

Bar Standards Board Regulatory Risk Framework

1. One of the key challenges for the Bar Standards Board is to determine how best to use limited resources to serve the needs of the public and of consumers of legal services.
2. In April 2014, the Regulators' Code 2014 came into statutory effect. Under this Code the Bar Standards Board must have regard to the following principles in the development of our policies and operational procedures guiding regulatory activities:
 - *Regulators should carry out their activities in a way that supports those they regulate to comply and grow*
 - *Regulators should provide simple and straightforward ways to engage with those they regulate and hear their views*
 - *Regulators should base their regulatory activities on risk*
 - *Regulators should share information about compliance and risk*
 - *Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply*
 - *Regulators should ensure that their approach to their regulatory activities is transparent*
3. The Bar Standards Board needs to be able to identify the public benefit derived from the activities that we undertake, and be sure that our finite regulatory resources are allocated proportionately to areas that warrant most attention.
4. The proportionate allocation of regulatory resources is dependent upon an understanding of potential harm in any given situation and a clear understanding of the controls that may be applied in order to correct or reduce exposure. This recognises that there is no single optimal regulatory solution that can apply to all circumstances.
5. In April 2013, the Bar Standards Board articulated in its current Strategic Plan the intent to adopt a risk-based approach to the regulation of legal services in order to describe, understand, prioritise and address issues that might warrant attention.
6. The Bar Standards Board's approach to risk based regulation is documented within its Regulatory Risk Framework, first approved in October 2013.
7. The drivers and core concepts of risk-based regulation at the Bar Standards Board are in the process of being reviewed and updated with an updated framework being prepared for publication mid-2015.

The Regulatory Risk Framework

8. The Bar Standards Board defines risk based regulation as 'The development and use of systematised decision making frameworks to prioritise regulatory activities and deploy resources based on an assessment of the risks that the regulated firms (individuals) pose to the regulator's objectives'
9. The Regulatory Risk Framework is comprised of two elements;

- A categorisation of the regulatory risks identified in relation to the non-achievement of regulatory objectives (taken directly from s1 of the Legal Services Act 2007. The Bar Standards Board maintains a Regulatory Risk Index);
 - The Bar Standards Board's approach to the identification, assessment, monitoring, mitigation and evaluation of regulatory risks is articulated in a Risk Management Cycle.
10. The Regulatory Risk Framework underpins all operational activities undertaken by the Bar Standards Board in the achievement of its regulatory objectives, organised with the following regulatory functions¹:
- Education & Training
 - Supervision
 - Professional Conduct
 - Strategy & Regulatory Policy
11. The Regulatory Risk Framework methodology is aligned to the corporate risk management approach to support prioritisation and decision making across both its regulatory and corporate responsibilities.

The Risk Index

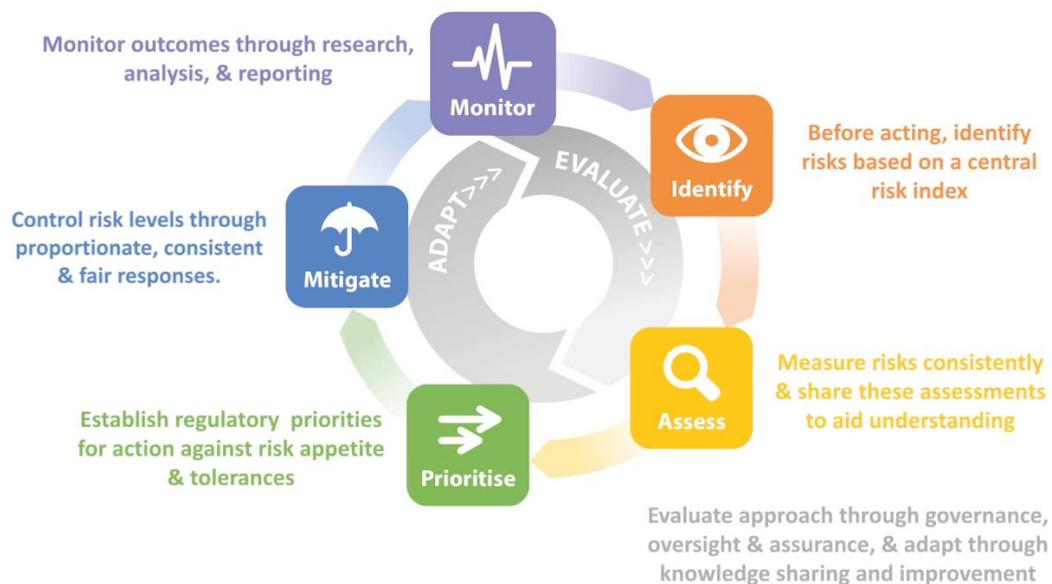
12. The Risk Index sets out key risks and provides a classification scheme for information, enabling a better response to risks as they occur through improved risk-based governance. This also enables us to understand what drives events through risk analysis and to talk about these exposures in a more consistent manner, backed up by training and awareness.
13. The Risk Index also helps us to engage in a more constructive fashion with both staff and the profession at large through developments like Future Bar Training and the Risk Outlook (planned for publication in early 2016). The Risk Index provides a consistent language with which we can share information about risks, and start a dialogue with key stakeholder groups beyond the organisation and governance itself.
14. The current draft of the Risk Index itself is structured into five categories, each of which contains a number of risks providing a greater level of granularity:
- Market & External Risks
 - Ethical Conduct Risks
 - Competence to Practise risks
 - Management & Administration risks
 - Client Service & Delivery risks.
15. The nature of our regulated market means that risks are interconnected and that many may drive or enable others. Understanding this helps us to work out where we really are best placed focusing efforts.

