



REGULATING BARRISTERS

Meeting of the Bar Standards Board
Thursday 22 October 2015, 4.30 pm
Room 1, First Floor, Bar Standards Board Offices,
289-293 High Holborn, London, WC1V 7HZ

Agenda - Part 1 – Public

			Page
1. Welcome and introductions (4.30 pm)		Chair	
2. Apologies		Chair	
3. Members' interests and hospitality		Chair	
4. Approval of Part 1 (public) minutes			
a) 10 September 2015 (*)	Annex A	Chair	3-5
b) 24 September 2015 (*)	Annex B	Chair	7-10
5. Matters Arising (*)			
6. a) Action points and progress	Annex C	Chair	11-12
b) Forward agenda	Annex D	Chair	13-14
7. Report on High Impact Supervision Returns (4.35 pm)	BSB 080 (15)	Julia Witting	15-66
8. Supervision Committee Annual Report 2014-15 (*)	BSB 081 (15)	Nicola Sawford	67-71
9. Standards Committee Annual Report 2014 -15 (*)	BSB 082 (15)	Sam Stein QC	73-76
10. The Enforcement Strategy (second version) (4.50 pm)	BSB 083 (15)	Sara Jagger	77-89
11. Complaints about barristers working for or on behalf of the BSB (*)	BSB 084 (15)	Sara Jagger	91-99
12. Chair's Report on Visits and Meetings: Sept-Oct 2015 (*)	BSB 085 (15)	Chair	101-102
13. Director General's Report (4.55 pm)	BSB 086 (15)	Vanessa Davies	103-115
14. Any other business			
15. Date of next meeting			
• Thursday 26 November 2015 (4.30 pm)			
16. Private Session			
John Picken, Governance Officer			
JPicken@barstandardsboard.org.uk			
15 October 2015			

**Note – Starred items will not normally be discussed unless a Member gives prior notice that this should occur. If you wish to raise any points on these items, please contact [John Picken](mailto:John.Picken@barstandardsboard.org.uk) before the meeting.*

BSB 221015

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting**

Thursday 10 September 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair)
Rob Behrens
Tim Robinson
Nicola Sawford
Adam Solomon
Anne Wright

By invitation: Keith Baldwin (Special Adviser)

BSB Executive in attendance: Viki Calais (Business Manager)
Vanessa Davies (Director General)
Oliver Hanmer (Director of Supervision)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Simon Thornton-Wood (Director of Education & Training) – items 7-11
Natasha Williams (Business Support Manager)

RG staff in attendance David Botha (Director of Finance)

Item 1 – Welcome

1. The Chair welcomed members to the meeting.

Item 2 – Apologies

2.
 - Malcolm Cohen
 - Justine Davidge
 - Andrew Mitchell QC
 - Andrew Sanders
 - Emily Windsor (Special Adviser)
 - Sara Jagger (Director of Professional Conduct)
 - Amanda Thompson (Director of Strategy & Communications)

Note: Rolande Anderson and Sam Stein QC were not present for Part 1 of the meeting but did attend for Part 2.

Item 3 – Members' interests and hospitality

3. None

Item 4 – Approval of Part 2 (private) minutes (23 July 2015) (Annex A)

4. The Board approved Part 1 of the minutes of the meeting held on Thursday 23 June 2015

ACTION**Item 5 – Matters Arising**

5. None.

Part 1 - Public

Item 6a – Action points and progress – Part 2 (Annex B)

6. The Board **noted** the update to the Part 2 action list. The following comments were also made:

a) **Consultation on BSB fees and charges (min P15a – 23/07/15)**

A paper on the proposed consultation will now be presented to the Board in November 2015.

b) **Rule change re: insurance with the BMIF for single person entities (min P21b – 23/07/15)**

Ewen Macleod confirmed the following:

- an initial meeting with the LSB on the proposed rule change has already taken place. We have since been asked by the LSB to source legal advice on competition law;
- some additional points were also highlighted at the meeting but we remain on track to submit the request by the end of September.

7. In response to a question about the effect on timelines, Vanessa Davies stated that the LSB is very likely to extend the time it takes to make a final decision. The BMIF has been made aware of this but appears willing to wait for the outcome.

Item 6b – Forward Agenda – Part 2 (Annex C)

8. The Board **noted** the forward agenda list but deferred discussion of it until the next meeting.

Item 7 – PRP Committee Report Q1 (April 2015-Jun 2015)

BSB 064 (15)

9. Anne Wright highlighted the following:
- expenditure is on track against budget but income targets are unlikely to be met. At Q1 stage, the forecast for year-end is £1,590k (a 15% shortfall);
 - one service complaint was received in Q1 (*note: this is a complaint about service provided by the BSB itself rather than a complaint about a barrister*);
 - the Committee has invited the Director of Professional Conduct to its November meeting to discuss the recent key performance indicator figures (Annex 2 of the report);
 - the Committee has reviewed the HR operating plan but remains concerned over high staff turnover rates.
10. She commented on the major uncertainties about demand-led activities and corresponding take-up rates eg for entity regulation. This has made accurate forecasting particularly difficult but this should improve with time and experience.
11. The Board also noted the following points:
- the activities listed as incomplete from the 2014-15 year-end report have been incorporated into the 2015-16 business plan. New timeframes have been agreed and this is reflected in the “green” ratings of the Q1 performance dashboard;
 - the dashboard has itself been revised to give further information on the status of an activity in terms of its size, significance, weighting and the extent to which the BSB has direct control over its delivery.
12. Patricia Robertson QC referred to the next strategic plan. She commented that the existing performance report only refers to the current financial year. It does not give a wider view of performance in relation to the three year plan. She therefore suggested that future reports include a short statement on overall progress in that context.

AGREED

- a) to note the report.
- b) to note that KPIs for the Professional Conduct Department will be discussed at the PRP Committee's meeting in November 2015.

13. **Item 8 – Schedule of Board Meetings 2016-17**

BSB 065 (15)

The Board **agreed** the dates for future meetings (January 2016 – March 2017).

14. **Item 9 – Any Other Business**

None.

15. **Item 10 – Dates of next meeting**

Thursday 24 September 2015

16. **Item 11 – Private Session**

The following motion, proposed by the Chair, and duly seconded, was agreed:

That the BSB will go into private session to consider the next items of business:

- (1) Corporate Risk Register
- (2) Business Planning and Budget Bid for 2016-17 (also includes the new draft strategic plan and 3 year financial projections)
- (3) Any other private business

The meeting finished at 4.50 pm.

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Part 1 - Public**Minutes of the Bar Standards Board meeting**

Thursday 24 September 2015, Room 1.1, First Floor
289 – 293 High Holborn, London, WC1V 7HZ

Present: Sir Andrew Burns KCMG (Chair)
Patricia Robertson QC (Vice Chair) – by phone for items 6-12
Rolande Anderson
Rob Behrens
Aidan Christie QC
Malcolm Cohen
Naomi Ellenbogen QC
Andrew Mitchell QC
Tim Robinson
Andrew Sanders
Nicola Sawford
Sam Stein QC – items 7-12

Note: Justine Davidge was not present for Part 1 of the meeting but did attend for Part 2

By invitation: Keith Baldwin (Special Adviser)
Isobel Leaviss (Independent Observer)
Andrew Russell (Registrar, BTAS)
James Wakefield (COIC representative)

Bar Council in attendance: Alistair MacDonald (Chairman, Bar Council)

BSB Executive in attendance: Nicholas Bungard (Regulatory Risk Analyst)
Viki Calais (Business Manager)
Vanessa Davies (Director General)
Joanne Dixon (Manager, Qualification Regulations)
Oliver Hanmer (Director of Supervision)
Oliver Jackling (Research & Evaluation Officer)
Sara Jagger (Director of Professional Conduct)
Tim Keeling (Change Programme Manager)
Andrew Lamberti (Communications Manager)
Ewen Macleod (Director of Regulatory Policy)
John Picken (Governance Officer)
Pippa Prangle (Head of Regulatory Risk)
Amanda Thompson (Director of Strategy & Communications)
Simon Thornton-Wood (Director of Education & Training)

Press: Chloe Smith (Law Society Gazette):

Item 1 – Welcome

1. The Chair welcomed members to the meeting, in particular those attending their first Board meeting ie:
 - Aidan Christie QC (new Board Member);
 - Naomi Ellenbogen QC (new Board Member);
 - Andrew Russell (Registrar, BTAS);

- Nicholas Bungard (Regulatory Risk Analyst);
- Oliver Jackling (Research & Evaluation Officer).

Item 2 – Apologies

2.
 - Adam Solomon;
 - Anne Wright;
 - Emily Windsor (Special Adviser);
 - Chantal-Aimée Doerries QC (Bar Council Vice Chairman);
 - Lorinda Long (Treasurer, Bar Council);
 - Stephen Crowne (Chief Executive, Bar Council);
 - Mark Hatcher (Special Adviser to the Bar Council Chairman).

Item 3 – Members’ interests and hospitality

3. None.

Item 4a & b – Action points and Forward Agenda

Action points and progress (Annex A)

4. The Board noted progress on the action list.

Forward Agenda (Annex B)

5. The Board noted the forward agenda list.

Item 5 – GRA Committee Annual Report (including Annual Report from the Independent Observer)

BSB 068 (15)

6. Isobel Leaviss presented her Annual report for the period July 2014-June 2015. This included her assurance statement to the Board which confirmed that, in her opinion, the enforcement system had operated in accordance with the intended outcomes of the BSB’s enforcement strategy.
7. She highlighted the following:
 - a) pre-complaints (para 8) ie enquiries that are not initially classed as complaints but may have the potential to be categorised as such;
 - b) “comebacks” (para 11) ie where a complaint dismissal letter has been issued but is not accepted by the complainant who subsequently writes to request that the case is re-opened;
 - c) regulatory complaints concerning staff, prosecutors and Board / Committee members (para 10).
8. She commented that:
 - a) there were 765 pre-complaints for the period. Of these about 75% were potential complaints and around 20% of those were actually converted to that status;
 - b) of the two comebacks from 2013-14 which were taken further, one has been proved at tribunal, albeit at the lower end of the disciplinary scale. The other is still due to go to tribunal;
 - c) she has made recommendations to guide future handling of complaints about BSB staff / officers given its dual role as employer and regulator.
9. In relation to 7b), the key motivator is dissatisfaction with the outcome of the initial investigation (as opposed to the process). In relation to 7c), the GRA Committee has already been briefed on the cases identified but no consistent pattern as to the underlying cause has emerged.
10. The Board thanked Isobel for her comprehensive and helpful report.

11. **AGREED**

- a) to note the GRA Annual Report.
- b) to endorse the GRA Committee's assurance on the Independent Observer's report.
- c) to publish the Independent Observer's Report and Assurance Statement on the BSB's website.

AL

Item 6 – Future Bar Training: Professional Statement

BSB 069 (15)

12. The Board considered the proposed Professional Statement which had been revised following comment on earlier versions by both the BSB and Education & Training Committee. A proof check is required as the existing version contains referencing errors.

13. **AGREED**

that the Professional Statement set out in the report be published in October 2015 subject to final proof check.

TK

Item 7 – Amended Rules for the Inns' Conduct Committee

BSB 070 (15)

14. The Board considered further proposals from the Inns' Conduct Committee for the amendment of its Rules. The original proposals were referred back because of concerns about how they would apply to disbarred barristers seeking re-admission.

15. The following points were confirmed:

- COIC has revised the proposals so that readmission hearings are held in public (not private) for barristers who were originally disbarred due to disciplinary proceedings;
- it has maintained the view that the standard of proof to be used in all hearings should be the civil standard.
- the Executive is satisfied with the reasoning to support the latter point and therefore recommends acceptance.

16. **AGREED**

to approve the amended Rules for the Inns' Conduct Committee.

Item 8 – Chair's Report on Visits and Meetings (Aug-Sept 15)

BSB 071 (15)

17. The Chair commented positively on his visit to the Legal Ombudsman (LeO) which he had found very useful and informative. LeO is willing to host visits from other Board Members as well.
18. Arising from this, Members discussed the recent decision to withdraw LeO's application to become an Alternative Dispute Resolution (ADR) entity so that a fuller consultation could take place. This runs until 2 November 2015. The EU Directive on Consumer ADR comes into effect well before that date meaning the default service for the interim period is the Trading Standards Office. Some concern was expressed at these circumstances and that the BSB should press the case for LeO to become an ADR entity.
19. In response, Ewen Macleod confirmed that the Law Society has issued guidance to its members for this interim period and that the BSB would respond in a similar fashion. The BSB will respond to the consultation in due course.

- AGREED**
20. to note the Chair's report on visits and meetings.

Item 9 – Director General's Report

BSB 072 (15)

21. Vanessa Davies commented as follows:
- the legal press has published several interesting articles recently on the growing uptake of entity regulation;
 - the seminar on Regulatory Risk (5 October 2015) will go ahead as planned. Details will be included in the next "Friday mailing" for Board Members;
 - the external assurance required for the Information Architecture project has now been received (cf. para 50 of the report). The project will therefore proceed;
 - a progress report on the ASPIRE programme will be provided at the October Board meeting.
22. The Chair noted the outcome of the live webinar as set out in paragraph 3 of the report. He referred to feedback from BSB stakeholders on the high number and complexity of recent BSB consultations and suggested we might make greater use of webinars and alternative technologies to improve engagement.
23. Ewen Macleod referred to the forthcoming consultation on the definition of "employed barrister (non-authorised body)". Given the specific nature of this consultation, it has not been presented to Board Members but is available on request from Kuljeet Chung in the Regulatory Policy Department.

**BSB
Members
to note**

24. **AGREED**
to note the report.

Item 10 – Any Other Business

25. None.

Item 11 – Date of next meeting

26. Thursday 22 October 2015.

Item 12 – Private Session

27. The following motion, proposed by the Chair and duly seconded, was agreed: That the BSB will go into private session to consider the next items of business:
- (1) Approval of Part 2 (private) minutes – 4 September 2015 (Annex A);
 - (2) Matters arising;
 - (3) Action points and progress – Part 2 (Annex B);
 - (4) Human Resources Operating Plan 2015 – Update September 2015 and Staff Survey 2015;
 - (5) Evaluation of the Bar Course Aptitude Test;
 - (6) Regulatory Risk: Outlook development and communications strategy;
 - (7) Governance Review;
 - (8) Amendment to Bar Standard Board's powers: response to the consultation;
 - (9) Standard Contractual Terms and the Cab Rank Rule – update on the LSB undertaking;
 - (10) QASA – Timetable for implementation;
 - (11) Any other private business.

The meeting finished at 5.05 pm.

**BSB – List of Part 1 Actions
22 October 2015**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
11a (24 Sept 15) – IO report	publish the Independent Observer's Report and Assurance Statement on the BSB's website	Amanda Thompson / Andrew Lamberti	immediate	25/09/15	Complete - the report was published and press released on 25 September 2015
13 (24 Sept 15) – FBT (Prof Statement)	publish the final version of the Professional Statement.	Tim Keeling	before 31 Oct 15	13/10/15	In hand- Publication expected 21 October
15a (23 July 15) – fees and charges	finalise and circulate a consultation on BSB fees and charges	Viki Calais / Amanda Thompson	by late Oct 15	13/10/15	In hand- on November Board agenda
21b (23 July 15) – insurance for single person entities	seek a rule change to require single person entities to obtain their primary layer of professional indemnity insurance from the BMIF	Kuljeet Chung	by 31 Jul 15	13/10/15 04/09/15	Ongoing – update in private session Ongoing A first draft of the application has been produced and preliminary discussions have been had with the LSB (the application will be updated in the light of these discussions). We also need to get some further advice on competition law before progressing the application. Assuming that can be done in time, the application will be submitted in September.
25 (21 May 15) – feedback on lessons learned for AtP 2015	circulate the key points arising from the Authorisation to Practise exercise to Board Members	Vanessa Davies	immediate	13/10/15 16/09/15 08/06/15	In hand - Electronic circulation week of 19 October. In hand – programme Board met on 16 September to confirm and key points will follow. In hand - a draft report was received by the Information Management Programme Board on 4 June 2015. The Bar Council CEO and BSB DG has requested some further proposals on

**BSB – List of Part 1 Actions
22 October 2015**

(This includes a summary of all actions from the previous meetings)

Min ref	Action required	Person(s) responsible	Date of action required	Progress report	
				Date	Summary of update
					recommendations and future actions before signing it off for circulation
12b (26 Feb 15) – reschedule Q3 data	investigate the possibility of rescheduling quarterly performance reporting for financial year 2015/16.	Amanda Thompson / Viki Calais	before June 2015	13/10/15	Completed – dates / agendas for next year address this and revisions incorporated in governance review implementation plan.
				16/09/15	To be re-considered as part of the governance review
				08/06/15	Being addressed as part of development of new assurance system (including performance reporting) that will be required to support the new governance system
				18/03/15	Under consideration but not yet finalised, depends also on outcome of governance review. A shorter turnaround may be possible when a new finance system is implemented but this not expected before 2016.

