

Annex D: Entity supervision scenario planning

This annex includes some scenarios which illustrate how entity supervision will operate. The scenarios demonstrate the different supervision processes that will be involved in supervision and how they will interrelate.

Entity A

Entity A comprises 20 barristers from an established family chambers and 5 others from different chambers. It will also have 10 solicitor members who were previously in private practice in small high street practices in London. Its business plan focuses on publicly funded family law. As the entity will undertake litigation it proposes to move into new premises in central London with facilities for conferences with clients.

Date	Process and actions	Person(s) responsible
September - November 2014	<p>Authorisation</p> <ul style="list-style-type: none"> • In the course of considering the application the Authorisation Manager reviews the business plan. They identify an increased likelihood of the new entity encountering financial difficulties, due to the prospect of future funding cuts in the area in which the entity intends to practise and the high initial costs associated with leasing new premises. • The entity is asked for further details on how it will mitigate financial risks and it provides assurances that it will undertake regular financial reviews to assess performance against its forecasts. It also provides a comprehensive continuity plan detailing what steps it would take to ensure that clients are protected if the entity does encounter financial difficulties. • The Authorisation Manager is satisfied that the measures outlined should help to mitigate the risk and protect clients and therefore the entity is authorized. • However, the Authorisation Manager believes that there remains an increased likelihood of risks relating to financial management materializing and this is noted on the entity's record. It is also mentioned in the Authorisation Manager's handover notes to the Supervision Team. • The entity is also assessed as high impact due to its size and the fact that it will undertake direct access family work and litigation. • As a result of the increased likelihood and impact the Authorisation Manager proposes that the entity should be high priority for supervision. 	<ul style="list-style-type: none"> • Authorisation Manager

<p>November 2014</p>	<p>Entry to supervision: Review of initial risk assessment and contact with entity</p> <ul style="list-style-type: none"> • The Supervision Manager is alerted to the fact that a new entity has been approved and reviews the profile on the Supervision Database. They agree that the entity should be high priority for supervision and decides that a visit should be arranged in the next 3 months to review how the entity is managing financial risks. • The Supervision Manager makes contact with the HOLP and HOFA at the new entity and outlines the supervision scheme and what will be required of the entity. They explain that the authorization process identified an increased likelihood of financial risks materializing and that the Supervision Team wants to work with the HOFA to ensure that this risks is managed effectively. It is agreed that a supervisor (or the Supervision Manager) will visit the entity within 3 months to discuss how financial risks, and others, are being managed post authorisation. 	<ul style="list-style-type: none"> • Supervision Manager
<p>February 2015</p>	<p>Entity visit</p> <ul style="list-style-type: none"> • A supervisor contacts the chambers and arranges a visit. The entity is asked to provide information in advance of the meeting. • In advance of the meeting the HOFA sends a revised and more comprehensive business plan, which includes assessment of risks and opportunities, and basis of assumptions and proof of LAA contracts that will generate income. • At the meeting, the entity provides evidence of review and consideration of the entity's accounts through its Finance Committee. It also explains that the Finance Committee has responsibility for reviewing the continuity plan and that there is now a member responsible for different areas. The supervisor is shown the entity's case management system, which it claims will assist with ensuring that, in the event of difficulties, deadlines and papers are easily located and could be transferred. • The supervisor has sufficient financial expertise to conclude that the material provided is reliable and the entity appears to be effectively managing the risk of financial difficulties and the impact that this could 	<ul style="list-style-type: none"> • Supervisor / Supervision Manager

	<p>have on clients. <i>[Note: if the supervisor is not confident to make this judgment they will be able to seek advice from the Supervision Team's Expert Panel, which will include additional accounting expertise].</i></p> <ul style="list-style-type: none"> • The entity visit is not confined to financial risks and other areas are discussed through the visit. The supervisor discovers that the entity is undertaking some privately paying work that comes under the Money Laundering Regulations but it does not have an MLR Officer, its staff are not trained in identifying cases that engage the regulations or in undertaking due diligence checks. • The supervisor writes up a report of the visit and sends it to the HOLP and HOFA at the entity. The report explains that the supervisor believes that the previously identified financial risks are being managed effectively but highlights the concerns about the entity's compliance with the Money Laundering Regulations. 	
<p>March 2015</p>	<p>Addressing non-compliance</p> <ul style="list-style-type: none"> • The report on the entity visit asked the entity to address the concerns around the Money Laundering Regulations within 4 weeks. It directed that as a minimum the entity needs to provide evidence that relevant members of staff have been trained and that effective policies and procedures have been developed. It also requests an explanation of why this issue was not identified by chambers and what measures they have put in place to ensure that future risks are identified proactively. • The HOFA responds within 3 weeks, providing evidence of training undertaken by three members of staff. One of its members will also give internal training to other members of the entity. It also provides a policy which sets out robust procedures for identifying cases within the MLRs and undertaking the required due diligence checks. It will record all checks and report any irregularities. • The HOFA also explains that the entity has discussed this issue at its Management Committee. The entity was too focused on managing existing risks and was not searching for new risks. It has recorded this on its lessons learned log, which is reviewed and updated at each meeting. It has decided 	<ul style="list-style-type: none"> • Supervisor / Supervision Manager