¹ The extent to which the risk-based approach has been embedded in practice currently differs across the organisation. Supervision and PCD adopted an explicitly risk-based approach with the launch of the new Handbook in January 2014, Education & Training will be introducing this through the implementation of the Future Bar Training programme.

16. The Risk Index includes both the 'causal' risks (i.e. those which drive harmful risks to occur such as 'a lack of management competence' and that does not have a tangible impact on its own) and those which are based around the 'consequence' or 'effects' (e.g. 'disorderly closure' of a chambers that directly impacts consumers), enabling us to start to understand those relationships and better focus regulatory resources on either prevention or correction.
17. The Risk Index catalogues all of the potential circumstances that could result in harm to our regulatory objectives, and enables us to track the level of each risk over, to compare types of risk and to start to better understand interrelationships between them and how to manage the trade-off between different risks to deliver the best regulatory outcomes using information that we have categorised against that Index.
18. Another important feature of the Risk Index is that this is a living document, intended to capture the key risks and to adapt with changes to the profession and our external environment over time. The current draft of the Risk Index has been pulled together over the past four months through extensive engagement with BSB staff and Senior Management Team, and will develop further as we make this publicly available for wider engagement and refinement in mid-2015.

The Risk Management Cycle

19. The Risk Management Cycle consists of 6 stages:



20. Risk Identification concerns the use of incoming information and intelligence in identifying where regulatory risks exist, prior to their assessment.
21. We have a wide range of information that might be drawn upon to inform the allocation of regulatory resources, from complaints received by the Professional Conduct Department, intelligence picked up by a member of the Supervision team through to queries from pupils who cannot get the necessary paperwork submitted by their supervisors. The risk-based approach enables the Bar Standards Board to take information from each of these sources and many

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others and relate it to a list of risks in order to inform decision making at both the individual event and wider policy level.

22. Once we have identified a risk, we need to better understand and measure it before taking action. Risk Assessment concerns the measurement of exposure in terms of potential impact upon regulatory objectives and the likelihood of such impact occurring. Assessments are captured and shared to build a complete 'picture' of risks at an event, barrister, chambers or profession level across different regulatory functions.
23. Risk Prioritisation is an explicit step in the process before action is taken to check our assessment against agreed priorities, helping to bring consistency and control across individual decision makers and driving action that aligns with strategic intent.
24. Risk Mitigation would be the first step where we actually take action that is specifically designed to influence a better outcome for the public, consumers, the rule of law or profession as a whole. The Bar Standards Board has many different types of control available, which it applies on a proportionate basis to either minimise the likelihood of risks occurring, to reduce the impact of a risk or to provide correction in the case where harm has already occurred. Consistent and proportionate decision making is critical to the effective mitigation of risks, supported by the Bar Standards Boards approach to decision making and governance.
25. Once action has been taken, the Bar Standards Board reflects upon the outcome of our actions to date (Risk Monitoring), assessing the effectiveness of controls in mitigating the specific risks at hand.
26. Evaluation (Learn and Adapt within the inner grey circle in the diagram) reflects an important, arms length process that accompanies the core risk management cycle. This is where different governance bodies or individuals with oversight responsibility will take a step back and evaluate the outcomes being achieved, the operation of day to day regulation and make changes to adapt our approach or change strategy where needed. This builds a continuous 'dynamic' improvement model into our regulatory activity.
27. Each of these stages within the Regulatory Risk Cycle are embedded within Regulatory activity, ensuring that the way in which risks are identified, assessed and managed (e.g. decision making) and evaluated is consistent and proportionate.

Regulatory Risk Programme

28. A great deal of work has already been done to date to understand and articulate the risk-based approach in the context of the Bar Standards Board. The Bar Standards Board signed off an initial draft of the Risk Framework in October 2013 and many teams have already embedded concepts into their processes and procedures.
29. The Bar Standards Board has put together a new programme of work under the oversight of its Regulatory Risk Manager to further improve the operational architecture that underpins the risk-based approach in practice.
30. The four work-streams within the programme are:

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- Risk identification & assessment – including issuing an update to the Risk Framework & Index, followed by publication of the Bar Standards Boards first Risk Outlook
 - Decision-making & control – a decision-making framework to align approaches throughout the organisation, explicitly embedding risk. Development of regulatory performance measures will also support bolstered regulatory oversight.
 - People & culture – building the capability, capacity and ways of working needed for effective risk-based regulation. This includes staff and board development, incorporation of regulatory risk into performance management and a structured programme around regulatory tone and culture.
 - Process, information & systems – the building blocks supporting effective operation of risk based regulation in practice. Processes and systems designed to align to regulatory intent and support flexible and adaptive regulation.
31. In practice, this programme builds the capabilities that will enable the following outcomes:
- The regulatory risks are defined, identified, assessed and a framework exists bringing together all activity in a consistent and disciplined manner.
 - The regulatory arrangements (e.g. Handbook) align to agreed risks and can adapt accordingly.
 - Operational processes are designed to support the identification, analysis and management of regulatory risks.
 - Regulatory resources are aligned proportionately to the level of risk exposure
 - Staff at all levels understand our regulatory approach and the risks to objectives
 - All decisions (whether formal or informal) are made with reference to both regulatory risks and the evidence that support action, whether at individual barrister, chambers or the profession as a whole.
 - Internal governance is provided with the information that it needs to make risk based decisions and challenge risk based performance.
32. Public-facing deliverables from the programme of work will include:
- An updated Risk Framework will be published setting out what we understand by the risk based approach and how we apply it in practice, supported by a revised Regulatory Risk Index (mid 2015)
 - Consultation on development of new risk assessment methodology (late 2015)
 - Risk Outlook developed with experts and launched early 2016 to publish our understanding of the market we regulate, the changing environment and priority risks to regulatory objectives.
33. More internally focused work will include ground work to build our market insight and understanding of risks, development of reporting on risks relevant to different governance bodies, integration of risk into staff and board member development and performance management, and a review of our approach to

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regulatory decision-making to ensure that risk is embedded consistently across the organisation.