Forward Agendas

Thursday 26 November 2015

- BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on the Equality Rules
- Fees and charges consultation
- Governance Review (Standing Orders & Qualifications Committee)
- Future of the BCAT – following feedback from LSB & Pearson VUE
- Bar Council Standing Orders: Part III amendments
- Sign off response to MoJ Consultation
- BSB email addresses (data protection audit)

Thursday 17 December 2015 (Board Away Day & Dinner)

- Presentation by Legal Services Consumer Panel
- Future Governance – Board Members' Role & Composition of Board
- Strategic Plan 2016-19

Thursday 28 January 2016

- Diversity data report (EA2010 compliance)
- PCD / PCD Interim Report
- Future Bar Training: consultation outcome and outline proposals for academic, vocational and professional stage reform
- Regulatory Outlook approval
- Outcome of consultation on Disciplinary Tribunal Regulations
- Education & Training Committee Annual Report
- Qualifications Committee Annual Report

Thursday 25 February 2016

- BSB Business Plan for 2016-17 and new Strategic Plan 2016-19
- BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)
- Report on recommendations: Immigration Thematic Review

Thursday 17 March 2016

- Strategic plan 2016-19 – final
- Public and licensed access review consultation
- Outcome of Fees and Charges Consultation

Thursday 21 Apr 2016 (Board Away Day)

Thursday 19 May 2016

- Approval of Future Bar Training LSB submission (changes to Qualification Rules, Academic Stage regulatory policy, Vocational Stage regulatory policy, Pupillage Stage regulatory policy)

Thursday 23 Jun 2016

Thursday 28 Jul 2016

- Approval of CPD regime changes (Part 2)

Thursday 15 Sept 2016 (budget)

BSB Q1 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

Thursday 29 Sept 2016

Thursday 27 Oct 2016

- Approval of CPD quality mark scheme proposal (Part 2)

Thursday 24 Nov 2016

BSB Q2 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

Thursday 15 Dec 2016 (Board Away Day)

Thursday 26 Jan 2017

Thursday 23 Feb 2017

BSB Q3 Performance Report (includes Business Plan update, KPIs, Management Accounts, Corporate Risk Register, SLAs)

Thursday 23 Mar 2017

Report on High Impact Supervision Returns

Status

1. For discussion and noting.

Executive Summary

2. This is a report by Supervision on the key themes arising from Supervision Returns submitted by 170 of the highest impact chambers. It demonstrates that risk-based regulation is well underway.
3. We significantly enhanced our understanding of the risk landscape through this process. The Supervision team had direct interaction with 170 of the highest impact chambers through the assessment of the returns and through follow-up calls and visits, in addition to a further 10 chambers that we had already visited. We are in the process of doing the same for a further 169 chambers assessed as Medium Impact, who have recently submitted their Supervision Returns. This has provided a wealth of information that is enabling the team to target its resources at the areas of highest risk.
4. The report provides details of key themes in the following areas
 - Risk management
 - Compliance with the BSB Handbook
 - Delivery of services
 - Complaints handling and client feedback
 - Maintaining high standards
 - Fee information provided to clients
 - Public access instructions
 - Conflicts of interest
 - Equality and Diversity
 - Pupillage
 - Finance and administration
 - Chambers viability
 - Disaster Recovery / Business Continuity Plan
 - Anti-Money Laundering and Counter Terrorist Financing controls
 - Fraud
 - Aged debt and referral fees
 - Information security
5. We are using this information not only to determine our immediate supervisory response but, as a risk-based regulator, to identify emerging themes that will help the BSB to shape activity across the whole organisation and inform regulatory decision-making. The themes that we identify will be drawn together with other information from across the BSB to enable us to report as a whole on risks to the Regulatory Objectives.
6. The Supervision department works closely with other departments within the BSB to ensure the effective sharing of information and to agree the appropriate proportionate regulatory approach. We are already providing input to the Regulatory Policy team's review of the BSB Handbook and we are

supporting the development of the “Risk Outlook”, which will set out a “weather report” on the Bar and the market environment, and the BSB’s priority areas of risk to our Regulatory Objectives. Each team member is actively involved in one or more of the three strands of the BSB’s overarching change management programme for effective risk-based regulation, ensuring that learning from Supervision activities are shared across the organisation as the Risk Framework, the Customer Engagement Strategy and the Governance projects are developed. Protocols are in place between Supervision and Enforcement departments to promote consistency of regulation, to avoid duplication and to encourage collaborative working. These protocols enable any supervisory action to complement any subsequent enforcement action and for enforcement to share issues that are more appropriate for supervisory action. It also enables a more complete picture of the regulatory landscape and our approach to it to be established, which in turn feeds into the broader BSB approach to risk-based regulation.

7. In addition, we have developed strong relationships with a range of external agencies and have in place information sharing arrangements with them. These include the Legal Ombudsman, the Office of the Immigration Services Commissioner, the Home Office, Trading Standards and the other legal regulators. These arrangements have provided further intelligence relevant to our supervision activity and broadened the scope of our regulation accordingly. It has also allowed for collaborative working on issues of common interest, for example where more than one agency is investigating the circumstances surrounding a particular enterprise.
8. We are already seeing tangible improvements in policies, procedures and controls as a result of the actions agreed with chambers following our review of the returns and visits to chambers assessed as High Risk. We believe that the Supervision programme can help to drive significant improvements in the market.

Recommendations

9. The Board is invited to note the report, the themes identified and the progress made by Supervision to embed risk-based regulation.

Background

10. The BSB has published a Supervision Strategy, which explains the framework for risk-based supervision. The BSB supervises chambers and entities to ensure that they are managing risk effectively and are compliant with regulatory requirements. Risk-based supervision:
 - Allows the BSB proactively to identify risks and take appropriate action to prevent them from materialising;
 - Encourages more effective risk management by chambers and entities and contribute to improvements in the level of compliance with regulatory requirements;
 - Helps to prevent negative outcomes for consumers and negative impacts on the regulatory objectives;
 - Allows the BSB to target its resources at those chambers, entities, individuals or areas that would benefit from supervisory attention; and
 - Provides the basis for constructive engagement between the BSB and those that it regulates.

Resource implications

11. No additional resource implications above those already planned.

Equality Impact Assessment

12. Section 2.4 of the report includes themes arising in relation to Equality and Diversity. This section of the report has already been provided to the BSB's Equality and Diversity Committee.
13. In summary, there is a range of maturity levels in relation to compliance with the BSB Handbook in this area, but good progress has been made. The challenge now for chambers that have achieved compliance with the rules is to make a real difference to improving equality and diversity, which is an area where the Bar as a whole still needs to make progress.
14. The Supervision Returns provided an excellent opportunity for chambers to assess their levels of compliance and revisit their Equality Action Plans, and for the Supervision team to encourage further progress.

Risk implications

15. We significantly enhanced our understanding of the risk landscape through this process. This has provided a wealth of information that is enabling the team to target its resources at the areas of highest risk and to identify emerging themes that are being used to develop regulatory decisions by the BSB.

Impacts on other teams / departments or projects

16. The themes arising from this review are being actively shared with other teams within the BSB as relevant.

Regulatory objectives

17. In 2014, the Supervision team carried out an impact assessment of all 794 chambers and sole practitioners. The survey sought to measure the potential impact of a range of risks to the achievement of the Regulatory Objectives, should they materialise at a chambers. This is a report by Supervision on the key themes arising from Supervision Returns submitted by 170 of the highest impact chambers.

Publicity

18. There will be a press release following this meeting to publicise the report, aimed at the legal sector media and chambers. There will also be tweets and a blog by the Director of Supervision in the legal media. We hope to put an article in Counsel magazine too. Publicity will focus on how this demonstrates the positive progress made by the BSB in risk-based regulation, as outlined in the executive summary above.

Annex

19. Annex 1 - Report on High Impact Supervision Returns October 2015.

Lead responsibility:

Julia Witting, Supervision Manager, Email: jwitting@barstandardsboard.org.uk Tel I: 020 7611 1468

BAR
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REGULATING BARRISTERS

**Report on High Impact Supervision Returns
October 2015**

Prepared by: Julia Witting, Supervision Manager

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EXECUTIVE SUMMARY

1. Following the establishment of the Supervision Team in 2014, risk-based supervision is now well under way.
2. In 2014, the Supervision team carried out an impact assessment of all 794 chambers and sole practitioners. The survey sought to measure the potential *impact* of a range of risks to the achievement of the Regulatory Objectives, should they materialise at a chambers.

The regulatory objectives are set out in the Legal Services Act 2007:

1. Protecting and promoting the public interest
2. Supporting the constitutional principles of the rule of law
3. Improving access to justice
4. Protecting and promoting the interest of consumers
5. Promoting competition in the provision of services
6. Encouraging an independent, strong, diverse and effective legal profession
7. Increasing public understanding of the citizen's legal rights and duties
8. Promoting and maintaining adherence (by authorised persons) to the professional principles

3. The issue of Supervision Returns to 170 of the highest impact chambers has provided us with an important baseline of information and opened up constructive engagement between the Bar Standards Board ("BSB") and those that it regulates.

There are 10 Core Duties in the BSB Handbook ¹

In particular:

Core Duty 9 states: You must be open and co-operative with your regulators.

Core Duty 10 states: 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.

4. Whilst it is a regulatory duty to co-operate with the BSB, we would like to take this opportunity to thank chambers for their co-operation in completing the returns. We sought feedback from chambers so we know that many spent a considerable amount of time completing the returns.
5. Chambers that did not provide sufficient information were rated High Risk and were subject to Supervision visits and ongoing monitoring.
6. The supervision process is all about facilitating a constructive relationship between chambers and the regulator. Where chambers took time to respond in detail, it helped us enormously to get sufficient assurance about how they are identifying, monitoring and managing risk, ensuring that they comply with the BSB Handbook and that they deliver a high standard of service to clients. It enabled us to rate such chambers as Low Risk in many cases. Chambers that are categorised as Low Risk and have no agreed actions to follow up will receive relatively little supervision attention, so we hope that they will regard

¹ https://www.barstandardsboard.org.uk/media/1663630/bsb_handbook_sept_2015.pdf

it as a good investment of their time. We will not be issuing Supervision Returns on an annual basis.

7. Some of these chambers said to us that they found the process very helpful to review their policies and processes, and to encourage chambers as a whole to improve standards.

"I found it very useful to undertake an audit of chambers procedures and although time consuming I feel it was definitely time well spent."

8. We significantly enhanced our understanding of the risk landscape through this process. The Supervision team had direct interaction with 170 of the highest impact chambers through the assessment of the returns and through follow-up calls and visits, in addition to a further 10 chambers that we had already visited. We are in the process of doing the same for a further 169 chambers assessed as Medium Impact, who have recently submitted their Supervision Returns. This has provided a wealth of information that is enabling the team to target its resources at the areas of highest risk.
9. We are using this information not only to determine our immediate supervisory response but, as a risk-based regulator, to identify emerging themes that will help the BSB to shape activity across the whole organisation and inform regulatory decision-making. The themes that we identify will be drawn together with other information from across the BSB to enable us to report as a whole on risks to the Regulatory Objectives.
10. The Supervision department works closely with other departments within the BSB to ensure the effective sharing of information and to agree the appropriate proportionate regulatory approach. We are already providing input to the Regulatory Policy team's review of the BSB Handbook and we are supporting the development of the "Risk Outlook", which will set out a "weather report" on the Bar and the market environment, and the BSB's priority areas of risk to our Regulatory Objectives. Each team member is actively involved in one or more of the three strands of the BSB's overarching change management programme for effective risk-based regulation, ensuring that learning from Supervision activities are shared across the organisation as the Risk Framework, the Customer Engagement Strategy and the Governance projects are developed. Protocols are in place between Supervision and Enforcement departments to promote consistency of regulation, to avoid duplication and to encourage collaborative working. These protocols enable any supervisory action to complement any subsequent enforcement action and for enforcement to share issues that are more appropriate for supervisory action. It also enables a more complete picture of the regulatory landscape and our approach to it to be established, which in turn feeds into the broader BSB approach to risk-based regulation.
11. In addition, we have developed strong relationships with a range of external agencies and have in place information sharing arrangements with them. These include the Legal Ombudsman, the Office of the Immigration Services Commissioner, the Home Office, Trading Standards and the other legal regulators. These arrangements have provided further intelligence relevant to our supervision activity and broadened the scope of our regulation accordingly. It has also allowed for collaborative working on issues of common interest, for example where more than one agency is investigating the circumstances surrounding a particular enterprise.

12. We are already seeing tangible improvements in policies, procedures and controls as a result of the actions agreed with chambers following our review of the returns and visits to chambers assessed as High Risk. We believe that the Supervision programme can help to drive significant improvements in the market.

1. Background

1.1 Supervision Strategy

13. The BSB has published a Supervision Strategy², which explains the framework for risk-based supervision.
14. The BSB supervises chambers and entities to ensure that they are managing risk effectively and are compliant with regulatory requirements. Risk-based supervision:
 - Allows the BSB proactively to identify risks and take appropriate action to prevent them from materialising;
 - Encourages more effective risk management by chambers and entities and contribute to improvements in the level of compliance with regulatory requirements;
 - Helps to prevent negative outcomes for consumers and negative impacts on the regulatory objectives;
 - Allows the BSB to target its resources at those chambers, entities, individuals or areas that would benefit from supervisory attention; and
 - Provides the basis for constructive engagement between the BSB and those that it regulates.

1.2 Impact Assessment

15. In 2014, the Supervision team carried out an impact assessment of all 794 chambers and sole practitioners. The survey sought to measure the potential *impact* of a range of risks to the achievement of the Regulatory Objectives, should they materialise at a chambers.

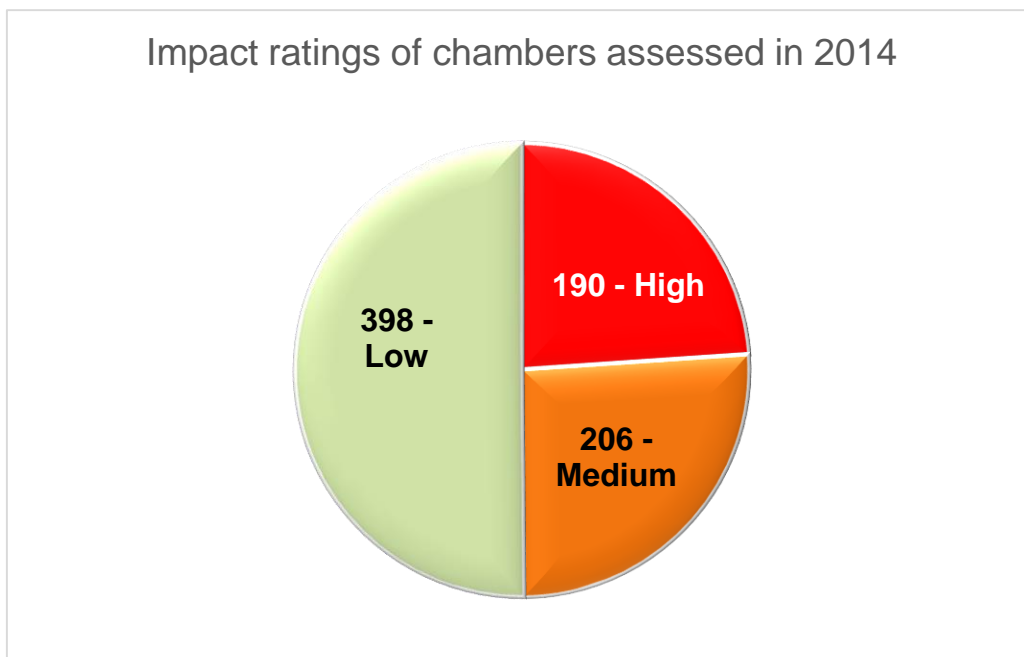
The regulatory objectives are set out in the Legal Services Act 2007:

1. Protecting and promoting the public interest
2. Supporting the constitutional principles of the rule of law
3. Improving access to justice
4. Protecting and promoting the interest of consumers
5. Promoting competition in the provision of services
6. Encouraging an independent, strong, diverse and effective legal profession
7. Increasing public understanding of the citizen's legal rights and duties
8. Promoting and maintaining adherence (by authorised persons) to the professional principles

16. The impact assessment was based on criteria such as the volume of new cases, the type of legal services delivered and whether or not pupillages are in place. For example, inadequate complaints handling processes would have more significant consequences at a chambers with a large and vulnerable lay client base than at a chambers with a very small corporate client base.

² The Supervision Strategy is available on the website here: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/supervision/>

17. “*Impact*” is a different measurement to “*risk*”. It shows only what the impact would be were things to go wrong; it is not an indication as to how likely this is to happen or how effectively a chambers is managing risk.
18. The impact assessment enables us to know where we should focus our resources to achieve the Regulatory Objectives with a proportionate regulatory approach. Through this assessment, we categorised chambers as either high, medium or low Impact.



1.3 Supervision Returns

19. We had rated 190 chambers as High Impact in 2014. A number of these chambers were subject to Supervision visits as part of our pilot programme of visits in 2014, or as a result of risk-based information that we had received. Others had merged in the interim or it became clear that they were branches or annexes of a main chambers.
20. That left us with 170 chambers that were classified as “High Impact”, and had not been risk assessed by the Supervision team previously. They were asked to complete a Supervision Return.
21. Through the Supervision Return, which comprised 44 questions, chambers were required to provide a self-assessment of their control environment - how chambers are administered and how regulatory compliance³ is achieved in the following key areas:
- Governance arrangements
 - Risk management
 - Internal control environment and compliance:
 - delivery of services
 - equality and diversity
 - pupillage
 - finance and administration

³ Bar Standards Board Handbook: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/>

22. This was an opportunity for chambers to describe their key risks and explain how effectively they are managed, to help us determine the likelihood of these risks materialising and to establish the level of supervision and support that chambers might need.
23. The Supervision team reviewed the returns and made a preliminary assessment of chambers as High, Medium or Low Risk.

Supervision assessment categories

Chambers are classified, based on the information provided in their Supervision Return, into one of three categories as follows:

High Risk

There is a significant probability that issues identified may have a fundamental impact on chambers' ability to meet the Core Duties and Outcomes set out in the BSB Handbook. Immediate action should be taken by chambers to mitigate the risks identified. Chambers will be subject to further monitoring by the Supervision team as specified.

Medium Risk

A number of important issues were identified and chambers should address these promptly in order to meet the Core Duties and Outcomes set out in the Handbook. Chambers should report progress to the Supervision team as specified. In other areas covered in the Supervision Return, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations.

Low risk

In the areas covered in the Supervision Return, we are satisfied that your practice is managed competently and in such a way as to achieve compliance with your legal and regulatory obligations. Some issues where controls could be strengthened may have been identified and these should be followed up by chambers. No further monitoring by Supervision is planned unless other information comes to our attention.