	<p>that future Management Committee meetings will include a standing item on reviewing the risk register and identifying new or emerging risks.</p> <ul style="list-style-type: none"> The supervisor assesses the information provided and is satisfied that it in relation to the Money Laundering Regulations it reduces the risk to a tolerable level. They inform the HOLP and HOFA of their assessment. They also emphasise the importance of proactive risk management by the entity and explain that future supervision activity will assess whether the entity is effectively managing risks itself as it has proposed and whether this is effective. 	
April 2015 onwards	<p>Ongoing risk-based supervision</p> <ul style="list-style-type: none"> There are no further specific risks that the entity needs to address but its profile on the database records the previous issues that have arisen. Given these previous issues (which suggest that it has previously failed proactively to manage risks effectively) and its high impact it remains medium priority for future supervision. This means that it is likely to be visited again within the next 12-18 months. Supervisors will also be in more regular contact to discuss how risks are being identified and managed. There will also be less tolerance of any concerns identified through intelligence that is gathered. Future visits or evidence gathering will assess whether the entity has improved its proactive risk management. This will include reviewing risk registers and minutes from Management Committee meetings and seeking evidence of risk identification and mitigation. 	<ul style="list-style-type: none"> Supervision Team

Entity B

Entity B comprises members of a large criminal set, which continues in operation alongside the entity. It has set up an entity to tender for work. Since the entity has formed the chambers has not taken on any pupils and the entity has been approved as a training organization and currently has 4 pupils.

Date	Process and actions	Person(s) responsible
November 2014	<p>Entity authorised</p> <ul style="list-style-type: none"> The application is approved and the initial assessment does not identify any significant risks. However, as the entity is high impact the 	<ul style="list-style-type: none"> Authorisation Manager

	Authorisation Manager proposes that the entity should be medium priority for supervision.	
November 2014	<p>Entry to supervision: Review of initial risk assessment and contact with entity</p> <ul style="list-style-type: none"> • The Supervision Manager is alerted to the fact that a new entity has been approved and reviews the profile on the Supervision Database. They agree that the entity should be medium priority for supervision and that it should be visited within 6 - 12months. • The Supervision Manager makes contact with the HOLP and HOFA at the new entity and outlines the supervision scheme and what will be required of the entity. 	<ul style="list-style-type: none"> • Supervision Manager
July 2015	<p>Intelligence handling</p> <ul style="list-style-type: none"> • The Supervision Officer is informed by the BSB's Pupillage Officer that Entity B has registered 6 pupillages for the coming year. The criminal set from which it draws its members used to take 2 or 3 pupils a year. The Supervision Officer checks the Database and establishes that the entity currently only has 6 registered Pupil Supervisors and one appears to be based in Leeds although all pupils are registered in London. The Supervision Officer is concerned about the rapid growth and potential oversight issues. • The Supervision Officer raises their concerns with the Supervision Manager who agrees that a visit, primarily focused on pupillage, should be undertaken. 	<ul style="list-style-type: none"> • Supervision Officer / Supervision Manager
August / September 2015	<p>Entity visit</p> <ul style="list-style-type: none"> • The supervisor contacts the entity to arrange a a visit. The supervisor intends to assess the adequacy of oversight and training provided to the pupils and therefore determines that they would be assisted by being accompanied by a member of the Expert Panel with expertise in pupillage training. • At the visit the supervisor and the pupillage expert meet with the HOLP as well as a pupil supervisor and two pupils, each of whom are spoken to on their own. They also review pupils' diaries. • It appears that pupils are being used to undertake poorly remunerated work to balance more lucrative work for more senior barristers in bulk tenders. The concern is that there appears to be insufficient oversight of pupils to provide adequate protection for clients and inadequate oversight, training and availability 	<ul style="list-style-type: none"> • Supervisor / member of expert panel