34. In order to properly analyse and understand the risks that we face, we must start to be more systematic about the way in which we capture regulatory information. We are working closely with the project team evaluating the Information Architecture needs of the BSB to ensure that we make the most of the opportunity presented by the re-engineering of systems currently being scoped.
35. Where other initiatives are closely related to regulatory risk work, these are also being captured within the plan and activities aligned wherever possible. There is already joint working with the thematic review into Immigration work being led by Regulatory Policy & Supervision and the Future Bar Training Programme for example.

Entity regulation policy statement

1. Part 3 of the Handbook sets out the requirements for authorisation as an entity by the BSB. This paper expands on the discretionary criteria in those rules and is the entity regulation policy statement referred to in rS99, gS20 and rS101.
2. To be authorised by the BSB as an entity, an applicant must:
 - a. Satisfy the mandatory requirements in rS83 and rS84
 - b. Be considered by the BSB to be an appropriate entity for it to regulate (rS99)
 - c. Satisfy the BSB that it will be competently managed and comply with the rules, and that its owners, managers, HOLP and HOFA meet the suitability criteria rS101)
3. If an applicant does not meet the mandatory criteria, it cannot be authorised by the BSB and its application will be refused.
4. If an applicant does meet the mandatory criteria, then the BSB will consider whether it is an appropriate entity for it to regulate. If it concludes that it is, the BSB may nevertheless refuse to authorise it if it is not satisfied that it will be adequately managed and run in compliance with the rules. This is discussed further in paragraphs below.
5. In reaching its decision on whether an entity is an appropriate one for it to regulate, the BSB must take account of its analysis of the risks posed by the applicant, the regulatory objectives and this entity regulation policy statement.

BSB Policy Objectives

6. The Bar Standards Board (BSB) is a specialist legal services regulator. Its particular specialist focus is on the regulation of advocacy and related litigation services and expert legal advice. In designing its entity regulation regime it has analysed the legal services market and its own capacities and capabilities, in addition to the opportunities for regulation by other Approved Regulators and identified the market segment that is appropriate for BSB regulation.
7. The overall policy objectives of the BSB are that:
 - a. The market should have the opportunity to develop, with authorised persons being able to innovate in ways that are compatible with the regulatory objectives and the associated risks being managed effectively and proportionately;
 - b. As business models change, the specialist skills and expertise associated with the Bar should be preserved and standards of advocacy should be maintained, thereby safeguarding the public interest;
 - c. Individual responsibility (in particular the accountability of the individual advocate or other authorised individual to the Court and the client) should be at the heart of the regulation of advocacy and related services;
 - d. Regulatory arbitrage is minimised;
 - e. The BSB should build on its regulation of individual barristers to give entities the option of being regulated by the BSB, particularly those wanting to specialise in advocacy and litigation;
 - f. The BSB minimises the risk of regulatory failure by regulating only those entities that fit well with its capacities and capabilities, ensuring that entities and their managers consent to the jurisdiction of the BSB;
 - g. Risk assessment and management should be at the heart of the BSB's regulatory arrangements;

- h. Entities which the BSB authorises should manage their own risks well and comply with their regulatory obligations;
- i. The BSB regulatory regime is proportionate to the risks it needs to regulate.

BSB approach

8. The BSB has developed its policy on what entities it would be appropriate for it to regulate in the light of these objectives. In exercising its discretion, the BSB will be sensitive to developments in the market and innovative practices that might be in clients' interests and which might differ from the type of entity described below. In such cases, the BSB will assess the risks posed by the entity in question and decide whether it is in the public interest for the BSB rather than another Approved Regulator to authorise such an entity.
9. This policy statement reflects the BSB's decision that it should be a niche regulator concentrating on those entities whose activities are similar to those traditionally undertaken by the Bar (and which the BSB therefore has experience of regulating), which do not hold client money, whose structure is simple and transparent, with work being closely overseen by authorised individuals and minimal risk of divergent interests between owners and managers. As both the BSB and those it regulates gain experience, and as the market develops, the BSB will consider whether it would be in the public interest for it to widen the scope of its entity regulation and if so it will publish a revised policy statement.
10. The BSB's risk framework (published alongside this policy statement) will be central to any decision to authorise an entity and to the BSB's approach to ongoing supervision of the entity. The BSB will assess the nature of the risks posed by an entity, taking into account its structure and governance arrangements, the kind of the services it is intending to provide, its impact on the wider legal services market and its own risk assessment and mitigation procedures.
11. The BSB would normally only authorise an entity if:
 - a. any owner¹ of the entity is also a manager;
 - b. the entity will not be a multi-disciplinary practice².
12. There may be exceptional circumstances where the BSB would authorise an entity that is not able fully to satisfy the criteria in paragraph 11 but, in the BSB's judgment, poses similar risks to those posed by entities which do satisfy the criteria.
13. When assessing the risks associated with an entity, the BSB will also take other factors into account, including:
 - a. the services that the entity intends to provide and the nature and extent of any non-reserved activities;
 - b. the proposed proportion of managers to employees;
 - c. the proposed proportion of authorised individuals to non-authorised individuals;
 - d. the extent to which its managers have been and/or are going to be actively involved in advocacy and/or litigation services or related advice;
 - e. whether any persons with an ownership interest (whether material or not) are not individuals;
 - f. whether any managers are not individuals;

