programme for change in education and training to ensure it is consistent, innovative and flexible. This programme consists of the introduction of a professional statement, which describes the knowledge, skills and attributes that all barristers should have on ‘day one’ of practice. A new flexible CPD regime has also been introduced for barristers on the established practitioners programme. There is also another work stream reviewing the arrangements and content for the vocational stages of training to be a barrister (currently the Bar Professional Training Course).
157. It has been identified that barristers may lack the training and preparation to provide a competent standard of service to their clients, particularly those who are vulnerable. It is recommended that the evidence gathered as part of this review should inform the programme for Future Bar training. This could include the following:

- Ensure that all barristers, on qualification, have an adequate awareness of the issues associated with client vulnerability and are able to apply them where necessary. They must also understand their limitations and further development needs, particularly if entering a new area of practice such as immigration; and
- Consider how guidance as part of the new CPD regime can assist a barrister to identify how client vulnerability learning should feature when planning their training needs.

158. The BSB is currently undertaking a review into the public and licensed access rules. The review includes assessing the effectiveness of the public access training and the guidance for lay clients. It is recommended that the evidence gathered in this review, particularly about public access work and intermediaries should feed into the public access and licensed access review.

159. These recommendations would contribute to existing projects at the BSB. It would be a constructive way of sharing the knowledge gathered from this review and using the evidence to help shape current programmes of work.

Risk 11: Supply chain risks

160. This review identified that the barrister can often be the last in the supply chain for immigration legal services, which means services provided early can impact the barristers' ability to provide a competent service. As part of this review we have worked closely with other regulators of immigration services to identify key issues that can impact the supply chain from the intermediary to the barrister.

161. It is recommended that the BSB continue to work with the immigration advice and services regulators. Joint guidance, which outlines responsibilities when instructing a barrister, could be created to support both the professional and lay clients to inform and manage their expectations. This review found the key areas that cause problems in the supply chain for immigration services; these include communication of fees, late delivery of paperwork, poor quality of files and assessment and management of vulnerability.

Examples of existing practices

"The majority of barristers we spoke to said that their clients will almost always have been given poor advice or exploited before reaching them" (Supervision Report 2015)

"There were concerns raised about the level of client care provided by solicitors, in preparing the client for the court process" (Supervision Report 2015)

162. The joint guidance could be beneficial for barristers in different practice areas; the issues identified between the intermediary and the barrister were not immigration specific and are likely to apply to range of practices. The outcome for this recommendation would be clients understanding the transition from their intermediary to a barrister. In addition to barristers and intermediaries setting and managing

expectations with each other and for the client.

163. The recommendation for this risk would continue our existing engagement with the immigration services regulators. The creation of joint guidance would be a new area of work for the BSB and it would contribute to the BSB's strategic direction of "considering with other regulators what common approaches might usefully be adopted"²⁵.

²⁵ BSB Strategic Plan 2016-19