	<p>of pupil supervisors to ensure that pupils are acquiring the skills they need to be signed off for their pupillages.</p> <ul style="list-style-type: none"> • A report of the visit highlights the pupillage concerns and informs the entity that the Supervision Team will recommend that it should have its authorization to take future pupils removed unless it can satisfy the BSB that it can manage the risks identified. 	
October 2015	<p>Addressing increased risk</p> <ul style="list-style-type: none"> • In relation to its existing pupils the entity is asked to provide details of how it will address the identified concerns within 4 weeks. It is also asked to set out what measures it would take to prevent similar issues arising in the future and to identify risks itself. • The entity responds by outlining the importance of pupils to its business plan and identifying a number of measures for improving oversight and training of pupils. These include plans to train additional members as supervisors, providing all pupils with additional trained supervisors to consult if their supervisor is unavailable, conducting regular peer reviews of files and introducing written and advocacy assessments. • The supervisor believes that the measures outlined should help to mitigate the risks but is concerned about whether the entity will follow through. They therefore inform the entity that they will visit again in the near future to assess how effective these measures have been. 	<ul style="list-style-type: none"> • Supervisor
December 2015	<p>Entity visit</p> <ul style="list-style-type: none"> • The supervisor returns to the entity. There is evidence that the measures have been implemented and the supervisor believes that the risk is now being managed to a tolerable level. The supervisor informs the entity. • The supervisor also discusses what lessons the entity has learned from the experience and what measures they have put in place to ensure that it will proactively identify and address risks in the future. The HOLP accepts the need for more proactive risk management but is unable to demonstrate that any meaningful thought has been given to this or that any practical measures have been adopted. • The supervisor informs the entity that it will remain high priority for supervision due to remaining concerns about its risk 	<ul style="list-style-type: none"> • Supervisor

	management. It is encouraged to make improvements and provide details of improvement to the Supervision Team. The Supervisor highlights possible resources that might assist the entity to improve its proactive risk management.	
January 2016 onwards	<p>Ongoing risk-based supervision</p> <ul style="list-style-type: none"> The entity is high priority for supervision and will be visited again within 6 months to assess whether it has improved its proactive risk management. This may be revised if the entity provides sufficient evidence in the intervening period of measures that it has adopted to manage risk. 	•

Entity C (intervention scenario)

Entity C is a 7 member personal injury firm that does direct access and litigation work.

Date	Process and actions	Person(s) responsible
November 2014	<p>Entity authorised</p> <ul style="list-style-type: none"> The application is approved. The initial assessment does not identify any significant risks. However, as the entity is high impact the Authorisation Manager proposes that the entity should be medium priority for supervision. 	<ul style="list-style-type: none"> Authorisation Manager
November 2014	<p>Entry to supervision: Review of initial risk assessment and contact with entity</p> <ul style="list-style-type: none"> The Supervision Manager is alerted to the fact that a new entity has been approved and reviews the profile on the Supervision Database. They agree that the entity should be medium priority for supervision and that it should be visited within 2 years. The Supervision Manager makes contact with the HOLP and HOFA at the new entity and outlines the supervision scheme and what will be required of the entity. 	<ul style="list-style-type: none"> Supervision Manager
May – July 2015	<p>Intelligence gathering</p> <ul style="list-style-type: none"> It is noted from LeO's monthly reports that there are two ongoing complaints about the entity. The Supervision Officer notes this on the entity's profile and monitors future LeO reports. One of the complaints that LeO is investigating goes to an Ombudsman decision and the Ombudsman orders a remedy. The decision 	<ul style="list-style-type: none"> Supervision Officer / Supervisor

	<p>letter criticizes the entity for not being clear on the services that it was offering to the client and its fees for those services. It is noted that the issue was not properly investigated at first instance and therefore the case fee is not waived.</p> <ul style="list-style-type: none"> • The other complaint is still ongoing but the LeO investigator has reported concerns about the adequacy of the first tier complaints handling. The Supervision Officer raises their concerns with a supervisor. 	
August 2015	<p>Entity visit</p> <ul style="list-style-type: none"> • A supervisor contacts the HOLP to explain that they have concerns about how it is managing risks to consumers. The entity is informed that a visit will take place in the next two weeks. • During the visit the HOLP is defensive and unhelpful. They are unable to provide any evidence of correspondence sent to clients concerning the services that they will offer or the basis of charging fees. There is also no evidence of clients being informed about their right to complain. Although the entity has a compliant complaints procedure it does not have adequate records of previous complaints and there is no evidence that it has made any attempts to learn lessons from the complaints that have been escalated to LeO. • The visit also identifies concerns with the lack of an adequate case management system at the entity, which is relevant due to the large case load and the litigation work that the entity undertakes. 	<ul style="list-style-type: none"> • Supervisor
August / September 2015	<p>Addressing non-compliance and increased risks</p> <ul style="list-style-type: none"> • The supervisor is concerned that the entity may need to have its authorization removed due to the extent of the concerns and the fact that the HOLP does not appear willing to engage with the issues. The approach is discussed with the Supervision Manager and the Head of Supervision. It is decided that an urgent meeting should be undertaken with the HOLP to outline all of the concerns and discuss how the entity intends to address the concerns. There is a concern that the problem may be with the HOLP and therefore the entity's other two managers are also invited to meet at the same time. One of the managers attends the meeting. • At the meeting the supervisor and the Supervision Manager explain that if the entity 	<ul style="list-style-type: none"> • Supervisor / Supervision Manager / Head of Supervision