¹ Owner as defined in the BSB Handbook as person who holds a material interest in the entity

² A multi-disciplinary practice combines the provision of reserved legal activities and non-reserved activities traditionally associated with legal professionals with other (non-legal) professional services (subject to any minor or incidental examples of other activities which are carried on in the course of supplying the main service and do not materially detract from the focus of the entity being legal)

- g. whether the entity is intending to provide high-volume, standardised legal advice or standardised legal transactional services direct to lay clients and, if so, whether this is likely to constitute a substantial or significant proportion of its practice; and
 - h. the systems that the entity will have in place to manage such services and associated risks.
14. The following factors, when present, would tend to indicate that it may be appropriate for the BSB to regulate an entity:
- a. all owners and all managers are individuals;
 - b. 50% or more of the owners and 50% or more of the managers are entitled to exercise rights of audience in the Higher Courts;
 - c. a substantial part of the services to be provided are advocacy and/or litigation services and expert legal advice;
 - d. the entity is not intending to provide high-volume, standardised legal transactional services;
 - e. 75% or more of owners and 75% or more of managers are authorised individuals³;
 - f. a substantial proportion of employees are going to be authorised individuals; and
 - g. each manager supervises only a small number of employees.
15. The following factors, when present, would tend to indicate that it may not be appropriate for the BSB to regulate an entity:
- a. not all owners and managers are individuals;
 - b. fewer than 50% of owners and fewer than 50% of managers are entitled to exercise rights of audience in the Higher Courts;
 - c. the provision of specialist advocacy and/or litigation services or other expert legal advisory services is not a significant proportion of the proposed practice;
 - d. a substantial part of the services to be provided are high-volume, standardised legal transactional services direct to lay clients;
 - e. fewer than 75% of owners and 75% of managers are authorised individuals⁴; and
 - f. a substantial proportion of employees will be non-authorised individuals.
16. The factors listed above are not exhaustive of the matters that may be relevant to the BSB's consideration of the appropriateness of an entity for BSB regulation. In each case, the BSB retains a discretion to grant or refuse authorisation in the light of its overall consideration of the risks posed by the entity, the regulatory objectives and the BSB's policy objectives.
17. In particular, even if the factors listed in paragraph 14 are present, the BSB may refuse authorisation if its analysis of the risks posed by the entity indicate that it may not be appropriate for BSB regulation. In making this decision it will take into account not only the extent to which the entity has assessed its own risks and put in place appropriate systems to manage those risks, but also whether the BSB itself has the necessary experience and skills to regulate the entity effectively.

Management and compliance

18. Rules rS101 and rS102 set out the aspects of management, control and compliance about which the BSB must be satisfied before granting authorisation. In exercising its discretion under these rules, the BSB will consider whether the arrangements are satisfactory for the nature and type of business which the applicant intends to provide. If the BSB concludes that the minimum requirements are satisfied and that it should therefore authorise the applicant, it will take account of its conclusions about the strength of the controls and

³ Only relevant to ABSs

⁴ Only relevant to ABSs

management in its assessment of the risks posed by the entity and hence the future monitoring and supervision arrangements which would be appropriate.

19. In considering whether a person meets the suitability criteria despite having disclosed an event which might call that suitability into question, the BSB will have regard to when that event took place and any evidence about subsequent behaviour. The test it will normally apply is whether the person is currently suitable for the role concerned and whether it and the public can have confidence in that person in that role.



REGULATING BARRISTERS

Supervision Strategy and Guidance

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Reviewed March 2015

PART A – SUPERVISION STRATEGY

The BSB is committed to a risk-based approach to supervision. This means that resources will be targeted at chambers, entities, individuals or areas that present the greatest risk. A risk-based approach will mean proportionate regulation; the BSB's Supervision Department will have less interaction with those who are managing risk effectively than those who present a higher risk.

Risk-based supervision will:

- Allow the BSB proactively to identify risks and take appropriate action to prevent them from materialising;
- Encourage more effective risk management by chambers and entities and contribute to improvements in the level of compliance with regulatory requirements;
- Help to prevent negative outcomes for consumers and negative impacts on the regulatory objectives;
- Provide a means of ensuring that identified non-compliance does not recur;
- Allow the BSB to target its resources at those chambers, entities, individuals or areas that would benefit from supervisory attention; and
- Provide the basis for constructive engagement between the BSB and those that it regulates.

Supervising chambers and entities

All chambers and entities must ensure that they are compliant with the regulatory requirements set out in the BSB Handbook. This includes a requirement to have appropriate risk management procedures in place.

The BSB will supervise chambers and entities to ensure that they are managing risk effectively and are compliant with regulatory requirements.

Chambers and entities that manage risks effectively can expect a low level of supervision. Those who are unable to demonstrate that they are managing risks effectively will receive more supervisory attention.

Where issues are identified through supervision the BSB will seek, where possible, to address them with the chambers or entity concerned without resorting to enforcement action.

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Supervising individual barristers

All individual barristers will be subject to a basic level of supervision through the annual authorisation process, supervision concerning specific areas of compliance (such as CPD requirements) and involvement in thematic reviews.

If the BSB receives evidence of non-compliance, it could consider enhanced supervision for that individual.

Through enhanced supervision the BSB will assist barristers to identify issues and take appropriate measures to prevent future non-compliance and future detriment to the regulatory objectives.