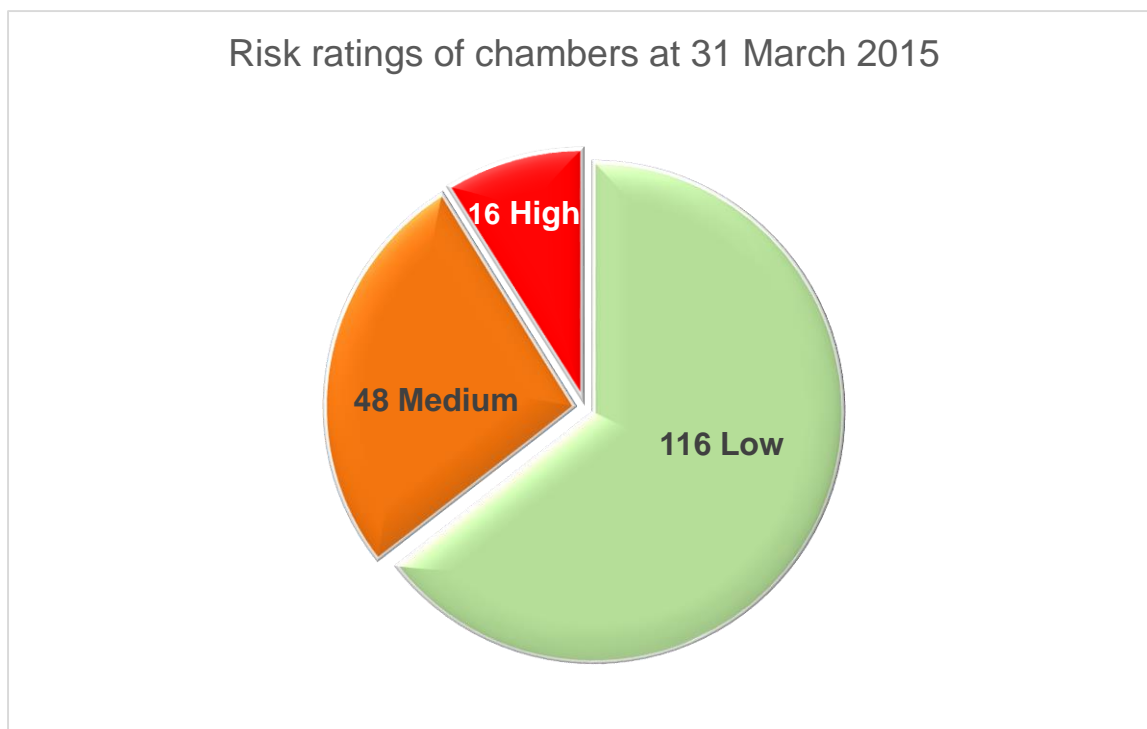
You must take steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations. The Supervision Return was not designed to cover all aspects of compliance with your legal and regulatory obligations and cannot be relied upon to provide assurance for all aspects of Chambers' control environment and risk management.

24. To ensure consistency between different members of the Supervision team, we used a moderation process whereby two members of the team independently assessed the returns against indicative criteria and then discussed their assessments with each other. Once we were satisfied that we were assessing the returns consistently, we reverted to single assessments.
25. The lead assessors contacted the nominated Regulatory Contacts in each chambers to discuss the assessment and seek more assurance where relevant.

26. All chambers' Regulatory Contacts received a letter explaining the assessment and outlining further information required and actions that were agreed during the telephone calls. These were logged on the Supervision database for follow up.
27. The Supervision team followed up with visits to chambers assessed as High Risk. These were chambers whose responses to a number of the questions in the Supervision Return did not provide sufficient assurance in the areas covered. Often, this was reflection of the amount of effort put into completing the returns. In other cases, it reflected a range of risks. The aim of supervision is to reduce the level of risk through follow-up action to improve management of risk and compliance with the BSB Handbook.

1.4 Risk ratings

28. By 31 March 2015, we had risk-assessed 180 chambers through review of the Supervision Returns, the pilot visits conducted in 2014 and through other risk-based information that we received from chambers, the BSB enforcement team or from other third parties, which we had followed up with visits.



29. Individual risk assessments for chambers will not be made publicly available.

1.5 Outcomes and next steps

30. There are 10 Core Duties in the BSB Handbook ⁴

In particular:

Core Duty 9 states: You must be open and co-operative with your regulators.

Core Duty 10 states: 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.

31. Whilst it is a regulatory duty to co-operate with the BSB, we would like to take this opportunity to thank chambers for their co-operation in completing the returns. We sought feedback from chambers so we know that many spent a considerable amount of time completing the returns.

“Completing the return took a ridiculous amount of time (liaising with individual members who have specific responsibilities, collating documents, discussions with head of chambers, clerks etc.). My senior clerk reminds me that it took almost a full week – probably 4 days or so. I very much hope it is a one off!”

32. Where chambers took time to respond in detail, it helped us enormously to get sufficient assurance about how they are identifying, monitoring and managing risk, ensuring that they comply with the BSB Handbook and that they deliver a high standard of service to clients. It enabled us to rate such chambers as Low Risk in many cases. Chambers that are categorised as Low Risk and have no agreed actions to follow up will receive relatively little supervision attention, so we hope that they will regard it as a good investment of their time. A number of chambers expressed this view. We will not be requiring any further information at this stage and we currently have no plans to visit these chambers. The Supervision Returns will not be issued on an annual basis.

“The return took about 1 month to complete but I feel it was worth it to provide you with sufficient assurance.”

33. Chambers that did not provide sufficient information were rated High Risk and were subject to Supervision visits and ongoing monitoring.
34. Some chambers said to us that they found the process very helpful to review their policies and processes, and to encourage chambers as a whole to improve standards. Comments from barristers, chambers administrators, senior clerks and chief executives included:

“In order to carry out the completion of the supervision report, I enlisted the help of our Administrator re finances, health and safety and IT. I also had help from the Secretary to the Tenancy and Pupillage Committee, our Equality and Diversity officers, our Money Laundering Officer and the clerking team. The final document was sent to the Management Committee for approval prior to submission. Copies of the response were also made available to members so that they can be sure that they are up to date with current procedures. I have started, but not yet completed, the

⁴ https://www.barstandardsboard.org.uk/media/1663630/bsb_handbook_sept_2015.pdf

revision of Chambers manual so that we have that completely up to date and handbook compliant. I would estimate that I spent around 4 weeks in total drafting the response, cross checking with the BSB handbook and discussing with those already mentioned. If I were asked to advise anyone I would recommend the method I adopted where all those who have responsibility for certain areas were consulted about those responsibilities and to cross check each area of responsibility with the guidance in the handbook. It is surprising what you come across!!”

“When I initially read the supervision document I immediately knew how much work was involved to respond effectively and the detailed thought process clearly evident to produce it. If you are passionate about the Bar and the Chambers you work for you it is important to provide a return on that investment by the BSB Overall I view the questionnaire as excellent and the BSB should be commended. It provided Chambers with the opportunity to reassess the business and monitor where over the years matters may have slipped to ensure systems and procedures are in place to ensure ongoing viability, accountability and good practice for clients. The legal market is ever changing and demanding so a business focus with overriding regulatory guidance and management is important. I think it is important that the BSB and BC try to assist Chambers rather than appear as a hindrance due to bureaucratic processes and a seeming inability to make decisive decisions (although I accept a primary role of the BSB is a regulatory one).”

“I completed the return just a month into the role and it had really helped me to do an internal audit of the administration of chambers.”

“The process of completing the Supervision Return has thrown up the need to review a number of areas. We are working with a consultant to help improve processes, compliance and governance. Areas prioritised are: direct public access, complaints handling, management structure and pupillage.”

“We found it a useful exercise to concentrate the mind and ask ourselves questions. The follow up call and explanation was very helpful.”

“It was a huge amount of work but we found it was a really useful stocktake exercise that focusses the mind.”

“I found it very useful to undertake an audit of chambers procedures and although time consuming I feel it was definitely time well spent.”

35. Chambers assessed as Medium Risk have a number of actions to follow up. In addition, a number of chambers assessed as Low Risk also had some actions to follow up. This has generated a considerable amount of further information that we need to assess, and we are still in the process of working through this information and reassessing the level of risk where relevant. Some chambers assessed as Medium Risk have been told that they will be scheduled for a visit in due course. These will follow visits to High Risk/Medium Impact chambers, which we are currently scheduling.
36. High Impact chambers assessed as High Risk have all been visited. In some cases, the level of risk was reassessed and reduced as additional assurance was provided. This was particularly the case where chambers had invested less time in submitting detailed responses to the Supervision Return.

At the end of a visit to a chambers assessed as High Risk, barristers and the clerk said: "We enjoyed the visit and you are very welcome to come back. It was very helpful to talk through the issues you had raised. It is a long time since we were last able to sit together to do this."

At the end of another Supervision visit, the senior clerk and a senior member of chambers said they were very impressed with the way that the meeting had been conducted. They particularly noted the understanding but ultimately accurate approach; the level of detail and accuracy would assist chambers going forward, as they are able to focus their efforts effectively on areas that require attention.

37. We are already seeing tangible improvements in policies, procedures and controls as a result of the Supervision work with chambers. We believe that the Supervision programme can help to drive significant improvements in the market.

Email from a senior clerk: "I thought I would keep you in the loop about where we are. I am pleased to say that we have asked for external help with making sure we do everything you want and that all areas are up to latest requirements. We have as such a practice manager/compliance manager now looking at what we need especially in relation to a contingency plan for unexpected events and closures etc."

38. The supervision process is all about facilitating a constructive relationship between chambers and the regulator. It is in everyone's best interests that chambers are managed competently; barristers' and chambers' operations should run smoothly, the BSB will need to take less enforcement action and consumers' interests will be protected and promoted. With this in mind, each chambers has a named contact within the Supervision team. We are encouraging chambers to contact us in the event that their risk profile changes significantly, for example due to significant changes in the practice, financial difficulties or a significant irregularity such as fraud or a compliance failure. A change in risk profile would not necessarily precipitate a visit - we want to know how chambers is managing the increased risk. Failure to keep us informed is more likely to precipitate a visit or other monitoring activity. We might also amend the risk assessment if other matters are brought to our attention from other sources to indicate that the level of risk has increased.
39. We significantly enhanced our understanding of the risk landscape through this process. Between us, the Supervision team had direct interaction with 180 of the highest impact chambers through the assessment of the returns and through follow-up calls and visits. We are in the process of doing the same for 169 chambers assessed as Medium Impact, who have recently submitted their Supervision Returns.
40. This has provided a wealth of information that is enabling the team to target its resources at the areas of highest risk. Furthermore, we are using this information not only to determine our immediate supervisory response but, as a risk-based regulator, to identify emerging themes that will help the BSB to shape activity across the whole organisation and inform regulatory decision-making. The themes that we identify will be drawn together with other information from across the BSB to enable us to report as a whole on risks to the Regulatory Objectives.

41. The Supervision department works closely with other departments within the BSB to ensure the effective sharing of information and to agree the appropriate proportionate regulatory approach. We are already providing input to the Regulatory Policy team's review of the BSB Handbook and we are supporting the development of the "Risk Outlook", which will set out a "weather report" on the Bar and the market environment, and the BSB's priority areas of risk to our Regulatory Objectives. Each team member is actively involved in one or more of the three strands of the BSB's overarching change management programme for effective risk-based regulation, ensuring that learning from Supervision activities are shared across the organisation as the Risk Framework, the Customer Engagement Strategy and the Governance projects are developed. Protocols are in place between Supervision and Enforcement departments to promote consistency of regulation, to avoid duplication and to encourage collaborative working. These protocols enable any supervisory action to complement any subsequent enforcement action and for enforcement to share issues that are more appropriate for supervisory action. It also enables a more complete picture of the regulatory landscape and our approach to it to be established, which in turn feeds into the broader BSB approach to risk-based regulation.

2. Themes from the High Impact Supervision Returns

42. The key themes that emerged are summarised below. We would advise all Heads of Chambers, Regulatory Contacts, Chambers Management Committees and the like to review these areas. For those that have not yet developed a risk framework or risk register, the key areas highlighted below may help.
43. We have mapped the themes to the BSB's draft Regulatory Risk Index⁵ categories. This index is currently under development and will be published following consultation with stakeholders.

2.1 Risk management

Regulatory Risk 4.2 Ineffective systems & controls

44. In the BSB Handbook, rule rC89.8 requires barristers to take reasonable steps to ensure that "appropriate risk management procedures are in place and are being complied with".

We asked chambers to explain the approach that they take to identifying risks, to summarise the key risks they have identified and to describe how these risks are being managed.

We also asked whether they foresee any changes in external factors over the next 12 months in the environment in which their chambers operates and, if so, what changes they anticipate and how they are preparing for them.

45. As these were chambers that we had assessed as "High Impact", they included many of the larger chambers, a good proportion of which have the relative luxury of specialist support staff (Practice Managers, Chief Executive Officers, Chambers Directors, etc.) in addition to traditional clerking roles. These staff have specific

⁵ <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/risk-based-regulation/>

responsibility for supporting the strategic management of chambers and we were encouraged to see good examples of risk management in practice.

46. Chambers that did not have staff with specific responsibility for strategic management of chambers tend to rely on the traditional structures within chambers of a management committee and dedicated committees for pupillage and other aspects of their operations, as well as practice team meetings. However, “traditional” does not necessarily equate to poor risk management. Where there is a focus on risk management and clear lines of accountability, this structure can work well to identify and escalate areas of risk to the management committee or equivalent.

Examples of good practice include use of risk registers, whereby chambers management are able to agree key risks and monitor how chambers is responding to them, linked to business plans and practice reviews.

One chambers said that as a result of reviewing compliance with the new BSB Handbook “We previously had no mechanism for identifying risks and decided to develop a risk register of the risks that we face and actions that have been or are being taken to mitigate those risks.”

Such good practice was not confined to the largest sets with specialist staffing. One chambers of under 40 members said: “We operate a business plan which is essentially a living document which collates a large amount of management information. This data is then converted into simple charts which provide a snapshot of the current health of Chambers. ... Part of the business plan is a risks log which is reviewed and updated monthly, by the Senior Clerk, with any key issues being reported to the Management Committee. The log is reviewed quarterly by the Management Committee to check whether any amendments to the current identified risks are required and to monitor any trends which need to be addressed”

47. Those chambers that have made a direct link between risk management and commercial advantage were able to articulate the clear benefits of effective risk management. Eg:

“X Chambers has a proactive and commercial management attitude towards risk. While effective risk management is a regulatory requirement, we recognise the commercial benefits of managing risk and compliance in relation to the quality of work, the retention of clients, barristers’ claim and complaint reduction and reputational protection”. X chambers has been in existence for over 120 years.

48. However, in our follow up conversations with chambers, it was clear that a considerable number of chambers struggled to understand the concept of risk.

- When we refer to **risk** we mean the threat to achieving an objective. For a chambers, this might be the about the ability to win enough good quality work to make the practice of its barristers financially viable.
- When we refer to **risk management**, we mean the way that the most important risks are identified, monitored and managed, so that a chambers is positioned strongly for the future. Agreeing the most important risks and how they are managed can help members of chambers and staff to have a shared vision about, and therefore confidence in, the future of chambers, and about where limited resources should be focussed. Rule rC89 in the BSB Handbook requires that appropriate risk management procedures are in place and are being complied with.
- When we refer to **high risk chambers** we mean that there is a significant probability that issues identified may have a fundamental impact on chambers' ability to meet the Core Duties and Outcomes set out in the Handbook.
- When we refer to a **high impact chambers**, we mean a chambers where there would be greater problems in the event that a risk materialises. Impact rating is inherent to the activities and profile of a chambers. It is important to note that a chambers can be High Impact, but still be considered Low Risk.

One chambers that was able to articulate its approach to risk management clearly said: "Our starting point for risk management is to:

- a) Identify the present and potential risk to Chambers.
- b) Classify the likelihood of a risk occurring, the consequences for when a risk occurs and assign an appropriate risk level.
- c) Create a strategy to mitigate the risk.
- d) Action and review the strategy on a regular basis."

49. Some chambers had recruited the support of consultants to help them complete the Supervision Returns. We would encourage all chambers that used consultants to ensure that the concepts of risk management were sufficiently understood and embedded in chambers after the consultants had completed their work and that this was not simply a paper exercise for chambers. Worryingly, it was apparent that some of these consultants also struggled to understand the concept of risk management, how to apply it to a chambers context and how to explain it to staff and members of chambers.

50. The majority of chambers said that they foresee changes in external factors over the next 12 months:

Do you foresee any changes in external factors over the next 12 months in the environment in which your chambers operates?		
Yes	111	65%
No	59	35%

51. The main factors cited by chambers were:

- Ongoing impact of cuts in public funding.
- Changes to specific areas of law, such as the changes in the Personal Injury fee regulations.
- The need to look to new opportunities available, such as public access, litigation, mediation, entities and “Alternative Business Structures”.
- Changes in the supply of work from solicitors, including competition from solicitor advocates, reduction in Duty Contracts and closure of some solicitors firms that have not survived the economic pressures.
- Competition from other chambers, but also opportunities for mergers and other forms of collaboration.
- Downward pressure on fees and the need to cut costs, bringing pressure on support staff. Also forcing the need to reduce the physical size of chambers and make greater use of technology for remote working/clerking and interaction with clients.
- Impact of the regulatory environment, such as QASA⁶ and the growing focus on the need to improve equality and diversity in the Bar.

One chambers described using a “PESTLE” analysis to identify a range of Political, Economic, Social, Technological, Legal and Environmental factors that might affect chambers.

It was encouraging to see that many chambers had put a great deal of thought into the external risks and how they are responding. They spoke of the need to change and adapt. Comments included:

“We have identified potential problems in all areas of our core practice over the next 12 months.”

“I foresee an ever increasing pressure on sets of chambers in both a regulatory and competitive environment sense.To me, all of these factors will ensure an increasingly diverse professional and well-run sets of chambers and an increasingly good service being received by clients, which can only be a healthy thing for the Bar in general.”

The external pressures “will create systemic risks across the sector of a decline in standards. Paradoxically, we anticipate that some of these features will also present opportunities: more efficient sets of Chambers will thrive and will be able to selectively recruit from less effective Chambers, high quality established practitioners with good client connection.”

⁶ The Quality Assurance Scheme for Advocates. For more information see: <https://www.barstandardsboard.org.uk/regulatory-requirements/for-barristers/quality-assurance-scheme-for-advocates/>

52. However, a sizeable minority did not show signs of having considered the environment in which they operate. The fact that 35% of chambers were apparently not able to evidence consideration of the environment in which they operate is surprising. At the time of completing the Supervision Returns, the country was gearing up for a General Election, the outcome of which was unpredictable, the Criminal Bar was considering striking in support of solicitors over Legal Aid cuts, and the markets were highly volatile in the face of Euro zone and other global crises. For some, this was perhaps a reflection that they were already experiencing considerable change. Nevertheless, it was apparent from both the Supervision Returns and the visits that we have carried out that a considerable number of chambers do not feel the need to create business plans and, indeed, find it difficult to see the need for a business plan in the context of the self-employed Bar.
53. Chambers that do not monitor the environment in which they operate are less able to respond flexibly to both risks and opportunities. It is in the public interest to have a strong and diverse legal sector.
54. Where chambers focussed their response to these questions only on operational risks (such as processes in the clerks' room) or where chambers were able to identify risks but were not able to explain what they are doing to manage them, we encouraged them to consider their approach to risk management: how they can improve overall identification, monitoring and active management of market or strategic risks (such as those identified above). For example, by adopting a simple risk register, by linking risk management to a business plan and through regular monitoring and discussion of risks at Management Committee meetings, to ensure that there is oversight of key operational and strategic risks, and a coordinated approach to risk management.

