

List of Defaulting Solicitors – Consideration of the Regulatory Objectives

	STATUS QUO	REMOVING THE LIST OF DEFAULTING SOLICITORS
Protecting and promoting the public interest	<ul style="list-style-type: none"> • It is in the public interest that barristers are paid for their work and so continue to operate in the profession. Debate to be had about whether the list actually meets the policy objectives. In any case, rC30.9.b allows barristers to refuse to act if, having requested payment in advance, that payment is not made. • An exception to the cab rank rule which enables barristers to refuse instructions altogether where they believe the solicitor is a credit risk, may be unfair on the lay client, and unnecessary for barristers, if the lay client is willing and able to pay fees in advance. Removing the reference to the list and broadening the exception may allow barristers to reject instructions on the basis of unacceptable credit risk of the solicitor, even where a lay client would be willing to pay in advance. 	<ul style="list-style-type: none"> • It is in the public interest that barristers are paid for their work and so continue to operate in the profession. The current list of defaulting solicitors is an incomplete guide to credit risk. • May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk. Guidance will be key – if too vague, may undermine the CRR. • The concept of “unacceptable” credit risk is uncertain and might change from case to case, and even from barrister to barrister. The importation of the words “reasonable” and “unacceptable” carry the potential for causing more difficulty than assistance. These words are open for interpretation and challenge, requiring barristers to provide evidence, which could cause great difficulty in practice. • Public interest in ensuring proper separation between regulatory and representative functions.
Supporting the constitutional principles of the rule of law	<ul style="list-style-type: none"> • Retaining the rule in its current form provides certainty if it is justified in terms of the regulatory objectives. 	<ul style="list-style-type: none"> • Guidance would seek to ensure clarity in the event that the rule changed.
Improving access to justice	<ul style="list-style-type: none"> • Limiting the situations where a barrister can refuse instructions under the cab rank rule ensures that more clients are able to obtain the services of a barrister. 	<ul style="list-style-type: none"> • May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk if the rule and guidance are drafted too loosely.

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		<ul style="list-style-type: none"> • A barrister could inappropriately determine that a solicitor was an unacceptable credit risk and refuse work from them, which could affect the lay client's ability to access the services of a barrister.
Protecting and promoting the interests of consumers	<ul style="list-style-type: none"> • Retaining reference to the list makes it clear on what basis a barrister could refuse instructions from a consumer's solicitor. A consumer could be sure that if their solicitor was not on the list, their instructions would be accepted assuming no other exemptions apply. • An exception to the cab rank rule which enables barristers to refuse instructions altogether where they believe the solicitor is a credit risk, may be unfair on the lay client, and unnecessary for barristers, if the lay client is willing and able to pay fees in advance. Removing the reference to the list and broadening the exception would allow barristers to reject instructions on the basis of unacceptable credit risk of the solicitor, even where a lay client would be willing to pay in advance. 	<ul style="list-style-type: none"> • May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk if drafting of rule/guidance too broad. • Introduces an element of uncertainty as to whether instructions will be accepted from a solicitor. • The concept of "unacceptable" credit risk is uncertain and might change from case to case, and even from barrister to barrister. The importation of the words "reasonable" and "unacceptable" carry the potential for causing more difficulty than assistance. These words are open for interpretation and challenge, requiring barristers to provide evidence, which could cause great difficulty in practice.
Promoting competition in the provision of the services	<ul style="list-style-type: none"> • If processes not fair and transparent, there could be unfair reputational consequences for a solicitor that could harm their competitive position. 	<ul style="list-style-type: none"> • A barrister could inappropriately determine that a solicitor was an unacceptable credit risk and refuse work from them, which could affect the solicitor's ability to compete in the market.
Encouraging an independent, strong, diverse and effective legal profession	<ul style="list-style-type: none"> • May have detrimental impact if list not fit for purpose and doesn't act as a suitable proxy for the policy objective of avoiding exposing the profession to unreasonable credit risks. 	<ul style="list-style-type: none"> • Broadening the circumstances in which a barrister could reject work on the basis of credit risk could give barristers more certainty that they will be paid for the work that they undertake. Surety of payment allows greater access to the Bar for those that may otherwise not be able to withstand the financial pressure.

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Increasing public understanding of the citizen's legal rights and duties	<ul style="list-style-type: none"> • Transparency of having one single list 	<ul style="list-style-type: none"> • The concept of "unacceptable" credit risk is uncertain and might change from case to case, and even from barrister to barrister. The importation of the words "reasonable" and "unacceptable" carry the potential for causing more difficulty than assistance. These words are open for interpretation and challenge, requiring barristers to provide evidence, which could cause great difficulty in practice.
Promoting and maintaining adherence to the professional principles	<ul style="list-style-type: none"> • The status quo is well understood and difficult for barristers to evade. It ensures they are acting with integrity and upholding the intent of the rule (assuming the list achieves the intended policy objectives). 	<ul style="list-style-type: none"> • May allow barristers to evade their obligations under the cab rank rule more easily by claiming unacceptable credit risk, if rules and guidance drafted too loosely.