PART B – SUPERVISION STRATEGY GUIDANCE



Bar Standards Board Supervision Strategy Guidance

1. Through supervision the BSB encourages and supports those that it regulates to effectively manage risk. It is an important tool which, alongside the BSB's other regulatory tools, contributes to a regulatory approach that provides the best possible protection for customers and the public interest.
2. The BSB has adopted a proportionate, 'risk-based' approach to supervision. This means that resources will be targeted at chambers, entities, individuals or areas that present the greatest risk. As a result, the BSB's Supervision Department will have less interaction with those that are managing risk effectively than those that are not.
3. This guidance accompanies the BSB's Supervision Strategy. It sets out how supervision will work in practice for chambers, entities and individuals, as well as the areas that the BSB will routinely consider through supervision.

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- SUPERVISION OF CHAMBERS AND ENTITIES
- SUPERVISION OF INDIVIDUALS
- THEMATIC REVIEWS

SUPERVISION OF CHAMBERS AND ENTITIES

4. Efficiently run chambers and entities, operating at low risk, are in everyone's best interests; barristers' and chambers' operations should benefit from running smoothly, the BSB will need to take less enforcement action and consumers' interests will be protected and promoted. This is why all self-employed barristers, including sole practitioners, are under a duty to ensure that their chambers are administered competently and efficiently; similar duties apply to those involved in managing entities.
 5. The BSB supervises chambers and entities to ensure that they are managing risk effectively as well as complying with their other regulatory requirements. It does so through its Supervision Department.
 6. All chambers and entities must ensure that they are compliant with the regulatory requirements set out in the BSB Handbook <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>. This includes a requirement to have appropriate risk management procedures in place.
 7. The BSB has identified a number of key processes that it expects competently administered chambers to be managing in order to ensure compliance with the BSB Handbook. The Supervision Programme [see PART C] sets out the key processes summarised into five key areas. This Programme is largely applicable to entities as well as Chambers. The Programme will be reviewed during 2015 and this will involve consideration of the specific application to entities.
 8. The role of the Supervision Department will include:
 - (i) Assessing the potential impact that each chambers and entity could have if significant risks/negative consequences were to materialise;
 - (ii) Assessing how well chambers and entities are run and how effectively they are managing risk; and
 - (iii) Working with chambers and entities to ensure that improvements are made and regulatory concerns are addressed.
- (i) Assessing impact**
9. The approach to assessing impact will differ for entities and chambers as the number of chambers is much greater and consideration of impact is more important for prioritising resources.

Chambers

10. The Supervision Department will periodically assess the impact that each chambers could have; this relates to the potential extent of the negative consequences if any significant risks were to materialise.

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11. To assess impact the BSB considers:

- Areas of work undertaken;
- Number of new cases started in the last 12 months;
- How much work is undertaken under the public access scheme;
- Whether pupils are taken;
- Whether chambers undertakes work within the Money Laundering Regulations; and
- Whether chambers uses an escrow account service to handle client money.

12. Consideration is also given to the effect each chambers could have on wider market risks. In particular, this will include consideration of:

- The effect of the chambers' business model, structure or membership on competition and consumer choice;
- The effect of business models and structures on the professional principles;
- Risks posed by particular client bases;
- Risks to the maintenance of a diverse and representative legal profession.

13. This information allows for the calculation of an impact score and an assessment as to whether chambers are Low, Medium or High impact. This determines whether a chambers will be involved in further proactive supervision. Chambers that are Medium or High impact will be involved in further proactive supervision whilst those who are Low impact will only become subject to proactive supervision if the Supervision Department becomes aware of evidence that suggests the need for it.

To take an example, inadequate complaints handling would have more significant consequences at a chambers with a large and vulnerable lay client base than at a chambers with a small corporate client base. Therefore the chambers with a large vulnerable client base has a higher potential impact.

14. Factoring in impact is an important part of the BSB's risk-based approach. More than half of all chambers are sole practitioners and therefore if chambers were supervised without reference to impact, the Supervision Department would spend more than half of its resources on sole practitioner chambers, which represent a very small share of the overall market. Taking impact into account allows the BSB to focus on chambers where the consequences of significant risks materialising are likely to be the most severe. This includes some high impact sole practitioners.

15. There is very little that a chambers can do to reduce their impact score as it will be inherent to the activities and profile of chambers.

16. It is important to note that a chambers can be high impact but still be considered low risk, and receive a low level of supervision, if it can demonstrate that it is managing risk effectively.

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Entities

17. All entities will be involved in ~~a~~ proactive supervision and therefore the assessment of impact is less significant.

18. However, the Supervision Department will take into account the size and types of work that an entity is involved in to give an indication of the potential impact. In practice, a large number of entities are likely to be single person entities, which will normally be considered to be lower impact than multi-person entities.

(ii) Assessing how effectively chambers and entities are managing risk

19. The BSB expects all chambers and entities to be managing risk and ensuring regulatory compliance across five main areas:

- (i) Governance and administration
- (ii) Provision of services to clients
- (iii) Equality and diversity
- (iv) Pupillage
- (v) Financial management

20. The Supervision Programme [see PART C] sets out more detail about the regulatory requirements and key processes that chambers should be routinely considering in relation to each area. These largely apply to entities as well as chambers.

21. In order to assess how effectively entities and Medium and High impact chambers are managing risk in these areas, the Supervision Department gathers information by the following means:

(a) Desk-based evidence gathering

This includes Supervision returns, in which selected chambers and entities are required to respond to a questionnaire asking questions about procedures and policies at chambers. Supervision returns will be undertaken at various points but will not be a regular, annual process.