One Head of Chambers said to us, after such a discussion: "You don't get any training to be a Head of Chambers". Others have made similar comments.

55. Supervision holds monthly meetings with the Bar Council to feed back any themes emerging from our work where we think guidance or training would be of interest to chambers, and this is feedback that we have passed on.

2.2 Compliance with the BSB Handbook

Regulatory Risk 4.2 Ineffective systems & controls

56. The BSB Handbook plays a key role in ensuring that high standards are maintained at the Bar.

"Justice and the rule of law are fundamental to our society. So is public confidence in the administration of justice..... It is important that the same high standards are maintained by all those whom the Bar Standards Board regulates."

Foreword to the BSB Handbook

57. The Supervision Return provided an important opportunity to gauge the level of compliance by the High Impact chambers with key requirements of the new Handbook that was published in 2014. We were encouraged by the comments of a

number of chambers who said that the process of completing the return had prompted them to carry out a detailed assessment – in some cases employing additional resources to assist in ensuring a thorough review, to highlight areas of non-compliance or where controls could be strengthened.

“We have and are still in the process of reviewing our present standards alongside the Handbook. This questionnaire has assisted in this process and we will be reviewing the position at our Management Committee Meeting. We are undertaking a review of training on the Handbook to ensure all our members are fully aware of the provisions.We are planning to compile a questionnaire for everyone in chambers asking whether they have read the Handbook and, if not, they will be given a deadline of when this will be expected to be done by.”

58. However, 20% of chambers said they had not carried out an assessment of compliance with the new BSB Handbook. Also, the quality of responses to other questions in the return cast some doubt on the robustness of the assessment by some of those who said that they had assessed their compliance.
59. We encouraged these chambers to undertake such an analysis to ensure that they are compliant with *all* relevant requirements, particularly where responses to other questions in the return demonstrated lack of awareness of the Handbook requirements. Of those that had carried out such a review, only a small minority said that no gaps in compliance were identified and amongst these, most chambers had taken the opportunity to improve policies and processes.

Have you carried out an assessment of your compliance with the BSB Handbook that was issued in January 2014?		
Yes	136	80%
No	34	20%

60. Any chambers that have not carried out this exercise should do so, and should ensure that *all* barristers and chambers staff are encouraged to familiarise themselves with the Handbook.

2.3 Delivery of services

2.3.1 Complaints handling and client feedback

Regulatory Risk 5.2 Inadequate complaint handling

Complaint rates

We asked chambers how many complaints they had received in the last 12 months and what percentage of total cases this represented. We also asked whether they have set a benchmark for the number or proportion of complaints that they would reasonably expect to receive.

61. The majority of chambers had received five or fewer complaints over the previous 12 months.

How many complaints has your chambers received in the last 12 months?	
Number of complaints	Number of chambers
0	15
1-5	106
6-10	30
11-15	11
16-20	4
21-25	3
26-30	1

62. 89% of chambers reported a complaint rate of 0.5% or less. Of the remaining chambers (18), a number had rounded the rate up to 1% on the return and said that their complaint rate was well below that level in practice.
63. This provides a useful benchmark, although chambers that practice in several areas of the law were aware that some types of work generate a higher rate of complaints due to the nature of the clients.
64. Given that more than half of chambers had not set a benchmark, we would encourage all chambers to use this data to support review of standards of service provided to clients. We encouraged chambers to set benchmarks that reflect market norms rather than having an expectation of zero complaints when this is unrealistic.

Have you set a benchmark for the number or proportion of complaints that you would reasonably expect to receive?	
Yes	45%
No	55%

Notification of complaints process to lay clients

Rule rC99 of the BSB Handbook says that you must notify clients in writing when you are instructed or, if that is if not practicable, at the next appropriate opportunity:

1. of their right to make a complaint, including their right to complain to the Legal Ombudsman (if they have such a right), how, and to whom, they can complain, and of any time limits for making a complaint;
2. if you are doing referral work, that the lay client may complain directly to chambers or the BSB authorised body without going through solicitors.

Guidance for chambers is available on the BSB website

<https://www.barstandardsboard.org.uk/code-guidance/first-tier-complaints-handling/>. This explains the means by which Chambers may seek to achieve compliance with rule rC99 of the Handbook.

65. A very low complaints rate may not necessarily be a good indicator. The underlying cause could be that lay clients do not know how to make a complaint.

We asked chambers what measures they take to ensure that lay clients are informed, in writing, of their right to complain.

We also checked data provided by the Legal Ombudsman about the number of "premature" complaints (i.e. complainants who approached the Legal Ombudsman first instead of chambers because they did not understand the complaints process) and information available on chambers' websites.

66. This is an area where both the BSB and the Legal Services Board have placed a considerable amount of focus, and we will continue to do so. Whilst we recognise that, for some, the need to rely on solicitors can present difficulties, chambers must take proactive steps to ensure that lay clients know how to make a complaint.
67. This has generated considerable debate in the past, but we were encouraged to hear many chambers have put processes in place to get assurance from their solicitors that they have passed on details of their complaints process. Note that the SRA has published guidance which emphasises that solicitors should assist barristers with conveying the required information to lay clients <http://sra.org.uk/barristers/>
68. We have also seen some good examples of client care leaflets that barristers hand to their lay clients when they first meet, setting out in plain English what to expect from their barrister as well as how to complain. We are encouraging chambers to take this approach wherever possible:

"Every client is handed a Complaints Letter at the first available opportunity. A letter is produced and attached to every brief and/or request for paperwork that is received in Chambers and this will be handed to the lay client either at the first conference or during the day at the first hearing at which the client is present."

"Every member of Chambers is provided with the "client information leaflet" with his or her brief or paperwork so that the leaflet can be handed to the lay client at the hearing or provide with any written advice or drafted pleadings. The client information leaflet provides details of what the client can expect from the member in terms of the service provided and it also provides details of the procedure to complain."

"Chambers is working with our regular professional clients to ensure that, where possible, lay clients are informed of their right to complaint about their barrister as part of the solicitor's client care letter. Chambers has also purchased, and distributed to members of chambers, professionally printed business-card size cards, which are designed to inform lay clients of their right to complain to Chambers or to the Legal Ombudsman. These are easy to carry and to have available when no other method of being informed in writing can be, or has been used."

One chambers was investigating the possible use of a mobile app for clients to acknowledge receipt of client care letter/complaints procedures.

Timeframe and contact details for making a complaint to the Legal Ombudsman

69. A consistent issue during our review of the Supervision Returns is chambers referring to incorrect information in their complaints policies and on their websites about:
- the timeframe for making a complaint to the Legal Ombudsman; and
 - the Legal Ombudsman's contact details.
70. We have raised this issue with many chambers. Those who have not done so already should check that the information that they provide to clients is consistent with the Legal Ombudsman timeframes as shown here:
<http://www.legalombudsman.org.uk/helping-legal-service-providers/>
Suggested wording for chambers websites and client care letters are available here:
<http://www.legalombudsman.org.uk/wp-content/uploads/2014/11/Signposting-information-Lawyers.pdf>
71. Note that the timeframe for making a complaint to the Legal Ombudsman may change if they seek Alternative Dispute Resolution (ADR) accreditation. Details can be found here: <http://www.legalombudsman.org.uk/helping-legal-service-providers/>

Monitoring and improving standards through review of complaints and feedback

72. Complaints and feedback can provide valuable information to help chambers to maintain and improve standards of service. Rule rC109 of the BSB Handbook requires that the person responsible for complaints handling should prepare an annual report on the number of complaints received, outcomes, trends and training issues.
73. Most chambers were able to describe some action taken as a result of feedback or complaints, even where complaints numbers were low.
74. Where chambers were not able to provide any examples, or their responses indicated that there was no regular reporting on complaints and feedback centrally (to a management committee or similar), we encouraged chambers to reassess whether there were sufficient mechanisms in place within chambers to ensure that high standards are maintained and that there is compliance with rule rC109.

Good practice examples included:

“A review of complaints is carried out on an annual basis in order to identify any common themes. Reviews over the past 15 years have indicated that themes tend to relate to individual counsel, rather than practice and procedure as a whole. As a result, the Senior Clerk will monitor more closely (in conjunction with other clerks where appropriate), the practice of those counsel (or staff) whose actions have given rise to either a complaint or negative feedback. Where necessary, the Head of Chambers will be involved and training or mentoring may be offered. As an example the Head of Chambers is preparing a document to circulate to all members on public access.”

“The next survey will focus on clerking & administration and counsel in a more detailed way. The aim is to gain a stronger understanding of client needs and expectations and to service these accordingly.”

“No major chambers-wide themes have been identified with respect to complaints. However, chambers continue to learn from complaints about individual barristers and apply that experience Chambers wide. Thus members are regularly reminded of the importance of good clear communication with clients and the importance of setting realistic timescales and meeting deadlines. There have also been a number of small changes in response to feedback from clients and suggestions as to how chambers might improve its service to clients.”

75. Chambers take a range of approaches to obtaining feedback. This includes:

- Feedback not proactively sought:

“We do not currently do anything proactive to obtain feedback from clients.... I have no examples of complaints that have resulted in a theme being identified resulting in changes. Since we have no feedback we have not implemented any changes as a result.”

“Chambers does not survey clients for feedback as it believes that the feedback obtained from those surveys does not provide any useful representation of the quality of service provided in that: a) Clients who have won their case given disproportionately positive feedback omitting to mention any minor issues that may have arisen during the course of the case and are unable to provide any suggestions for improvement. b) Clients who have lost their case give disproportionately negative feedback, often complaining of matters which are not related to the quality of service provided. Chambers instead addresses the standards that are required to provide a good service and provides them without seeking distracting feedback.”

- Informal feedback received through daily contact in the clerks’ room or with the barrister. This was often felt to be the most valuable source of feedback.
- Routine request for feedback at the conclusion of each case.
- Feedback at seminars for professional clients.

- Surveys to solicitors. A number of chambers said that they struggled to get responses and some solicitors had asked them to stop sending questionnaires:

“We had sent out questionnaires/ feedback forms for solicitors and lay clients. Many, many of our solicitors complained about this as "extra unwanted paper". Some (at least 2) even threatened to stop instructing chambers if we did not stop!”

“Historically Chambers sought feedback from clients quarterly in accordance with the requirements in the Manual. However, this process produced in the vast majority of cases no response from clients, and in some cases positively hostility to being asked for feedback so that the decision was taken to cease this process in 2010/11.”

- Practice review meetings with key professional clients.
- Engagement of consultants to conduct client service reviews.
- Downloadable forms on chambers’ websites.

76. Of particular note was the fact that few chambers actively seek feedback from lay clients and a number felt that it would not be possible or appropriate to do so. Rule rC121 of the BSB Handbook requires barristers with less than three years’ standing to seek appropriate feedback from their public access clients on the service provided, but few chambers referred to this in their return.

“Chambers considers that, even where direct contact is possible, its lay clients would be more likely to regard feedback requests as an unwelcome intrusion than as a valuable opportunity for comment.”

77. We are considering this in more depth as part of a piece of work on Consumer Engagement. A few chambers did describe how they obtained feedback from lay clients:

“At the conclusion of every Direct Access case an email survey is sent to the client asking them to provide feedback on the service they have received. The information provided is then collated and used as part of Chambers annual quality review. Any themes or trends are investigated and recommendations made to the Management Committee if necessary.”

“In Public Access cases all barristers of fewer than three years’ standing actively seek feedback from their clients.”

“The clerks are encouraged to record all feedback comments from solicitors, clients and any other person that a member of chambers has contact with on our LEX case management system, whether these comments are of a positive or negative manner.... The Chambers administrator can then run a report quarterly to review comments to forward to the Practice Director to assist with barrister analysis meetings.”

“Our client care letter also invites feedback from lay clients at the conclusion of the case.”

“Individual members do receive letters, emails and cards of thanks from grateful lay clients on occasion. Any positive comments about counsel's strengths are used by the clerks for cases of similar nature when clients are anxious about the suitability of their barrister.”

“Chambers operates a Facebook page and a Twitter account which are both apparent from the website. Although no feedback has ever been received by these routes it is recognised that social media is increasingly used by consumers to raise dialogues regarding service.”

78. The Legal Ombudsman sends us regular reports about complaints that they have processed. We checked these report for cases where barristers had been charged a case fee by the Legal Ombudsman, reflecting poor complaints handling by the barrister. We asked chambers if they were aware of this and whether they had assessed what lessons could be learnt from the experience.
79. We are aware that chambers may not be aware of all complaints handled by the Legal Ombudsman. This is because of the self-employed status of barristers and the concern of the Legal Ombudsman that they may be breaching the Data Protection Act by disclosing this information to chambers. However, we think that chambers do not have a complete picture of complaints if they do not have this information; they should consider how this issue is managed within chambers. In some cases, chambers' constitutions require barristers to disclose all complaints, so that the management committee (or similar) can review all complaints on an annual basis. There is a new opportunity now for chambers to access information held by the Legal Ombudsman because new IT systems are being introduced to administer cases online. There is an opportunity for “Administrator” access to be granted to chambers personnel, which would give oversight of all complaints relating to their members. We would encourage chambers to take this opportunity, which will support management committees when reviewing complaints reports.

2.3.2 Maintaining high standards

Regulatory Risk 5.1 Failure to provide a proper standard of service

We asked: “What steps does your chambers take to ensure that high standards are maintained by its barristers”.

80. Some chambers wondered how to answer this very open question, but we found it very helpful in giving us an indication of the culture within chambers. Organisational culture is widely recognised as an important factor in successful organisations. Examples included:

“The ethos of our chambers is the provision of high quality, expert services to our full client base.”

“This set of Chambers takes pride in the provision of a service that meets the needs of the lay client.”

“Chambers seeks to encourage and foster an 'open door' culture which allows members to seek the guidance of colleagues about professional conduct matters. Such a culture can help to ensure that high standards are maintained, particularly when a barrister is faced with a difficult or sensitive professional conduct matter or ethical issue, and provides a practical means by which more junior members are able to benefit from the experience and guidance of more senior practitioners.”

“There is a corporate responsibility within Chambers and no one wants to 'let the side down'”.

“Collegiate culture of Chambers which encourages more junior practitioners to seek ethical and professional advice from more senior members... client feedback, both positive and negative, is discussed in a friendly but constructive manner.”

“A significant reliance is placed on supervisors, mentors, other members and staff to embed a culture of the desire to provide consistently high standards of advocacy, advice, support and respect for others. Members are encouraged to work from Chambers as much as possible and an 'open-door' policy is embedded throughout providing support for all, from pupillage to the most senior members.

81. Some of the tangible things that chambers spoke of included the information provided to clients, internal policies and processes, induction or mentoring new barristers joining chambers, signing up to a chambers-specific code of practice and service standards, proactively seek client feedback, practice group meetings and chambers oversight of CPD.
82. Chambers that were not able to demonstrate many measures to ensure high standards are maintained were asked to consider this question further.

2.3.3 Fee information provided to clients

Regulatory Risk 5.1 Failure to provide a proper standard of service

We asked: what information does your chambers provide to clients about the fees they will be charged and the terms and conditions associated with those fees?

Outcome oC18 of the BSB Handbook is: “clients are adequately informed as to the terms on which work is to be done”.

Rule rC22 of the BSB Handbook has a clear requirement that all clients should be routinely informed in writing, when instructions are first accepted, of the basis for charging of fees.

83. In our Supervision Returns and on visits to chambers, this is a key area of focus for us. If there is any doubt on the Supervision Return responses, we ask for clarification about how chambers ensure that costs information is transparent and provided in writing. On visits, we ask for copies of recent client care letters to check what information on costs is provided. We raise specific actions, with high priority, where we think that costs are not transparently agreed in writing.

84. This was an area where we needed to revert to a considerable number of chambers for more assurance because of lack of a clear response, or because there was clear non-compliance. All chambers should ensure that they comply with rule rC22 because failure to provide clear fee information is a common cause of complaints.
85. The Legal Services Board wrote to the BSB this year about costs transparency, which is the underlying cause of 25% of all complaints about legal service providers, according to the Legal Ombudsman. In particular, they are concerned about Damages-Based Agreements (“DBA’s”) which they say are confusing for clients. A DBA is a contingency fee arrangement whereby the lawyers can take a percentage of the damages (up to a maximum of 25% in personal injury cases, 35% in employment cases and 50% in most other cases). DBAs became lawful in 2013 under the Damages-Based Agreements Regulations.
86. We did not specifically asked about DBA’s on the Supervision Return but in the question about source of income, some quoted the percentage of work done via Conditional Fee Arrangements (“CFA’s”). A CFA is where a lawyer will not take a fee if the claim fails. In most cases, if the claim is successful, the lawyer will charge a success fee in addition to their base costs.
87. For some of those that did specify the proportion of CFA work, the proportion of total fee income was high. However, none reported problems in this area as a theme in complaints and feedback.

CFA as a % of income	no. of chambers	% of chambers
Not specified	108	64%
Less than 1%	8	5%
1-10%	27	16%
11-50%	26	15%
>50%	1	1%
	170	100%

88. For public access work, the majority of chambers charge a fixed fee upfront and use standard wording recommended by the Bar Council in their letters, so this appears to be relatively low risk to the public for the Bar. Public Access work overall is a low proportion of the Bar’s work. This is consistent with the statistics quoted by the Legal Ombudsman: most complaints about DBA’s/CFA’s relate to solicitors.
89. We will monitor this area further as we review the Medium Impact chambers’ Supervision Returns and will review controls with chambers as part of our visits.