	<p>does not take the concerns seriously and seek to address them as a matter of urgency, they will recommend that the entity's authorization be removed or that conditions be placed on its authorisation.</p> <ul style="list-style-type: none"> • The HOLP gives an undertaking to provide a comprehensive action plan for making the required changes within 5 working days. This is confirmed in writing. • The action plan is not received within 5 days and it is not possible to contact the HOLP. • The supervisor is able to speak with the manager, who states that they will chase the issue up and get back in contact within 48 hours. • No response is received within 48 hours. • The supervisor calls the entity and is informed that the manager is no longer with the entity. 	
October 2015	<p>Conditions / removal of authorization / intervention</p> <p><i>[insert]</i></p>	

Risk-based supervision has been operational for chambers since January 2014. In this time the Supervision Team has been receiving, assessing and acting upon intelligence received from the profession, members of the public, other BSB departments, the Bar Council and LeO.

Below are two examples of supervision in practice:

Addressing non-compliance: Inadequate advertising of pupillage

- The Pupillage Gateway Team at the Bar Council received an email from a BPTC student detailing four chambers that were advertising pupillages on their own website but not on the Pupillage Gateway as required in the Handbook (and the Code of Conduct previously).
- The email was passed on to the Supervision Manager. The intelligence was easily verified by cross checking the chambers' websites with the Pupillage Gateway. The intelligence was logged.
- Three of the chambers had 3 or more weeks to run before the application deadline. The Supervision Manager contacted the Pupillage Administrator at three of the chambers and discussed why they were not advertising in line with regulatory requirements. All three chambers were either unaware of the requirement or believed that they had discharged their duty by providing information to a legal publisher who used to administer the Pupillage Gateway. All agreed to provide the required information to the Pupillage Gateway team within 5 working days.
- An email was sent by the Supervision Manager summarizing the conversation and the requirement to rectify the non-compliance within 5 working days.
- All of the chambers had placed adverts on the Pupillage Gateway within 2 working days.

- The fourth chambers had only a week to run before its deadline. This chambers was therefore also invited to extend its application deadline. Within 2 working days it had placed an advert on the Pupillage Gateway with a 2 week extension.
- The Supervision Team will target communications activity to proactively remind the Bar of these requirements to prevent future issues.

Addressing non-compliance: Misleading the public

- Staff at the Bar Council identified a barrister's website that was advertising training for litigants in person. The website employed the Bar Council and BSB logos in a fashion that implied that the course that was being offered had been endorsed by them.
- There was concern that the website was misleading to the public.
- The Head of Supervision contacted the barrister concerned and requested that they remove the logo and address the potentially misleading nature of the website.
- The barrister was initially unresponsive and therefore a follow up email was sent which stated that if a satisfactory response was not received within 5 working days enforcement action would be considered.
- A response was received within an hour and the logo was removed and the issue remedied.

Chambers experiencing financial difficulty

- Intelligence was received from the Bar Council about a chambers that was considering closing down.
- The Supervision Manager contacted the Practice Manager to ascertain the true position and it was confirmed that chambers was considering closing down. The Practice Manager explained the measures that chambers had considered in order to manage risk in the event that it does close down. It was clear that this issue had been given proper consideration by chambers. However, the Supervision Manager requested a meeting with the Practice Manager and Head of Chambers to discuss the matter in greater detail. A meeting was scheduled for one week later, after the chambers had met with an insolvency practitioner.
- The Supervision Manager and Head of Supervision met with the Head of Chambers and Practice Manager and discussed the closure of chambers, which was now confirmed. It was clear from this discussion that chambers was in the process of an orderly closure and that due consideration was being given to managing the risks associated with closure. They were grateful for the opportunity to discuss this with the BSB and for the opportunity to examine whether there were any risks that they had not identified. In the event it was not possible to identify risks that were not already being properly mitigated. It was agreed that they would contact the BSB's supervision team if any issues were to arise prior to closure and that further contact would be made after closure.