The Supervision Department may also request certain information from chambers or entities at other times, particularly in advance of Supervision visits.

(b) Chambers visits

The Supervision Department visits chambers and entities to review in detail how they approach compliance and risk management across the five areas.

(c) Information gathering and assessment

The Supervision Department receives and assesses information from the Legal Ombudsman and the BSB's Professional Conduct Department. It also assesses

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information reported from other sources, including barristers, pupils, judges and members of the public.

(d) Entity Annual Renewal Process

The Supervision Department will seek confirmation at annual renewal from each entity that it continues to comply with the mandatory and discretionary requirements for entity authorisation.

22. The above sources of evidence will enable the Supervision Department to assess whether a chambers or entity is Low, Medium or High risk for the purpose of supervision. This informs the level of supervision that chambers or entity will receive in the future.
23. In order to assess whether a chambers or entity is Low, Medium or High risk the Supervision Department will consider what controls they have in place to manage risk and ensure regulatory compliance. Below is an explanation of what each rating will denote:

High Risk

Chambers or entities in which issues are identified that are likely to have a fundamental impact on their ability to meet the Core Duties and Outcomes set out in the Handbook. Immediate action should be taken by the chambers or entity to mitigate the risks identified.

Medium Risk

Chambers or entities in which one or more important issues have been identified that may have an impact on their ability to meet the Core Duties and Outcomes set out in the Handbook. The chambers or entity should address these issues promptly.

Low risk

Chambers or entities for which no significant issues have been identified. On the basis of evidence reviewed, the Supervision Department is satisfied that the chambers or entity is managed competently and in such a way as to achieve compliance with legal and regulatory obligations. Some controls may be strengthened and these should be followed up by the chambers or entity.

24. High risk chambers or entities are those who can benefit the most from supervisory attention and therefore they receive a higher level of supervision than lower risk chambers or entities.

(iii) Working with chambers and entities to address supervisory concerns

25. Through its assessment process, the Supervision Department may identify areas of concern where controls at a chambers or entity need to be strengthened and an action is required to address this. Actions are categorised as follows:

Priority 1: for immediate action

Areas of high risk where further information is required by the Supervision Department immediately in order to provide assurance that the risk is being managed effectively.

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or

Areas of high risk where the Supervision Department requires an update immediately should circumstances change or as further information is received which increases or reduces the level of risk.

Priority 2: urgent

Matters where a high risk and weaknesses in controls have been identified and urgent action is required to mitigate the risk. The Supervision Department would normally expect the chambers or entity to address these issues immediately and provide a follow-up to Supervision within 2 weeks.

Priority 3: important

Matters where a medium to high risk and weaknesses in controls have been identified and prompt action is required to mitigate the risk. The Supervision Department would normally expect the chambers or entity to address these issues and provide a follow-up to Supervision within 1 month.

Priority 4: merits attention

Other areas where controls could be strengthened. There is no expectation to report to the Supervision Department on follow-up of these findings, but they should be followed up by the chambers or entity.

26. The intention is to address most concerns, including non-compliance, through these means. The Supervision Department will only refer a matter to the Professional Conduct Department to pursue enforcement action in the following circumstances:

- If a chambers or entity has not satisfactorily addressed non-compliance within a reasonable period of time;
- If the chambers or entity concerned has a poor history of compliance and engagement with the Supervision Department such that it is unlikely that it would take the opportunity to address the issue;
- If the non-compliance concerned is very serious.

SUPERVISION OF INDIVIDUALS

Basic supervision

27. All individual barristers are involved in a basic level of supervision. This includes the following:

- Annual authorisation;
- Monitoring of compliance with CPD requirements; and
- Involvement, as required, in thematic reviews (see below).

Enhanced supervision

28. Individual barristers who do not comply with their regulatory requirements may also be involved in enhanced supervision.

29. Enhanced supervision could involve one of the following:

- Monitoring of the individual's overall compliance with their regulatory requirements. This would help the barrister concerned and the BSB to understand the extent of their non-compliance and any reasons for this. This form of supervision would be for a limited period of time.
- Explaining concerns to the individual and providing them with a period of time in which to confirm that they have taken appropriate measures to prevent future non-compliance. The Supervision Department will make the barrister aware of any relevant guidance or other resources that are available to assist them to address the concerns.

30. Barristers who do not cooperate with enhanced supervision may be referred to the Professional Conduct Department to consider whether enforcement action should be pursued.

THEMATIC REVIEWS

31. The Supervision Department will also be involved in a limited number of Thematic Reviews to cover specific high risk areas. Thematic Reviews will allow for assessment of compliance and risk management in relation to a particular regulatory requirement, area of work or business practice.
32. The specific areas chosen for thematic reviews will be primarily informed by the BSB's Risk Assessment Framework. Evidence gathered from the supervision of chambers, entities and individuals will also help to inform what areas might be selected for a Thematic Review.
33. Thematic Reviews might cover all chambers and entities (for example if it relates to a particular regulatory requirement with universal application) or to all chambers, entities or individual barristers undertaking work within a certain category. It might also involve a sample of chambers, entities or individuals within a certain category.
34. Evidence gathered through this facet of supervision may be fed into the supervision of chambers and entities as set out above.

PART C – SUPERVISION PROGRAMME

Chambers Key Processes

All chambers must ensure that they are compliant with the regulatory requirements set out in the BSB Handbook <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>. This includes a requirement to have appropriate risk management procedures in place.

The BSB has identified a number of key processes that it expects competently administered chambers to be managing in order to ensure compliance with the BSB Handbook. These can be summarised into the following five key areas that we will focus on during our supervision visits.