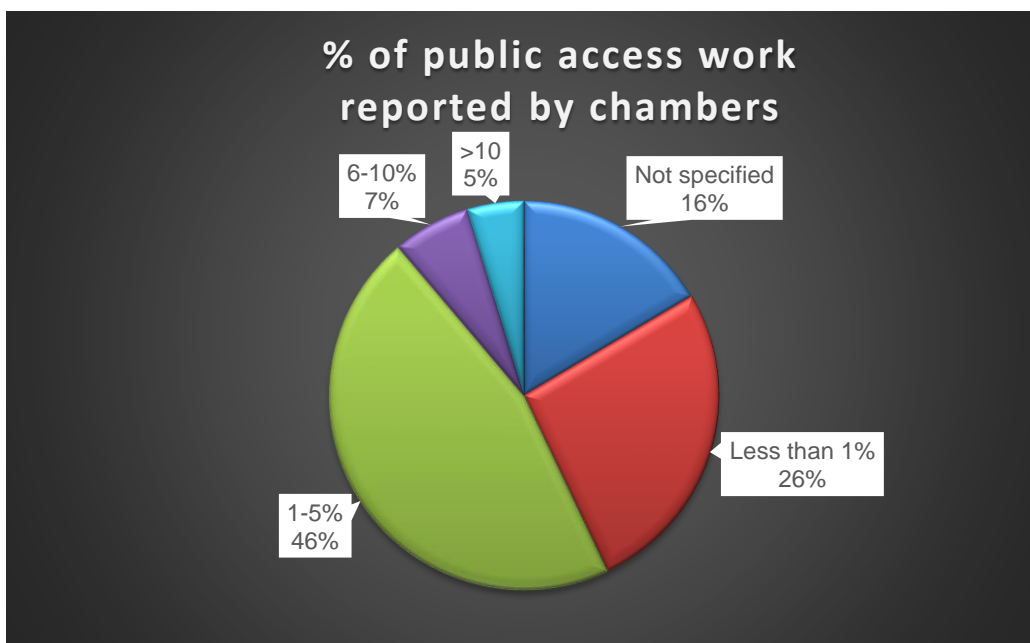
2.3.4 Public access instructions

Regulatory Risk 5.1 Failure to provide a proper standard of service

90. This was an area where a number of chambers said that their barristers (and in some cases clerks too) assess suitability of clients for public access instruction, but they provided no detail about how the assessment is done.
91. In particular, there was no mention of what steps are taken to ascertain whether it would be in the best interests of the client or in the interests of justice for the public access client to instruct a solicitor or other professional client (rule rC120 of the BSB Handbook). Some rely on written communication only because they regard this as more time-efficient for chambers, for example:

“Forms are sent to possible DPA clients. This is passed to members to view if suitable for Direct Access.”

92. In general, much of the feedback we have had is that chambers have found that public access work is very resource intensive for both clerks and barristers – perhaps more so than they had anticipated.
93. The vast majority of chambers that carry out public access work either reported that this comprises less than 5% of their work, or did not specify the proportion. Where the proportion was not specified, some comments indicated that the level of public access work was low. Therefore, in overall terms this is probably not a high impact issue for the Bar.



94. Some of the people responsible for completing the returns were not themselves involved in assessing suitability and we were able to obtain additional assurance during the course of follow-up with some chambers.

95. Nevertheless, the BSB Regulatory Policy team is currently carrying out some further research in conjunction with the Legal Services Board, so we have shared this information for further consideration in this area. Also, in the Supervision Return for Medium Impact chambers/sole practitioners, we have asked some additional questions in this area.

Example of one of the more detailed responses that reflected more consideration of how suitability is assessed:

“Before determining whether the client (or case) is suitable for instruction under the public access scheme there are a number of factors that the barristers and clerks will consider when assessing if a case is suitable for public access work.

- After an initial discussion between a public access trained clerk and the client, a potentially suitable public access trained barrister would usually be identified, assuming the case is within the areas of law covered by Chambers' public access trained members.
- Following this, the clerk will request written instructions and any supporting documentation from the client. The written instructions will give the barrister a clear indication of what he/she is being asked to advise upon, thereby providing counsel with the best possible opportunity to decide if a case is suitable for public access.
- Initially the barrister will review documentation provided and assess the complexity of the individual case. This may involve a telephone discussion with the client or perhaps with another member of Chambers - this might be particularly useful to more junior members who are able to take the view of more senior members or those with more experience of public access cases.
- They will also discuss the case with their clerk, who will have already dealt with the client by telephone or in writing; it is equally as important that the client is able to communicate well with the clerks' room as with the barrister. All clerks dealing with public access clients have completed the necessary Bar Council public access training and will give their view on whether a client is suitable for public access.
- The barrister will then consider if they feel the lay client is someone they would be comfortable dealing with on a day to day basis. Some clients will find it more difficult to communicate with a barrister than others. It may be as simple as a language barrier - if the client requires an interpreter this may increase the need for a solicitor, however we would obviously consider each case on its own merit.
- The barrister must also consider if the client is capable of dealing with the administrative aspects of the case that barristers are unable to deal with. The client may need to lodge documents with the court or pay a fee when filing documents. In some cases this may mean there might be a need to bring in a solicitor. Failure to lodge a document on time or in the correct court office may mean the end of the case or proceedings.
- As with any instructions received into Chambers, the clerk and barrister will assess the timescale of the proceedings and consider if the barrister has the necessary availability to advise/ represent the client at each stage of the proceedings. This is done in conjunction with the clerking team by reviewing the barrister's case load on a regular basis and a forward review of the diary to identify potential clashes or busy periods.

- If, after considering the factors above, the clerks and barrister do not feel a case is suitable for public access and consider that the client would be better served by involving a solicitor they would assist the client in finding a suitable instructing agent or other set of chambers to take the case forward. Over the years Chambers has built up an excellent relationship with a number of small law firms who we regularly recommend clients to where a solicitor would be beneficial to the case either for particular stages of the case or in running the entire matter.”

2.3.5 Conflicts of interest

Regulatory Risk 2.7 Conflicts of Interest

96. In most chambers, clerks carry out checks on the case management software to identify conflicts of interest, for example where both sides are being represented by chambers. In some chambers, there were no formal procedures within the clerk room to identify conflicts at an early stage and they relied on the barristers to identify conflicts when they read the papers. Some chambers provided limited explanation of how conflicts are managed, once identified.
97. In some chambers, the risk may be lower than others, depending on the type of work they do, so we asked chambers to consider what risks this might raise and how the risks are managed.

Good practice example:

“When instructions are received ... the names of the parties are checked against Chambers' computer database to ensure that Counsel has not appeared or advised the opposing party/parties or for any other potential conflict might arise. Our computer systems enable search by a party's name, property name, child's name and other variables. Chambers clerks enter all relevant variables as search terms to identify potential conflicts of interest.

Where an actual conflict is identified any barrister concerned will not be permitted to accept instructions. If the barrister concerned was specifically requested the clerks would explain the position and recommend alternative suitable Counsel.

Where a potential conflict of interest arises (no specific conflict is identified but a risk is identified eg instructions to act against a previous client in an unrelated matter where the fact that counsel has previously acted for the opposing party may mean that they are privy to information which could give rise to a conflict) the clerk managing the enquiry/instruction would discuss the potential case in either general or specific terms with the barrister concerned to determine whether there is a risk of conflict or an actual conflict of interest. If a discussion regarding potential conflict results in the barrister seeing case papers or obtaining information which pertains to that case but the barrister does not in fact accept the instructions due to a potential or actual conflict, the case details would be entered on the computer systems as below and appropriately flagged on the system to prevent the barrister from accepting instructions for the opposing party.

Where an enquiry regarding potential instructions is received and/or where instructions are in fact received in chambers and an actual or potential conflict of interest is identified, details of the case and the conflict are recorded on the Chambers computer system and an automated flag is generated. Details of cases where instructions are

rejected due to an actual or potential conflict are also entered onto the computer systems. Thereafter, whenever the case file/records for that instruction are accessed on the computer systems or a conflict of interest search identifies the case an automated warning regarding the potential conflict will be activated and appear on screen to alert the clerks.

Where 2 barristers within chambers are instructed on opposing sides of the same case, then a firewall is created in the clerking room to separate the clerking services for the 2 barristers concerned so as to prevent any conflict of interest and/or accidental disclosure of confidential information. This is done by allocating to each barrister a particular (and different) clerk who will independently deal with all clerking matters related to the instruction. A note is made on each computerised entry for the case flagging the conflict and identifying the clerk responsible for handling all matters related to the instruction. Papers received in relation to the instructions are dealt with by the particular clerk allocated to each barrister and are kept under lock & key whilst in chambers to prevent cross-over of information. Telephone calls related to the instructions are taken in a separate room to avoid the possibility of anyone overhearing the conversation.

Where proceedings have been commenced and disclosure of the fact that a barrister in chambers is acting for the other side will not breach confidentiality then the client on each side is alerted as to the situation and the procedures adopted to manage potential conflict/information contamination and is asked to mark all papers coming into chambers clearly and accordingly.

Barristers in relationships with others in chambers do not currently practice in the same fields of law. Barristers whose partners instruct chambers do not receive such instructions.”

2.4 Equality and Diversity

Regulatory Risk 1.4 Lack of a diverse and representative profession

98. This section of the report has already been provided to the BSB's Equality and Diversity Committee.⁷
99. In summary, there is a range of maturity levels in relation to compliance with the BSB Handbook in this area, but good progress has been made. The challenge now for chambers that have achieved compliance with the rules is to make a real difference to improving equality and diversity, which is an area where the Bar as a whole still needs to make progress.
100. The Supervision Returns provided an excellent opportunity for chambers to assess their levels of compliance and revisit their Equality Action Plans, and for the Supervision team to encourage further progress.

⁷ <https://www.barstandardsboard.org.uk/about-bar-standards-board/how-we-do-it/our-committees/equality-and-diversity-committee/>

101. Key areas highlighted were as follows:

- A real desire in a number of chambers to support this agenda and encourage more equality and diversity at the Bar. Some chambers would welcome more guidance to make a step change from compliance with the rules, to making a real difference in practice.

Some chambers were able to share examples of good practice and how they are working with schools and other groups to promote inclusion. These could be disseminated by the BSB/Bar Council to inspire others. Eg:

“The problem in reality is to understand the monitoring process and where necessary turn it into remedial action. In following the policy we have learnt nothing new about the composition of chambers, but recognise that our biggest concern is how to attract a greater of diversity in prospective candidates. In reality this is a broader educational problem and Chambers recognises the need to engage in recruitment at an earlier stage, either at schools or universities. A number of members of Chambers are engaged with School trials project, and Careers conventions, in the hope of encouraging people to look at the Bar/Chambers as a realistic Career choice.”

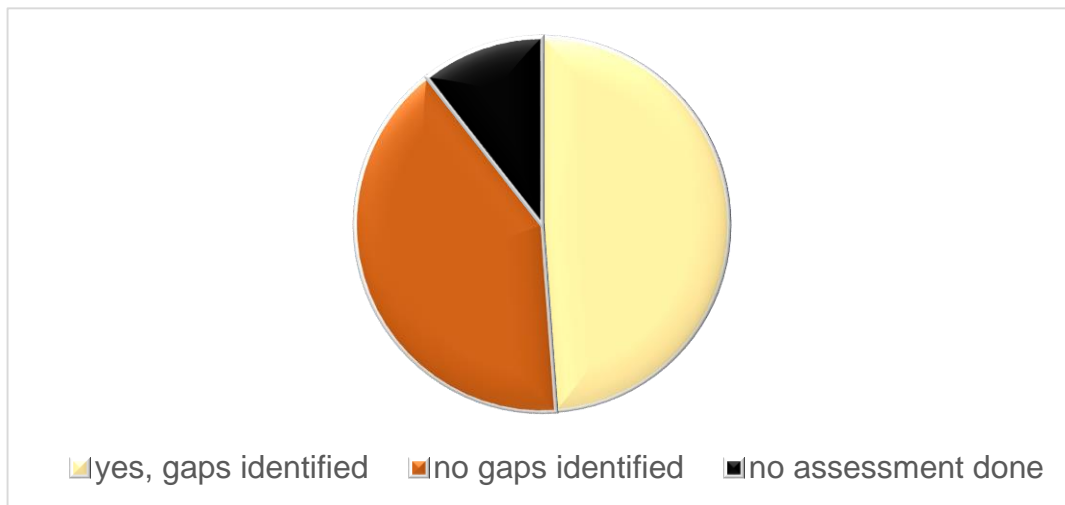
- A challenge remains that chambers have a high number of high calibre applicants for pupillage, so the incentive to widen the net is limited. In order to change recruitment practices, chambers need evidence that greater diversity would directly benefit them.
- Good progress made by many chambers, but a number of key areas still to be addressed by chambers that are further down the maturity curve.
- Monitoring of fair allocation of work has been particularly challenging for many chambers, but the support of the main case management software suppliers has been enlisted. In turn, this will help the vast majority of “High Impact” chambers to improve their ability to monitor fair allocation of work. A number of chambers indicated that they need further practical support by the BSB/Bar Council in this area.
- Some chambers struggle to get the support of enough members to provide data because they don’t necessarily appreciate why it is needed. Support from the BSB/Bar Council in this regard would be welcomed.

Anecdotally, some barristers have complained that they have to submit data to multiple organisations. Consideration would be welcomed as to whether collection of data could be consolidated and made available to the different agencies.

- A number of smaller chambers said that they think they can make a real contribution to the promotion of diversity at the Bar, but struggle with the financial outlay of funding pupillages in the current climate. They asked whether more financial support could be made available to help the Bar make progress.

102. In the Supervision Return, chambers were asked the following questions:

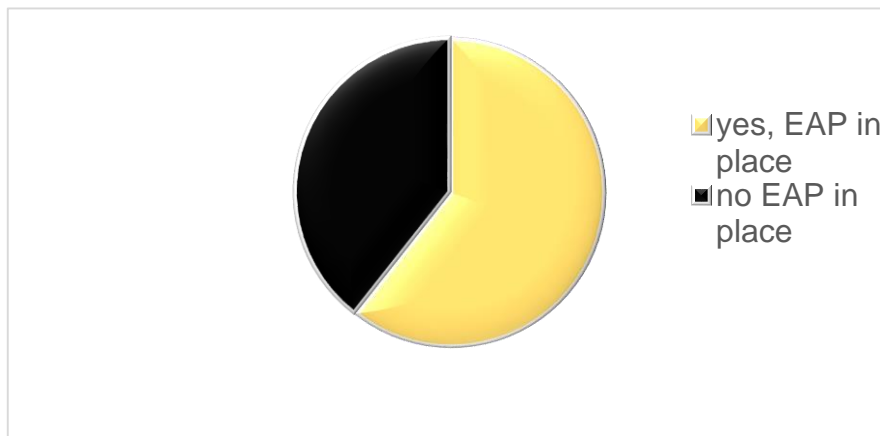
1. *Have you identified any gaps in compliance with the requirements of rules rC110-112?*⁸
Outline the gaps that you have identified and explain how you plan to address them.



18 of the High Impact chambers had not done an assessment of their compliance with the BSB Handbook.

Nearly half of the High Impact chambers (83) identified gaps in compliance with the Equality and Diversity rules.

2. *Do you have an Equality Action Plan that has been drawn up as a result of your monitoring activities?* Those chambers that had an Equality Action Plan were asked to summarise their key priorities and what actions they have planned for achieving them.



⁸ These are the Handbook rules that relate to Equality and Diversity: <https://www.barstandardsboard.org.uk/regulatory-requirements/bsb-handbook/the-handbook-publication/>

The main areas of non-compliance identified by chambers were as follows:

Area of non-compliance	No. of chambers reporting non-compliance
Multiple areas for improvement identified (including those listed below)	37
Monitoring fair allocation of work	17
Fair recruitment & selection training	11
Diversity data collection, publication & monitoring	8
Policies	4
Attracting diverse applicants	1

103. On the face of it, this suggests a high level of non-compliance, but there are a number of positive points to be made:

- a) Of those that had identified gaps, many had made good progress in a number of areas and were clearly on a journey to improve their level of compliance. For example, they had policies in place but wanted to update them or they had collected diversity data but had yet to publish it on their website.
- b) We were pleased to receive positive feedback from chambers that the process of completing the Supervision Return prompted many of them to review compliance with the BSB Handbook and to update their policies and processes. They found this to be a very helpful exercise.

“Upon receipt of this BSB questionnaire, the current rules 110 to 112 have been checked. Prior to this Chambers was only partially compliant and we are in the process of remedial work.”

Those that had not done a systematic assessment of their compliance with the Handbook and/or had no Equality Action Plan were required to do so through follow-up action, which we are monitoring. This will further improve overall levels of compliance and focus on this area.

- c) Where chambers said they needed help and guidance in specific areas, we were able to take this opportunity to signpost them to the Equality & Diversity teams at the BSB/Bar Council and encourage them to get in touch.
- d) Many chambers struggled in practice with meaningful monitoring of the fair allocation of work and want to ensure that it can be done efficiently. Some would welcome further support from the BSB/Bar Council in this area.

Some chambers have worked with the two main chambers software providers to develop improved reporting functionality, which will support better monitoring of fair allocation of work via their case management systems. In turn, this will be of benefit to many other chambers too:

“To date, there has not been any effective monitoring of the fair allocation of unallocated work. Chambers clerks have been inputting information into the Lex system dealing with the allocation of unallocated work. However, the process of trying to monitor this allocation of work in an effective way is proving very difficult. Accordingly, Chambers has been liaising with Lex for a substantial period of time for Lex to make adjustments to its software to enable a proper monitoring process to be carried out.”

We presented a session at one of the Inns’ Pupil Supervisor training events. During one of the exercises, discussion indicated that processes within chambers to monitor fair allocation of work “seemed liked quite a good idea” to many, rather than a must-do. The results from the Supervision Returns reflects that this is an area where more work needs to be done.

- e) Some of the non-compliance related to fair recruitment training. At the time of completing the returns, many chambers had trained some members and had plans to complete the training for all relevant members before the deadline of the next round of pupil recruitment.

Chambers were also asked how they ensure objective and fair selection of pupils. Any areas of concern were followed up with chambers.

- f) Some chambers expressed support to comply with the data collection and publication requirements, but struggle to get the support of enough members to provide the data because they don’t necessarily appreciate why it is needed. Support from the BSB/Bar Council in this regard would be welcomed. Anecdotally, some barristers have complained that they have to submit data to multiple organisations; in addition to the BSB requirements, the Bar Council also compiles statistics for the Bar Barometer report⁹, and the CPS and Attorney General require data to evidence compliance with their requirements. Consideration would be welcomed as to whether collection of data could be consolidated and made available to the different agencies.

“When I circulated the recommended diversity questionnaire to members of Chambers and staff only 10 people out of over 90 completed it which adds to the difficulties of effective monitoring.”

Some chambers are still confused about what data needs to be published eg. whether inclusion of chambers staff as well as barristers is required and the minimum number of people below which publication is not required.

⁹ <http://www.barcouncil.org.uk/about-the-bar/facts-and-figures/publications/>

“While chambers remains committed to the E&D policies put in place at the inception of chambers there is substantial reluctance amongst those members of a protected group in relation to publication even of percentages on the chambers website, particularly in light of the overall small total number of barristers practicing. The committee continues to work towards a proposal acceptable to all parties that will satisfy the requirements of the code.”