1. Governance & Administration of Chambers

1.1 Risk management

Handbook Core Duties

CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook outcomes: Section C5

oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC76-78 & rC89

- Risk management.
- Insurance.

1.2 Authorisations

Handbook Core Duties

- CD2: You must act in the best interests of each client
- CD7: You must provide a competent standard of work and service to each client
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook outcomes: section D2

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.
- o30: Barristers undertaking public access or licensed access work have the necessary skills and experience required to work on that basis
- o31: Barristers undertaking public access or licensed access work maintain appropriate records in respect of such work
- o32: Clients only instruct via public access when it is in their interests to do so and they fully understand what is expected of them

Key processes: rules rC89, rC119-141 & rQ130-131

- Practising certificates.
- CPD.
- Registrations for Public Access work and Litigation.

1. Governance & Administration of Chambers
<ul style="list-style-type: none">• Procedures for public access and licensed access work.
1.3 Outsourcing services critical to the delivery of legal services <u>Handbook Core Duties</u> <ul style="list-style-type: none">• CD7: You must provide a competent standard of work and service to each client <u>Handbook outcomes: section D2</u> <ul style="list-style-type: none">• oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.• oC25: Clients are clear about the extent to which your services are regulated and by whom, and who is responsible for providing those services. <u>Key Processes: rule rC86</u> <ul style="list-style-type: none">• Contracts• Performance management.
1.4 Viability <u>Handbook Core Duties</u> <ul style="list-style-type: none">• CD2: You must act in the best interests of each client• CD3: You must act with honesty and integrity• CD7: You must provide a competent standard of work and service to each client• CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations. <u>Handbook outcomes: sections C4 & C5</u> <ul style="list-style-type: none">• oC22: The public have confidence in the proper regulation of persons regulated by the BSB• oC23: The BSB has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the regulatory objectives• oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook. <u>Key processes: rules rC72 & rC89</u> <ul style="list-style-type: none">• Chambers administration.• Staff competency.• Arrangements for the orderly wind down of activities.
1.5 Duty to report <u>Handbook Core Duties</u> <ul style="list-style-type: none">• CD2: You must act in the best interests of each client• CD3: You must act with honesty and integrity <u>Handbook outcomes: section C4</u> <p>oC22: The public have confidence in the proper regulation of persons regulated by the BSB oC23: The BSB has the information that it needs in order to be able to assess risks and regulate effectively and in accordance with the regulatory objectives</p> <u>Key processes: rules rC66</u> <ul style="list-style-type: none">• Serious misconduct by a barrister is reported to the BSB

2. Provision of services to clients

2.1 Terms of service

Core Duties

- CD5: You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.
- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section C3 & 5

- oC13: Clients know what to expect and understand the advice they are given
- oC14: Care is given to ensure that the interests of vulnerable clients are taken into account and their needs are met
- oC18: Clients are adequately informed as to the terms on which work is to be done
- oC20: Clients understand who is responsible for work done for them
- oC25: Clients are clear about the extent to which services are regulated and by whom, and who is responsible for providing those services

Key processes: rules rC15, rC19 & rC22:

Terms of service agreed in writing.

2.2 Casework management

Core Duties

- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section C3

Outcomes:

- oC10: Clients receive a competent standard of work and service.
- oC16: Instructions are not accepted, refused or returned in circumstances which adversely affect the administration of justice, access to justice or the best interests of the client.

Key processes: rules rC15 & rC18 & rC21 & 25-27

- Confirming barristers have time to deal with each case before accepting instructions.
- Procedures for returning instructions in accordance with the Handbook.

2.3 Client confidentiality & conflicts of interest

Core Duties

- CD6: You must keep the affairs of each client confidential

Handbook outcomes: section C3 & C5.3

- oC11: Clients best interests are protected and promoted by those acting for them
- oC12: BSB authorised persons do not accept instructions from clients where there is a conflict between their own interest and the clients' or where there is a conflict between one or more clients
- oC15 Clients have confidence in those who are instructed to act on their behalf
- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC15, rC21 & rC89

Policies and procedures for dealing with:

- Management of conflicts of interest in Chambers
- Protecting confidential information
- Compliance with Data Protection legislation

2. Provision of services to clients

2.4 Complaints

Core Duties

- CD7: You must provide a competent standard of work and service to each client

Handbook outcomes: section D1.1

- oC26: Clients know that they can make a complaint if dissatisfied, and know how to do so.
- oC27: Complaints are dealt with promptly and the client is kept informed about the process

Key processes: rules rC99 – 109

Policy and processes covering:

- How clients are informed of the complaints process.
- Handling complaints.
- Record keeping and confidentiality.
- Assessing and reporting on complaint resolution and trends.
- Learning from complaints.

3. Equality & diversity

All areas

Handbook Core Duties

- CD5: You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or the profession.
- CD8: You must not discriminate unlawfully against any person

Handbook section outcomes: D1.2 & D1.3

- oC28: Self-employed barristers, chambers and BSB authorised bodies run their practices without discrimination.
- oC29: Pupils are treated fairly and all vacancies for pupillages are advertised openly.

Qualification rules B5

3.1 Governance

Key processes: rules rC12 & rC110-112

- Equality and Diversity Officer appointed
- Diversity Data Officer appointed and registered with the BSB.
- Equality & Diversity policy and implementation plan in place.
- Policies and procedures in place for:
 - Anti-harassment
 - Parental leave
 - Flexible working
 - Reasonable adjustments
 - Diversity data
- Recruitment processes in place based on objective and fair criteria.
- Information is collected, monitored, acted on and published.

3. Equality & diversity

3.2 Recruitment & funding of pupils

Key processes: rules rC110, rC113-118 & rQ61

- Recruitment processes.
- Pupillage panel members have received equalities/fair recruitment training.
- Vacancies advertised on Bar Council approved gateway websites in accordance with Handbook requirements.
- Adherence to BSB minimum remuneration requirements for pupils.

3.3 Allocation of work to pupils & members

Key process: rules rC110-112

- Monitoring and allocation of work.

4. Pupillage

All areas

Handbook Core Duties

CD10 You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations

Qualification rules B5

4.1 Registration

Key processes: rules rQ37 – 53 & rQ62-67

- Chambers registered as an Approved Training Organisation.
- Barristers registered as Pupil Supervisors.
- Registration of pupillage

4.2 Quality of training

Key processes: rules rQ36 & rQ54

Procedures in place for:

- Ensuring pupils receive opportunity to develop skills and experience.
- Access to Supervisor.
- Peer review.
- Appraisals.
- Training records.

5. Financial management

5.1 Financial accounting, financial management

Handbook Core Duties

- CD3: You must act with honesty & integrity
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook section C5

Outcomes:

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules r89

- Chambers are administered competently and efficiently.
- Staff are competent (experienced, trained).

5.2 Referral fees

Handbook Core Duties

- CD2: You must act in the best interests of each client
- CD3: You must act with honesty & integrity
- CD4: You must maintain your independence
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook section C2

Outcomes:

oC5: Those regulated by the BSB maintain standards of honesty, integrity & independence, and are seen as so doing

oC7: The proper administration of justice, access to justice and the best interests of clients are served

oC9: Those regulated by the BSB and clients understand the obligations of honesty, integrity and independence

Key processes: rule rC10

- Referral fees must not be paid or received

5. Financial management

5.3 Handling client money

Handbook Core Duties

- CD3: You must act with honesty & integrity
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Handbook section C5

Outcomes:

- oC24: Your practice is run competently in a way that achieves compliance with the Core Duties and your other obligations under this Handbook. Your employees, pupils and trainees understand, and do, what is required of them in order that you meet your obligations under this Handbook.

Key processes: rules rC73-75

- Barristers & Chambers are prohibited from holding client money.
- Client money held and processed via an FCA-authorized third party payment service.
- Due diligence performed on third party payment systems.

5.4 Money laundering

Handbook Core Duties

- CD3: You must act with honesty & integrity
- CD5: You must not behave in a way which is likely to diminish the trust & confidence which the public places in you or in the profession
- CD10: You must take reasonable steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Key processes:

Adherence to Money Laundering regulations 2007

PART D – INFORMATION GATHERING POLICY



Supervision Department information gathering policy

The Supervision Department's remit involves gathering information about chambers from multiple sources. This could include surveys or supervision returns, telephone calls, visits to chambers or written questions.

Co-operation

Chambers and individual barristers are subject to CD9: this requires you to be open and cooperative with your regulators. We expect that most requests for information will take place in the context of such cooperation.

Sometimes however, we may need to invoke the BSB's powers under rC70 of the BSB Handbook, whereby the BSB can request to inspect premises and records and there is a duty to comply with such a request. You will be informed in writing if we are relying on this power.

The purpose of information gathering

The purpose of all information gathering from the Supervision Department is to assist the Supervision Department in the performance of its supervisory functions. Where information gathering identifies non-compliance, the Supervision Department's goal will be to ensure that the issue is addressed in a manner which should prevent recurrence.

Information gathering by the Supervision Department is not a part of the Professional Conduct Department's (PCD) investigation functions. However, if we acquire information that suggests potential serious misconduct, this information may be passed on to the PCD. It will be for the PCD to decide whether to pursue an investigation. We will inform you if a referral to the PCD takes place.

Supervision visits

All chambers should expect to be visited by the Supervision Department from time to time. Some visits will be triggered by a random selection of chambers. Other visits may be part of our thematic review programme. For example we might wish to visit a particular chambers because it undertakes a certain kind of work and we want to find out more about this as part of a consultative process.

Our visits may also be triggered by specific concerns about a chambers or individual barrister. For example, a complaint could be referred to us for investigation by the Professional Conduct Committee under rE2.11 and rE27 of the BSB Handbook. Alternatively we might select a chambers for a supervision visit because of our risk assessment.

Annex G

A typical chambers supervision visit would involve a scheduled meeting between one or more members of the Supervision Department and the Head of Chambers and/or the Chambers' Regulatory Contact. Sometimes, we may ask additional individuals with specialist skills or expertise to accompany the Supervision Department on visits. Equally, we may request that additional members of chambers are available for the visit.

In most cases, we will ask before arranging a supervision visit. Where possible, we will indicate in advance our areas of interest.

We expect that most visits will be arranged and undertaken in the spirit of cooperation. However, if required the BSB will be able to invoke its power under rC70 of the BSB Handbook to inspect premises and records. This power might be needed from the start of a supervision visit or it may be invoked during or after a visit. The decision to use this power, and the timing of its use, will depend on our assessment of the potential seriousness and urgency of the situation. We will inform you in writing if our powers under rC70 are being invoked (but not necessarily in advance).

Depending on the purpose of the supervision visit, we would usually expect to provide a follow-up written report to the chambers or individual concerned, addressing such matters as we consider appropriate.

Where we make suggestions for improvement in such a report, we would usually expect chambers and individual barristers to cooperate with us in addressing those suggestions. We may also engage in follow-up supervision visits.