- g) Anecdotally, some chambers still have some way to go:

During a visit, one chambers said that they had decided to market chambers with universities other than Oxbridge – by extending the spread to the Russell Group universities.

A challenge remains that chambers have a high number of high calibre applicants for pupillage, so the incentive to widen the net and change recruitment practices is limited unless chambers think there is a real benefit to doing so. They need evidence that greater diversity would directly benefit chambers.

- h) A number of the smaller chambers that we have spoken to in the course of our reviews have been passionate about promoting improved equality and diversity at the Bar. They felt that they were more diverse than larger chambers and would be more likely to take on pupils from a more diverse range of backgrounds but they cannot afford to fund pupillages. They wanted to know if more financial support could be provided to support them if they are actively contributing to the recruitment of a more diverse intake of pupils.
- i) Some indicated that they were technically compliant but felt that they could do more. For example, they recognised that they could do more to improve the diversity of pupillage applications:

“We pride ourselves in Chambers having a good balance in key areas of gender, ethnicity, sexual orientation and socio-economics. We have realised however that we could be doing more active work in this area, and although we have robust protocols in place for the gathering of data, we could do more work to analyse the data to feed in to Chambers’ future strategies. We plan to take professional advice as to how to go about this exercise.”

In our follow up with a number of chambers, we said that we were encouraged that they had made good progress in the area of Equality and Diversity. However, particularly for the larger and more influential chambers, we said that, now that their policies and procedures are established, we would encourage them to consider what actions they could take to promote equality, which is an area where the Bar as a whole still needs to make progress.

We think that for those larger chambers that have put resources into getting their policies and processes in place, more guidance is needed about how they can take their Action Plan to the next level and really make a difference to the Bar. In this respect, it would have been helpful if the sample Equality Action Plan that is available on the BSB website included more examples of good practice and stretch targets. At the moment it is focussed on compliance with policy and process. Whilst

this is understandable at lower levels of maturity, as progress is made across a wider number of chambers, support in making a real difference to this agenda would be helpful. Chambers are looking for ideas and examples of good practice about how they can contribute to this.

Some chambers gave good examples of positive work they are doing with schools and outreach programmes to promote inclusion and diversity at the Bar. It may be helpful to include more examples in the sample Equality Action Plan¹⁰:

“Chambers will also continue to support outreach programmes. It has participated in the Social Mobility Foundation programme to encourage high-achieving students from disadvantaged backgrounds to experience work at the Bar. For the last two years Chambers has taken a student from the programme.”

2.5 Pupillage

104. The responses to questions in this area were often rather brief and we had to revert to a number of chambers for more assurance. This tended to reflect the fact that the person completing the form was not involved in pupillage selection, so we were able to obtain additional assurance in many cases, in particular in relation to the following:

Pupillage selection

Regulatory Risk 1.4 Lack of a diverse and representative profession

We asked: “How does your chambers ensure objective and fair selection of pupils?”

- How pupillages are advertised:

105. The Pupillage Gateway ¹¹ is the online application system for pupillage. All pupillages must be advertised on the Gateway (rule rQ61 of the BSB Handbook) and approximately 100 chambers use the Gateway for processing applications. This advertising requirement is to help promote diversity in the Bar by ensuring that there is equality of opportunity through an open and transparent recruitment process. The Gateway is administered by the Bar Council and the onus is on chambers to proactively contact the Pupillage Gateway team to ensure that all pupillages are advertised on the website.
106. We have had reports from third parties that some chambers are not complying with this requirement and we have followed this up individually with some chambers where it has come to our attention. We would urge all chambers to ensure that they follow this requirement to ensure that objectives relating to equality of opportunity are met.

¹⁰ This information has been shared with the Equality team.

¹¹ <http://www.pupillagegateway.com/>

- Fair recruitment training has been undertaken:

107. At the time that the returns were completed, a number of chambers were in the process of ensuring that all relevant barristers and staff met the deadline for receiving the required training. There seemed to be good awareness of the requirements.

Good practice example:

“X Chambers runs its timetable for applications in line with the Pupillage Gateway timetable. This is fair to those who are applying for pupillage with chambers within the Gateway. It means that applicants are not pressured into deciding whether to accept a pupillage before the Gateway system commences.

X’s extensive application form attempts to draw out the candidate and allows them to demonstrate their academic ability, analytical skills and written skills as well as any relevant experience they may have. X does not have a minimum degree level criteria and recognises that those applicants for whom the Bar is a second career may have developed important transferrable skills.

Application forms are anonymised for the initial paper selection for interview round. Members of chambers reviewing forms in this initial papers selection round are given written guidance on the marking criteria. Each application form is marked by at least two members of chambers, and sometimes three.

At interview, all members of interview panels now have undergone Equality and Diversity recruitment training. Interview questions are designed to be able to be answered by those who have not yet done the Bar Professional Training Course as well as those who have, or have equivalent experience. Again, interviewers are given written marking criteria to apply to each candidate.

After interview, constructive feedback is given to those unsuccessful candidates who request it.”

Pupillage training

Regulatory Risk 3.1 Inadequate training and preparation for practice

We asked: “How does your chambers ensure that pupils are provided with adequate tuition, supervision and experience?”

Good practice examples included:

“Chambers’ pupillage policy documents that pupillage is divided into three periods of four months, spent with three different Pupil Supervisors (of varying levels of seniority and who specialise in different aspects of law). Supervisors are aware that pupillage involves a close professional relationship and all take their responsibilities seriously. Matters for which the Pupil Supervisor is responsible are set out in the pupillage policy documents.

On the first day of pupillage, a meeting is arranged with the Head of Chambers, Chairman of the Pupillage Committee, Secretary to the Pupillage Committee, Pupillage Welfare Officer (who does not vote when a pupil applies to be a member of chambers) and Senior Clerk.

Pupil Supervisors provide informal feedback to their pupil on a day-to-day basis. If the pupil carries out written work for any member of chambers other than the Pupil Supervisor, that member of chambers is expected to complete a Feedback Form. This should be shown to the pupil, who is entitled to retain a copy of it. All Feedback Forms are submitted to the Secretary to the Tenancy Committee, and may be inspected by any member of chambers.

Every two months, a review will be conducted by the Pupil Supervisor and recorded in writing. The pupil will be invited to engage in and contribute to the review. The review will be counter-signed by the pupil. The Review Form will also afford the pupil the opportunity to comment on his or her experience to date. The pupil is entitled to retain a copy of the Review Form. All Review Forms are submitted to the Secretary to the Tenancy Committee, and may be inspected by any member of chambers.

In the first two weeks of June each year, pupils will undertake an advocacy exercise. This will involve the making of submissions to a panel of three members of Chambers (including at least one Queens Counsel). The panel will give feedback to the pupil at the end of the exercise. The feedback will be recorded in a short report. The pupil is entitled to retain a copy of the report.

The clerks actively seek to encourage professional clients to send work to chambers that it suitable for pupils in their practicing six months of pupillage. This work is then allocated between the pupils by way of strict rotation.”

108. We recognise that smaller chambers may not be able to provide the same breadth of resource and supervision as in the above example, however all chambers should ensure that good quality feedback is given to pupils and that pupils are able to provide feedback and raise any concerns if necessary. This was an area where we needed more assurance from, and agreed follow-up action with a number of chambers.
109. The Bar Council has set up The Pupils' Helpline ¹² to give confidential and objective advice and support to pupils who encounter problems during pupillage and want to discuss their concern with a member of the Bar who is unconnected with their chambers. Contact can be made anonymously if preferred. Chambers should ensure that pupils are aware of this service.

¹² <http://www.barcouncil.org.uk/supporting-the-bar/member-services/pupils-helpline/>

2.6 Finance and administration

2.6.1 Chambers viability

Regulatory Risk 4.1 Viability & 5.4 Disorderly closure

We asked chambers whether they had had any cash flow problems in the last 12 months that have prevented, or made it difficult to meet liabilities, or if they anticipated that such problems might arise. For those that had, we asked what plans were in place to ensure that chambers could continue as a going concern (ie. able to continue operating for the next 12 months).

23 chambers (13% of the High Impact Chambers that completed a Supervision Return) had experienced cash flow problems in the last 12 months. However, these chambers had generally managed their problems and were confident that forced closure was not imminent. In the last 18 months, there have been no disorderly closure scenarios.

110. Those that had had cash flow problems could explain how the risks were being managed and the risk of closure reduced. This included:
- Improving billing and fee collection
 - Controlling costs
 - Restructuring staffing
 - Renegotiating premises leases
 - Downsizing premises
 - Changing chambers rent structures
 - Changing bank
 - Targeting more profitable work
 - Attracting more Silks with higher earning potential
111. In two cases, problems were caused by VAT issues, either miscalculation or a long running dispute with HMRC (that was eventually resolved in chambers' favour).
112. We have published "Chambers Closure Guidance"¹³ on the BSB website and are encouraging all chambers to document a written plan for the steps that they would take if they had to close down suddenly. The guidance covers considerations such as the handling of confidential information and protection of the interests of clients.
113. In particular, some chambers reported vulnerability to the departure of a significant proportion of their members, particularly where departing members did not settle amounts owed to chambers.

One practice director thought that the risk to chambers' cash flow of barristers leaving without settling their chambers rent may increase as the market becomes more fluid in the current environment. As barristers take their work-in-progress with them, to the benefit of the new set, the chambers that they leave behind may not be compensated for the time put in by their staff to win the work.

¹³ Chambers Closure Guidance is available in the resources section here: www.barstandardsboard.org.uk/supervision

2.6.2 Disaster Recovery / Business Continuity Plan

Regulatory Risk 4.2 Ineffective systems and controls

114. The current threat level for international terrorism for the UK is assessed as “severe”¹⁴ Most chambers are located in prime locations in city centres, and in London a large number are clustered in a relatively small area near the courts and the Inns. Aside from the national risk, any business or service is at risk of accidental fire, flood etc, that prevents normal access to premises and technology. Despite this, a quarter of High Impact chambers have not documented a Disaster Recovery/Business Continuity plan:

Has chambers documented a Disaster Recovery/Business Continuity Plan?	
Yes	74%
No	26%

115. However, most chambers thought that the risk levels were low and manageable because of the relatively small size of their operations and their ability to access IT resources remotely. However, few had gone through a formal risk assessment process in chambers, or documented their planned response. Very few of those that had done so, had tested their plans.
116. All chambers should develop a written Disaster Recovery/Business Continuity Plan that would set out the steps that they would take to ensure continuity of service in circumstances in which chambers were not accessible for any reason. These plans should be tested.
117. We do not have specific guidance in this area but chambers may find the following information helpful:
www.gov.uk/government/uploads/system/uploads/attachment_data/file/376381/Expecting_the_Unexpected_Reviewed.pdf

2.6.3 Anti-Money Laundering and Counter Terrorist Financing controls

Regulatory Risk 2.5 Failure to co-operate or comply and 2.6 Financial impropriety

The Money Laundering Regulations¹⁵ apply to a limited category of work undertaken by the Bar. The most likely areas identified in the Regulations are: non-contentious advisory work, in particular, tax advisers and those instructed to advise at the planning or execution stage of the buying or selling of real property or business entities (i.e. transactions), or in relation to the setting-up, structuring, or management of companies or trusts (or similar structures).

118. In the past, the Bar Council and the Chancery Bar Association produced guidance for its members and the topic is covered in the Bar Council's public access training. The Bar Council has removed this guidance from its website and is in the process of updating it, and expects to publish it soon.

¹⁴ <https://www.mi5.gov.uk/home/the-threats/terrorism/threat-levels.html>

¹⁵ <http://www.legislation.gov.uk/ukxi/2007/2157/contents/made>

119. As a regulator, we are subject to scrutiny and oversight by HM Treasury in this area and have to report annually with a self-evaluation. The Bar Council's new guidance will be submitted to HM Treasury for review and approval. HM Treasury will shortly be publishing its National Risk Assessment of Money Laundering and Terrorist Financing.
120. HM Treasury also anticipate that the UK will soon be subject to a peer review by the international Financial Action Task Force ("FATF"). The FATF published a report on the legal sector in 2013,¹⁶ indicating some concerns about the levels of risk in the legal sector, and it is likely that the UK's National Risk Assessment will reflect that.
121. The Supervision Returns provided an excellent opportunity for us to develop our understanding of the risk profile of the Bar and enable us to establish a baseline of information about which chambers carry out the specific activities referred to in the Money Laundering Regulations.

63 chambers (37%) said that they carry out work that falls within the Money Laundering Regulations, although 34 of these referred only to general public access work rather than specifically to the categories of work referred to in the Regulations. 2 chambers reported that they had made "Suspicious Activity Reports" to the authorities.

122. Chambers were asked in the Impact Assessment survey whether they hold client money and whether they do any work that falls within the Money Laundering Regulations. Those that said they did were more likely to be assessed as "High Impact". We repeated these questions in the Supervision Return. Where there was a difference in the response compared to the Impact Assessment, or where a review of the website indicated that they might be doing work that falls within the Regulations, we followed up with chambers to ensure that they were clear about their responsibilities and reviewed the controls in place where relevant.
123. Where relevant chambers were able to describe the controls in place for checking the identity of clients, we reminded them that that their "Customer Due Diligence" requirements extend beyond this to understanding the nature and purpose of the business relationships and asked them to ensure that their procedures address this. We also highlighted the anticipated guidance that the Bar Council will publish soon. Publication of the new guidance will provide an opportunity for chambers that are uncertain about their responsibilities to carry out a further review to ensure that they are complying with the Regulations.

¹⁶ <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>

2.6.4 Fraud

Regulatory Risk 4.2 Ineffective systems and controls

124. Apart from the largest chambers, most are run with lean staff structures, which means that segregation of duties (a key internal control in any operating environment) is difficult. One chambers told us that a criminal had targeted a number of chambers and solicitors for this reason by gaining employment as a bookkeeper.

We asked: "Have there been any instances of fraud, suspected fraud or other irregularity at your chambers in the last 12 months that have resulted in a financial loss or a 'near miss'?"

125. In addition to the above case, 7 chambers (4%) reported incidents:
- Two junior clerks stole from chambers by withdrawing and pocketing petty cash from the bank and falsely using a signature stamp to sign cheques.
 - Cash disappeared from chambers' safe.
 - Spending by a member of staff on a chambers credit card became higher than anticipated.
 - A supplier's cheque was stolen from the Post Office and used to fraudulently reproduce a series of cheques made out to the same individual.
 - A toll fraud attack (when a hacker gains access to a VoIP telephone system and programs international call-routing from the voicemail, running up massive bills). Losses were covered by insurance in this instance.
 - Dispute over rent payable to chambers by a barrister as a result of a verbal agreement that could not be substantiated.
 - A member was discovered to be practising without a current practising certificate.
 - Errors in transfers from the barristers' fees bank account to barristers.
126. All cases prompted a review and tightening of controls, in particular:
- Instigating more dual controls over payments and cash.
 - After the toll fraud was identified, a number of new security steps were put in place. These included increasing the password complexity and disabling the option for diverts to be placed to outbound numbers from voicemail for the entire system.
 - Centralised monitoring in chambers of practising certificates. We would encourage all chambers to do this, in addition to monitoring BMIF insurance renewals where we have also identified discrepancies in some chambers. This safeguards against the need for enforcement action and ensures that clients are protected, as well as the reputation of chambers.

2.6.5 Aged debt and referral fees

Regulatory Risk 2.3 Lack of independence & 4.2 Ineffective systems and controls

We asked: "What is the level of aged and irrecoverable debt for barristers' fees?"

127. We hear a widespread view in the Bar that levels of aged debt are too high and that this is a significant issue for barristers and for chambers. So we hoped that the responses to this question would bring out some of the facts behind this market view. We were disappointed, therefore, that the question was poorly answered, with limited indication of the extent to which chambers had a view on this matter. Aged debt appeared to be high in many cases but most chambers did not provide a context for the amount of aged debt, analysis of the level of risk, information about the reasons for the level of aged debt or an assessment of whether the controls in chambers were adequate.
128. Anecdotally, we have heard a number of reasons cited for the levels of aged debt, ranging from poor controls within chambers to deals done with solicitors, without the knowledge of junior tenants, to forgo their fees in return for the promise of more lucrative work - in other words, referral fees, which are prohibited in the BSB Handbook (rule rC10).
129. Referral fees and the impact on the quality of legal services has become an area of focus for the government¹⁷. The Ministry of Justice is currently consulting on "Enhancing the Quality of Criminal Advocacy"¹⁸. This includes a proposed introduction of a statutory ban on referral fees; how disguised referral fees can be identified and prevented; and the proposed introduction of stronger measures to ensure client choice and prevent conflicts of interest. Chapters 4 and 5 of the Rivlin Report on Criminal Justice, Advocacy and the Bar (March 2015)¹⁹ also touches on these issues.
130. In the Supervision Return for Medium Impact chambers, which we issued in 2015, we re-worded the question so that we could get more facts about the level of aged debt and chambers' views. We have also gathered further information about the payment of referral fees from our visits to chambers and from other reports made by individuals to the BSB. We will be using this information to identify where we need to focus our work in this area.

Anyone that would like to share their experience in confidence with us can contact us by email on supervision@barstandardsboard.org.uk or by calling 020 7611 1444 and asking to speak to a member of the Supervision Team.

¹⁷ <https://www.gov.uk/government/news/government-to-outlaw-legal-referral-fees>

¹⁸ https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/consult_view

¹⁹ http://www.barcouncil.org.uk/media/342215/rivlin_report_final_march_2015_.pdf

2.6.6 Information security

Risk assessment

Regulatory Risk 4.2 Ineffective systems and controls

We asked chambers to summarise the key information security risks that they had identified and to describe how these risks are being managed/controlled.

131. In 2014, the Information Commissioner's Office (ICO) published a warning to barristers to keep personal information secure, especially paper files.²⁰ This followed a number of data breaches reported to the ICO involving the legal profession.
132. The National Crime Agency reports that cyber crime is one of the eight key threats to the UK in its National Strategic Assessment of Serious and Organised Crime 2015²¹. Aside from the more obvious risk of the loss of confidential and highly sensitive client information, there is a wider concern that, in an increasingly technologically connected world, chambers are seen as a weak link in the "supply chain".²² There is concern that chambers are at risk of being used by criminal elements whose target is not necessarily the chambers themselves, but their direct or indirect clients and suppliers. In an increasingly connected and technology-dependent world, criminals are adapting and exploiting technology, and looking for these weak links to exploit.
133. Our observations support this concern about chambers. Given the structure of the Bar, with the relatively small size of the vast majority of chambers, dedicated IT resources and specialist information risk management expertise are rarely found in chambers. Against this backdrop, increasingly, chambers are reviewing their premises costs and providing their members with more opportunities to work from home in an effort to cut costs. Most barristers use a range of mobile devices to connect with chambers' IT systems remotely and communicate with clients. A number of chambers try to keep paperwork to a minimum and store client papers electronically. Some barristers are starting to use tablets in court. Changing and growing use of technology will be a feature of working patterns.
134. Therefore there is a clear threat if the risks are poorly managed. Many chambers were unable to describe their key information security risks and how they are managed other than at a very basic level. In some cases, review of information risk management is driven by their clients' requirements for assurance. Eg:

"We do not anticipate any major information security risks, although clients are increasingly insisting on secure email."

²⁰ <https://ico.org.uk/about-the-ico/news-and-events/news-and-blogs/2014/08/information-commissioner-sounds-the-alarm-on-data-breaches-within-the-legal-profession/>

²¹ <http://www.nationalcrimeagency.gov.uk/publications/560-national-strategic-assessment-of-serious-and-organised-crime-2015/file>

²² For more in-depth discussion see the paper by Zurich insurance company: http://knowledge.zurich.com/cyber-risk/cyber-risk/?WT.mc_id=z_cp_b2b_se_GOOGLE_GN-Cyber-Risk-Phrase-EN_GN-Cyber-Risk-Phrase-EN_cybercrime&WT.srch=1&qclid=CK2ovfWGsMgCFYOy2wodl6UE3Q

135. The Bar Council has issued some guidelines²³ in this area and we encourage chambers to review these guidelines and consider what the relevant risks are and if they are sufficiently understood and being appropriately monitored in Chambers.

Examples of good practice in a chambers of less than 40 members:

“We regard the lawful and correct treatment of personal information as of the utmost importance to our successful operations and to maintaining confidence between chambers and those with whom it carries out business. Therefore, we considered it essential to ensure that we have robust procedures in place in terms of data protection and undertook a series of improvement initiatives across a range of areas. We engaged an external data protection consultant to audit our procedures and infrastructure. The subsequent report included the following: “Compared to other Barristers Chambers we have audited, X Chambers comes out ahead not only for compliance but also for its desire for continual improvement and leadership. This is the only audit report where we have awarded a level of assurance of “substantial”. Chambers should be extremely proud to have achieved this and must keep up the hard work to maintain it.

We have subsequently made a commitment to undergo an information security audit on an annual basis. Our Data Protection Policy was expanded and enhanced and incorporated into the Quality Manual. Compliance is measured on a regular basis, with Data Protection now being a standard Management Committee agenda item. We undertook an extremely detailed penetration test of our information technology systems. All adverse findings were remedied immediately. As with the data protection audit, we have made commitment to an annual audit.

Significant capital expenditure was made in terms our information technology infrastructure, including the centralised purchase of encryption software for all equipment, both of barristers and staff, to [industry] standard. All administrative personnel have undergone data protection training, to be refreshed three years hence. All administrative personnel have now been subject to DBS checks. Other improvement initiatives undertaken include: The provision of a regularly reviewed Risk Register; Similarly, a Change Control Register; Data handling guidelines; Register of Starters/leavers; Register of Disablement of Accounts; IT Hardware and Software Asset Register; Enhanced data protection agreements with third party suppliers of services; Improvements to the terms of employment in respect of data usage.”

***Registration with the Office of the Information Commissioner
Regulatory Risk 4.2 Failure to co-operate or comply***

136. In 2014 the Information Commissioner’s Office updated its guidance for chambers about compliance with the Data Protection Act and the requirement to register data controllers²⁴.

²³ <http://www.barcouncil.org.uk/for-the-bar/professional-practice-and-ethics/it-panel-articles/guidelines-on-information-security/>

²⁴ <https://ico.org.uk/media/for-organisations/documents/1578/registration-of-barristers-chambers.pdf>

137. A considerable number of chambers do not have processes in place to ensure that their members and relevant staff are registered and in limited spot checks we found many discrepancies. We would encourage all chambers to ensure that they have procedures in place to ensure compliance with the requirements to register with the Information Commissioner's Office and to keep those registrations up to date.

Good practice example:

"The Chambers Administrative Team have a spread sheet of all members of Chambers which is constantly reviewed to make sure that registration of everyone is constantly maintained. ...We have a member of staff, our Administrative Assistant, who monitors the dates for renewal and ensures that all of the relevant fees and forms are sent in a timely manner."

3. Other information that informs our assessment of risk

138. The Supervision Returns provide us with very valuable information that help us to assess the risk landscape, but we also use information from a range of other sources, both internal and external, to help us to assess risk and identify emerging themes so that we can build a more informed view of chambers.
139. For example, the BSB's Professional Conduct team alert us to any issues that arise from their enforcement activity that appear to be of a systemic nature in chambers. We also receive reports directly from barristers, chambers staff and third parties that alert us to emerging risks.
140. In addition, we have developed strong relationships with a range of external agencies and have in place information sharing arrangements with them. These include the Legal Ombudsman, the Office of the Immigration Services Commissioner, the Home Office, Trading Standards and the other legal regulators. These arrangements have provided further intelligence relevant to our supervision activity and broadened the scope of our regulation accordingly. It has also allowed for collaborative working on issues of common interest, for example where more than one agency is investigating the circumstances surrounding a particular enterprise.
141. We have also met, and shared information with the Legal Practice Managers Association and the Institute of Barristers Clerks.

4. Lessons learned

Alignment with the BSB's approach to risk based regulation

142. The learning that the supervision activity has acquired from applying a risk based approach to regulation will be shared across the BSB in order to ensure a consistent means of risk assessment. Further, the themes identified in this report will be used in determining strategic risk priorities and in reviewing the risk framework operated by the BSB.

143. At a more practical and operational level, a number of lessons have been learnt:

Pilot Supervision Returns

144. We initially piloted the Supervision Return with three chambers that kindly gave us their support to test the questions and how we had configured the survey software. We used feedback from these pilots to make some substantial changes to:

- refine the questions;
- increase the character limits to certain questions;
- improve the technical guidance for completing the forms; and
- gauge the length of time needed to complete the form and therefore set the deadlines accordingly.

Changes to the returns issued to Medium Impact chambers

145. We continued to learn from the experience of the High Impact chambers and adapt the returns. Supervision Returns were issued earlier this year to chambers assessed as Medium Impact. We refined questions that some of the High Impact chambers had found difficult, including extra guidance, for example in relation to risk management and aged debt. We also simplified the return for sole practitioners.

U-Engage survey software

146. The returns were submitted via U-Engage survey software. Any negative feedback that we received tended to be about the portal itself. A number of chambers found the software difficult to use. It is not particularly intuitive and, in particular, a number of chambers lost data that they had input and not saved, costing them extra time. Also, some chambers were confused by the different BSB surveys simultaneously available on U-Engage.

147. We addressed this in the next round of Supervision Returns (for the Medium Impact chambers) by expanding the technical guidance and reminding chambers over the phone, whenever the opportunity arose, to actively save their responses. Consequently, there were fewer reported technical problems with submitting the Medium Impact returns.

148. We have given this feedback to our IT project team and will be assessing whether U-Engage, in its current format, is fit for purpose for other planned surveys.

Follow-up information

149. The process generated a considerable amount of follow-up information. We are planning more time for reviewing follow-up by chambers of actions that we have agreed and for reassessment of risk ratings where appropriate.

Regulatory Update email

150. This year, the BSB initiated a new monthly Regulatory Update email for barristers and chambers' designated Regulatory Contacts. We will use this as a tool to highlight any themes that arise from our work.

Board reporting

151. A Supervision database was developed earlier this year to record the results of our risk assessments, our visits, and follow-up actions in progress, as well as information about entities obtained during the authorisation process. We are developing this database so that it can provide reporting functionality. This will enable us to report regularly to the Board on the changing risk profile of chambers and entities as we carry out our supervision work, assess adequacy of follow-up of actions agreed or as we receive information that leads to a reassessment of risk.

152. It will also help us to highlight emerging themes to help drive regulatory decisions and policy. Issues that we log are mapped against the draft Regulatory Risk Index that is currently being finalised by the BSB's Risk team. The themes that we identify will be drawn together with other information from across the BSB to enable us to report as a whole on risks to the Regulatory Objectives, as described in section 1.5 of this report.

Supervision Department Report on Activity 2015

Status

1. For noting.

Executive Summary

2. Risk-based supervision has been fully operational and delivering evidenced-based risk information to inform the Supervision Department's ("the Department") activities for over 12 months.
3. 180 High Impact Chambers have been risk-assessed through their supervision returns, other information, follow-up calls and visits. A detailed report collating the findings and identifying key themes has been produced for consideration by the Board on 22 October.
4. 170 medium impact chambers have been risk-assessed through their supervision return and follow-up activities are in progress.
5. The entity regulation regime was launched on April 8, 2015 and to date 33 entities have been authorised to provide legal services. The application to widen the scope to include ABS was submitted to the LSB at the end of April, 2015. The first renewals process will occur at the start of April 2016.
6. CPD spot check underway with assessment of returns underway. Development of the new CPD is also in progress with the closure of the consultation.

Recommendations

7. The Board is asked to note the contents of this paper and to consider in conjunction with the contents of the Supervision Report on High Impact Chambers.

Supervision Committee

8. The Supervision Committee was constituted in November 2013 to consider policy on matters relating to the supervision of chambers and the regulation of entities. It has strategic oversight of and provides expert guidance and advice on operational policy and any issues arising with the context of embedding risk-based regulation.
9. The Committee met twice in 2015 with an additional formal mid-year review. It was involved in the supervision returns process for high and medium impact chambers and the introduction of entity authorisation, scrutinising and challenging progress, capacity and capability throughout. Two members of the Committee took part in the pilot for the launch of the entity authorisation IT system and provided valuable feedback. This oversight, advice and scrutiny has assisted the Department in making significant progress in implementing a consistent and BSB-aligned risk-based approach to its activities.

Supervision Department

10. The Supervision Department was re-structured in May and consists of 9 members of staff (one of whom is part time). A new role - Head of Supervision and Authorisation - reporting to the Director of Supervision was created and has operational responsibility for the overall activities of both the authorisation and supervision teams. The Department now has a managed programme of work showing all current and planned activities and allows for planning and prioritisation of activities in tandem with detailed resource allocation and capability plans.

11. The Department's capacity and capability have been significantly strengthened over the past 12 months through the recruitment and induction of skilled resources with risk evaluation, financial and legal expertise. Mitigation strategies have been implemented through flexible resourcing arrangements ensuring that all resources are cross-skilled and can be used where there is evidence of greatest need or risk. There has been (and continues to be) ongoing internal development through knowledge sharing, training and collaborative working. All resources are competent in risk analysis and manage a portfolio of chambers and entities. This flexible way of working ensures that increases in capacity requirements for specific activities (such as for the assessment of supervision returns) can be effectively managed with existing resources. It also facilitates consistency in risk-based decision making and co-ordinates ongoing review.

Entity Authorisation

12. Entity authorisation decisions have been issued since 8 April and, at time of writing, there are 33 entities authorised to operate as BSB regulated bodies with a further 120 applications in various stages of completion. The BSB Entities Register is published on the website and updated weekly. There are currently 150 expressions of interest with applications in various stages of completion.

13. A new IT system to support the end to end authorisation process was launched in July 2015. The system is tailored to streamline the application process depending on the size of the entity and removes the need for manual registration. It also facilitates the automated migration of entities to the supervision database on renewal and the consolidation of management information. Development considered and built in (where possible) feedback from the entity pilot in November 2014, from applicants and from a pilot of the system itself in June 2015.

14. The Department has applied the knowledge and expertise gained from its risk-based approach to supervision to the authorisation and supervision of entities. The relatively low level of take-up has facilitated an in-depth evaluation of the risks posed by each application, benefitting both the applicant and the Department. Using a risk-based framework to determine suitability for regulation, the nature of the risks posed by each entity is considered, 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. If authorised, each entity is given a risk profile (High, Medium or Low) which is captured on the Supervision database, aligned with the risk index and used to inform ongoing supervisory activities.

15. The relatively low level of take-up does not yet represent a meaningful enough number to permit a full analysis of the operation of entity regulation. However, as staff have become more proficient and expert with the assessment of risks, the type and complexity of entities authorised has been broadened within the scope of the Entity Regulation Policy Statement. For example, an application was received from a solicitor who did not have higher court rights. The application described an experienced practice manager and robust risk management and governance processes. In such circumstances, the overall risk profile was low, the specific risk posed was captured for ongoing monitoring and the entity was authorised. The Department is also working closely with a chambers which has expressed a strong interest in incorporating as an entity.

16. The common and consistent approach to authorisation and supervision of entities permits the identification of common themes and trends which informs overall proportionate and cost-effective supervisory activity. An example of this for entities will be the first annual license renewals process planned for March/April 2016. The Department will use the risk profile assigned on authorisation to review each entity's risk rating, pinpoint what specific areas pose the greatest risks and target resources effectively.

Licensing Authority (Alternative Business Structure) Application

17. The application to license Alternative Business Structures (“ABS”) was submitted to the Legal Services Board in late April and is now under formal consideration. The Project Initiation Document setting out the basis for the project was considered, and approved, on 27 May and there is a project team in place with operational responsibility for planning and implementation.
18. An initial engagement meeting was held with the LSB on 21 May and there has been routine and generally positive engagement since then. The LSB visited the BSB offices in early October to review the entity authorisation and enforcement processes as it is proposed that these will be leveraged for and extended to include ABS. The visit was viewed positively by both parties. The LSB also met with 2 Board members (October 19) to discuss the impacts and risks associated with becoming a licensing authority.
19. Alongside the application for approval to be a licensing authority, the BSB is seeking necessary and related orders affording it statutory powers of intervention (s.69 Order) and for referral to the first tier tribunal (s.80 Order). The LSB has indicated that, all things being equal, it will issue its recommendation on the application towards the end of March 2016. This will then be subject to up to 6 months consideration by the Lord Chief Justice with launch of the regime expected in Q3 2016.
20. When the scope of the BSB’s regulatory regime is extended to include ABS, these will come within the remit of the supervision and enforcement strategy. Thus, there will continue to be a consistent and aligned approach to the assessment and supervision of risk.

Supervision

21. The Department has made significant progress embedding its risk-based supervision regime in the last 12 months. The approach is aligned with the BSB’s regulatory risk index meaning that themes identified through the supervision returns process can be fed into the wider risk assessment work.
22. The Department has published its strategy, policies and processes through which it has collected and analysed a wealth of information about chambers and sole practitioners. These have been consolidated into a “Supervision Manual” which will be published as a single document once the risk framework has been finalised and published.
23. In 2014 all 794 chambers / sole practitioners were impact-assessed as High, Medium or Low in 2014. All High and Medium Impact chambers (350) have completed a Supervision Return and have been risk assessed by the Department. This has provided an evidence basis for the proportionate and effective targeting of resources. All chambers assessed as High Impact and High Risk have been visited (27 to date).
24. The returns process has facilitated the collation of a significant body of substantive information about the administration of chambers which has, and will continue to be used to inform regulatory decisions and policy. In turn follow-up has ensured that the highest impact chambers have made tangible improvements in policies, procedures and controls, helping to drive material improvements in the market.
25. A significant amount of senior time in the Department was spent on one very high risk chambers. The risk assessment and response was based both on internal work and an assessment of information received from a range of external sources. There was close collaboration with the Professional Conduct Department to protect the public from very poor standards of practice and there was a high level of inter-agency and regulator engagement to share information and manage the situation appropriately. Knowledge and expertise

gleaned from this process have been documented, shared and form part of the supervision strategy.

26. A detailed report has been produced on the key findings from the high impact chambers review and is before the Board for consideration.
27. 170 chambers and sole practitioners were categorised as Medium Impact and the risk assessment of the supervision returns was completed in September. A programme of visits to Medium Impact / High Risk chambers is underway and will be finalised by the end of October.

Thematic Reviews

28. Information gathered from across the organisation indicated that immigration was an area of particular risk and in mid-2015, the BSB commenced a thematic review of immigration services, jointly run by the Department and the Regulatory Policy Department. Focussed visits were arranged with an additional eight chambers / sole practitioners to gather evidence about the provision of immigration services from the provider perspective. The results of this work are being finalised with a decision on next steps to be follow. It is anticipated that the review will identify the key risks arising from immigration practice and will enable the BSB to take an evidenced and proportionate approach to its regulation in this area.
29. The Department gave the Equality & Diversity Committee a thematic report and recommendations based on the outcomes of the assessment of the high impact supervision returns and other high visits.

CPD

30. The approach to CPD supervision has been revised so that it is in line with the wider risk based approach. Supervision is now targeted where there is evidence of the greatest risk of non-compliance. The focus is now not on disciplining non-compliance but supervising individual barristers so that they meet their regulatory requirements. As a result the number of referrals for enforcement action has drastically reduced and the backlog in processing CPD returns has disappeared.
31. The Department is currently undertaking a spot check of compliance with requirements for y/e 2014. There has been a particular focus on New Practitioners and High Risk Barristers. At time of writing the contact phase has been completed and the assessment phase is underway.
32. The development of the new CPD Scheme is ongoing. The consultation has closed and the results are being collated for detailed analysis.

Communication and Collaboration with other Departments and Projects

33. An effective risk assessment process is critical to the joined-up management of risks. The Department works closely with other departments within the BSB to ensure the effective sharing of information and to agree the appropriate proportionate regulatory approach.
34. The majority of incoming complaints or information received by the BSB is currently routed through the Supervision and Professional Conduct departments. Protocols are in place between these departments to promote consistency of regulation, to avoid duplication and to encourage collaborative working. As part of the risk programme, a piece of work is underway to review how incoming information is assessed in order to understand and support the alignment of approaches between the departments and across the organisation. Initially focused on supervision and enforcement, the group has begun looking at other

incoming information also. The output of this work will align the way that information is received and risk assessed, ensuring a truly consistent approach. The analysis of the information will also feed into the Information Architecture project.

35. All members of the Department are actively involved with other cross-organisation initiatives and programmes of work, including each strand of the ASPIRE programme.
36. Knowledge sharing sessions have been led by the Department to ensure that all staff at the BSB understand the approach to supervision and entity authorisation and how it might impact upon their work. The intranet was introduced in 2015 as a central repository of information for all staff about the functions of the BSB (and the wider Bar Council) and key documents, policies and processes are available for staff to consult and ultimately contribute upon.

External Communications

37. The Department provides regular external briefing sessions to chambers, other legal bodies and at events to share its experience with and knowledge of supervision and authorisation and to learn from external contacts.
38. The Department has developed strong relationships with a range of external agencies and has information sharing arrangements with them. These include the Legal Ombudsman, the Office of the Immigration Services Commissioner, the Home Office and the Office of Trading Standards. At time of writing a Memorandum of Understanding with the SRA is in final draft. Additionally there is active information exchange about the lessons learnt and experience of the SRA with ABS / Entities which will be used to inform the BSB's approach to operational implementation.
39. These arrangements and relationships provide information relevant to our supervision and authorisation activities and broaden the scope of our regulation accordingly. It has also allowed for collaborative working on issues of common interest, for example where more than one agency is investigating the circumstances surrounding a particular enterprise.

Publicity

40. The activities of the Department have been received well to date by the profession. There has been positive feedback from the profession about the increased proactive and constructive engagement with the Bar through the supervision return process and the introduction of new ways of working through entity authorisation. Strategy and Communications have provided support where required, specifically in relation to communications work.

Next steps

41. With the completion of the risk profiling of all high and medium impact chambers and the alignment of entities with the supervision approach, the focus for the next 12 months will be on identifying and targeting resources in those areas that present the greatest risk to the regulatory objectives. This will be achieved through the co-ordinated and shared use of information about the operation of the legal services market as well as through the risk outlook and will be addressed through thematic reviews. It is intended that the licensing regime, once launched, will align with this approach.

Nicola Sawford
Clíodhna Judge

Standards Committee Annual Report 2014-2015

Status

1. To note.

Background

2. The Standards Committee last reported in this format to the Board in January 2013. This report summarises the Committee's activity since then, albeit briefly as the Board will be familiar with most matters of substance being considered by the Committee. The Committee was chaired by Matthew Nicklin QC over the course of 2013 and from January 2014 to date by Sam Stein QC.

The new Handbook

3. Over the course of 2013, the Standards Committee was involved in the development and finalisation of the new Handbook in conjunction with the Entity Regulation Programme Board. The Committee considered numbering for the Handbook and approved the final version in April 2013, prior to it being signed off by the Board.

Guidance

4. The Committee was involved in the development and approval of a number of pieces of guidance over the course of the last 2 years, including:

Media comment guidance

5. The old Code of Conduct contained a prohibition on providing media comment which was removed prior to the introduction of the new Handbook. The prohibition was supplemented by website guidance. The guidance clarifies the remaining obligations in relation to media comment and suggests some of the issues that the barrister should bear in mind whilst exercising professional judgment about whether and how to comment.

Referral fees guidance

6. The Committee was involved in the production of guidance on referral and marketing arrangements for barristers permitted by the BSB. This guidance was launched in conjunction with the new Handbook in January 2014 and provides examples of what is and is not likely to amount to a referral fee, with examples of cases in which a payment is not likely to be a prohibited referral fee.

Reporting serious misconduct of others

7. The Committee oversaw the production of the reporting misconduct guidance which came into force at the same time as the new Handbook. The guidance was recently updated to ensure it is in line with one of our equality objectives to provide guidance on the reporting of discrimination and harassment for barristers.

Barristers supervising immigration advisers

8. The committee agreed to publish guidance for the profession on self-employed barristers acting as a supervisor for the purposes of immigration advice and services. This was previously prohibited by the old Code of Conduct, however this was not

replicated in the BSB Handbook and is permitted by the Immigration and Asylum Act 1999. The guidance was published in June 2015 and sets out what is expected of barristers when acting in such a capacity and covers a barrister's obligations under the Handbook when acting as a supervisor. A thematic review into immigration advice and services and assessment of the risks to clients is currently being undertaken. A report with final recommendations will be presented to the Board early in 2016.

Client money and fixed fees

9. The Committee updated guidance on taking fixed fees in advance, where those fees are based on an assessment of the likely time commitment and there is an agreement to refund a proportion of the fee if the actual time commitment is lower. This emphasises the need to do so only after careful estimation of the likely workload and that such agreements should only be entered into by clients who can reasonably be expected to understand the consequences. It also states that in public access cases the barrister will not take a fee (unless a fee has been agreed simply for assessing the papers) until an assessment has been made that the case is suitable for public access.

Guidance on provision of information to the BSB (rC64)

10. The Committee considered guidance to rule C64 in the Handbook. Rule C64 requires barristers to provide the BSB with information as required for the purpose of discharging its regulatory function. The associated guidance at gC93 states that it has been recognised in the case of *R (Morgan Grenfell & Co Ltd) v Special Commissioner [2003] 1 A.C. 563* that disclosure of client information to the regulator does not infringe the client's right to privilege. The Committee considered this guidance on the basis that it may not be an accurate statement of the law. The Committee agreed to remove references to case law and add an additional sentence to the guidance setting out that 'the BSB will look at the question of client privilege on a case by case basis and may seek clarification from the Courts, as to disclosure, if it finds that client legal privilege creates difficulties in the exercise of its regulatory functions and an appropriate test case arises.'

Changes to conflict of interest rules

11. The Committee considered whether a 'real risk of conflict' should be added to the provisions in relation to conflicts of interest in the Handbook. Specialist advice was sought on the use of 'real' or 'significant' risk in the rules. The Committee agreed there was a public interest point about a barrister adequately assessing risk of conflict of interest before acting for a client instead of accruing fees only to subsequently identify a conflict of interest, which one could reasonably expect should have been foreseen, leading them to cease to act. As a result adding 'or real risk of' to the rules will be discussed with the LSB, with a view to the rules being amended via an exemption direction.

Unregistered barristers and legal advice privilege

12. The Committee considered the extent to which clients of unregistered barristers can rely on common law legal advice privilege and sought legal advice on the issue. The Committee agreed new guidance and a minor rule change to require unregistered barristers to inform the client that there is a 'substantial risk they will not be able to rely on legal advice privilege.' This rule change will also be discussed with the LSB, with a view to rule being amended via an exemption direction.

Scope of practice for employed barristers

13. A consultation on the definition of employed barrister (non-authorised body) was agreed by the Committee and was issued on 13 October 2015. The amended definition will allow barristers to source employment through agencies and their own corporate vehicles. The change to the definition is minor and the Board has previously agreed in principle that the rules for employed barristers working in non-authorised bodies should be relaxed. The policy change allowing barristers to work through agencies and corporate vehicles was agreed by Standards Committee earlier this year, and since then the Executive has been issuing waivers to reflect this change. The change to the definition will mean that waivers will no longer need to be issued. The wider work on scope of practice issues will form part of the Handbook review due to commence in 2016.

BSB regulated individuals acting in a judicial or quasi-judicial capacity

14. Following representations from the Professional Conduct Committee (PCC), the Committee has agreed amendments to rE23 – rE25 of the Handbook, which concern BSB regulated individuals acting in a judicial or quasi-judicial capacity. The amendments are mostly for clarity as to the procedure to be followed when a complaint arises out of a BSB regulated individual's actions in a part-time, or temporary, judicial or quasi-judicial capacity. The PCC have now made further representations regarding the amendments, which are currently being considered by the Committee. When the amendments have been agreed, they will be discussed with the LSB with a view to the rules being amended via an exemption direction.

Handbook index

15. The Committee considered and made recommendations on an index for inclusion in the Handbook, which will be treated as 'live' document for barristers and the public to easily navigate their way through the Handbook.

Waivers

16. Jurisdiction for granting waivers from the Handbook formally moved over to Standards Committee in 2014. Since then the Committee has been granting waivers from the Handbook where appropriate, except those which have been the responsibility of the Qualifications Committee. Since then the following types of waiver have been granted:

Extension to complete public access training to undertake international work

17. The Committee granted a waiver to a barrister who required an extension to complete public access training before taking on international work due to health reasons.

Waiver from the requirement to be a member of BMIF

18. The Committee has granted 8 waivers from the requirement to be a member of BMIF, granted on the basis that the barristers in question hold a self-employed practising certificate, but are practising entirely doing foreign work in another jurisdiction. These waivers make clear that they are only valid whilst the barrister is practising in another jurisdiction and not holding him or herself out as undertaking work relating to the law of England and Wales.

Waiver from rS39 – (scope of practice rules for employed barristers (non-authorised body))

19. The Committee agreed a policy change to allow employed barristers to work through agencies or corporate vehicles, as the current construction of rS39 prevents this (although see above on the consultation of the definition of employed barrister which will reflect the policy change in the Handbook). To date, 3 waivers have been granted, all of which apply in limited circumstances and are not waivers to supply reserved or unreserved services to the public at large.

Membership for January 2014 – present

Chair

Sam Stein QC (Board member)

Barrister Vice- Chair

Nicholas Vineall QC (left January 2015)

Andrew Mitchell (Board member, appointed Vice-Chair January 2015)

Lay Vice-Chair

Dr Anne Wright CBE (Board member)

Barrister Members

Adrian Berrill-Cox (left January 2015)

Michael Cronshaw

David Edwards QC

Elisabeth Laing QC (left March 2014)

Jeremy Nicholson QC

Paul Sinclair

Ian Wade QC

Lay Members

Peter Douglas

Elizabeth Hall (left September 2015)

Annie Hitchman

Paul Jackson

Advisers to the Committee

Sarah Brown (left July 2015)

Lead responsibility

Sam Stein QC/Ewen Macleod

The Enforcement Strategy (second version)

Status:

1. For approval.

Executive Summary:

2. The Enforcement Strategy is an integral part of the BSB's enforcement system and underpins the decision making processes. The Complaints Regulations, Part 6, Section A of the Handbook, at regulation E5, stipulate that the Professional Conduct Committee (PCC), when determining which of its enforcement powers to use, will take into account the Enforcement Strategy.
3. The first version of the Enforcement Strategy was agreed by the Board in March 2013 in preparation for the introduction of the BSB Handbook and came into effect on 6 January 2014. The Strategy is not due for full review until two years after its introduction i.e. January 2016 (see paragraph 11). However, an interim and limited review has been carried out in light of the introduction, in April 2015, of entity regulation. The review was carried out by a Working Group of the Professional Conduct Department and Professional Conduct Committee and also by the BSB's Head of Regulatory Risk and Regulatory Risk Analyst to ensure it remains aligned with our current approach to risk. The results indicated that the Strategy remains fit for purpose and only minor amendments have been made to reflect the issues outlined above and to refine phraseology.
4. The second version of the Enforcement Strategy is attached at Annex 1.

Recommendations

5. The Board is asked to approve the revised Enforcement Strategy for publication.

Background

6. Originally agreed by the Board at its meeting on 21 March 2013, the first version of the Enforcement Strategy was introduced in January 2014 to support the introduction of the BSB Handbook. The Enforcement Strategy sets out the BSB's approach to the enforcement of the regulatory requirements in BSB Handbook and reflects the BSB's outcomes focused and risk-based approach to regulation.
7. The first version of the Enforcement Strategy included reference to entity regulation in anticipation of our jurisdiction being extended, nevertheless, it was considered appropriate to carry out a limited review to ensure that its terms remained in line with our approval as an entity regulator.
8. In September 2014, a Working Group consisting of members of the Professional Conduct Department (PCD), the Professional Conduct Committee (PCC) and a representative of the BSB's Prosecution Panel, was set up to consider any changes necessary to adapt the enforcement system to meet the needs of entity regulation. The Group was chaired by the Aidan Christie QC (now the Chair of the PCC). That Group, as a first step, reviewed the contents of the Enforcement Strategy which revealed no necessity for any substantive changes except for revising the references to enforcement against entities and streamlining

some paragraphs. However, finalisation of the second version of the Strategy was put on hold pending the outcome of the wider work on developing further our approach to risk and the BSB's risk framework and index. In light of this work, the BSB's Head of Regulatory Risk and Regulatory Risk Analyst have also reviewed the Strategy. They are satisfied that it adequately reflects our current approach to risk although some cosmetic amendments were recommended and these have been made.

Comment

9. The amendments to the second version of the Enforcement Strategy are not substantive. They include: incorporating references to entity regulation; improving phraseology/streamlining some paragraphs; and removing references to powers that no longer exist or have yet to be introduced. However, the following paragraphs have been added:
 - a. Paragraph 9(g) - to cover timeliness as a "hallmark" of the system; and
 - b. Paragraph 24 – to cover publication of our policies and procedures under the "Openness and transparency" section:

10. In the original Enforcement Strategy, we made a commitment to consult with stakeholders to evaluate its effectiveness two years from its initial introduction ie January 2016. The recent interim review does not represent that evaluation which will still be carried out in 2016. However, the timescale for the evaluation has been altered in the revised Strategy from being "*two years from the initial application*" to "*after two years of its operation*" (see paragraph 26 of Annex 1). This is to allow greater flexibility in deciding when the evaluation is conducted as a review in January 2016 could now represent an unnecessary duplication of work. The implementation of any changes to the enforcement system arising from the governance review will inevitably require a review of the Enforcement Strategy and therefore the evaluation will be incorporated into this work stream to ensure our resources are used effectively

Resource implications

11. No resource implications or additional costs arise from the revised Strategy.

Equality Impact Assessment

12. A full Equality Impact Assessment was undertaken in March 2013 when the first version of the Strategy was agreed. As the changes are not substantive and designed solely to be an updating exercise as opposed to an evaluation, a full impact assessment of the Enforcement Strategy has not been carried out. The wider evaluation of the effectiveness of the Strategy will be carried out in 2016 and at that stage a further equality impact assessment will be carried out. Nevertheless, there is no evidence that the approach outlined in the Enforcement Strategy is creating any undue adverse impacts: indeed, in itself it provides a framework for fair and equitable decision making.

Risk implications

13. There are no identified risks with this update to the Enforcement Strategy.

Impacts on other teams / departments or projects

14. There are no direct impacts on other sections or projects of the BSB.

Consultation

15. As the review was conducted for the limited purposes of incorporating entity regulation and the amendments identified are not substantive, external consultation was not considered necessary. However, internal consultation was carried out via the PCD Entity Regulation Implementation Project and informed by input from the Regulatory Policy Department.

Regulatory objectives

16. The Enforcement Strategy contributes to the achievement of the following regulatory objectives:
- a. protecting and promoting the public interest and the interests of consumers;
 - b. supporting the constitutional principle of the rule of law; and
 - c. promoting and maintaining adherence to the professional principles.

Publicity

17. Proactive publicity is not considered necessary but the revised Enforcement Strategy will be posted on the BSB website.

Annexes

18. Annex 1 – “The Enforcement Strategy”.

Lead responsibility:

Sara Jagger, Director of Professional Conduct



REGULATING BARRISTERS

Enforcement Strategy

Introduction

1. The Bar Standards Board is committed to taking an outcomes focused, risk-based and proportionate approach to all its regulatory activities, which includes its approach to taking enforcement action.
2. This document sets out our strategy in relation to the enforcement of the regulatory requirements set out in our Handbook. In the context of this strategy, enforcement action means the application of sanctions to address non-compliance with the provisions of our Handbook. The strategy seeks to provide clear information and guidance about our approach to taking enforcement action as well as:
 - a) the outcomes we are trying to achieve through enforcement action;
 - b) to whom this strategy applies;
 - c) the role of enforcement in promoting regulatory compliance; and
 - d) how we will determine what action to take.
3. This strategy will be applied in conjunction with our Supervision Strategy and is underpinned by the detailed provisions of Part 5 of our Handbook (the Enforcement Regulations). Nothing in this strategy is intended to override the contents of the Handbook or limit any discretion which it confers.

Intended outcomes of this strategy

4. The main objective of this strategy is to achieve compliance with the regulatory arrangements set out in our Handbook by providing a framework in which to take enforcement decisions. Enforcement action is intended to meet the objectives of:

- a) protecting and promoting the public interest and the interests of consumers;
 - b) promoting adherence to our regulatory arrangements as set out in our Handbook;
 - c) supporting the constitutional principle of the rule of law;
 - d) promoting and maintaining adherence to the professional principles;
 - e) providing a credible deterrence to non-compliance with our regulatory arrangements; and
 - f) preventing further breaches.
5. These objectives will be taken into account when determining what enforcement action to take in an individual case.

Scope of the strategy and our enforcement powers

6. We are able, under the terms of the Legal Services Act 2007 (“the Act”), and our Handbook to take enforcement action against:
- a) barristers (including unregistered barristers);
 - b) Registered European lawyers;
 - c) BSB authorised bodies; and
 - d) BSB regulated managers.

The standards of professional conduct

7. The BSB’s Code of Conduct, Part 2 of our Handbook, requires those we regulate to comply with the following core duties:
- You must observe your duty to the court in the administration of justice.
 - You must act in the best interests of each client.
 - You must act with honesty and integrity.
 - You must maintain your independence.
 - 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.
 - You must keep the affairs of each client confidential.
 - You must provide a competent standard of work and service to each client.
 - You must not discriminate unlawfully in relation to any person.
 - You must be open and co-operative with your regulators.

- You must take reasonable steps to manage your business, or carry out your role within your business, competently and in such a way as to achieve compliance with your legal and regulatory obligations.
8. The core duties underpin the entire regulatory framework, define the core elements of professional conduct and set the mandatory standards that all BSB regulated persons are required to meet. The core duties are supported by a number of mandatory rules. In addition, the Code sets out the outcomes which compliance with the core duties and rules are intended to achieve. Enforcement action will be considered where BSB regulated persons fail to meet these requirements or breach the rules covering practising requirements set out in Part 3 of the Handbook: Scope of Practice.

Promoting regulatory compliance through enforcement

9. The hallmarks of our enforcement strategy are as follows:
- a) **Risk-based** – We will focus our enforcement action on the issues that have been, or have potential to be, most harmful to the regulatory objectives. We will consider the nature of any alleged regulatory breach and consider the level of risk posed to determine what action, if any, we should take.
 - b) **Proportionality** – We will take proportionate enforcement action in the light of identified risks to ensure the stated outcomes of our Code of Conduct are met and compliance with the regulatory objectives is achieved.
 - c) **Outcomes-based** – The outcomes identified in the Handbook, although not themselves enforceable, will be considered when deciding what action to take.
 - d) **Individual responsibility** – Individual responsibility is at the heart of our regulatory regime. Typically, we will take action against an individual but action will be targeted at an entity alone or at an entity and individuals as appropriate.
 - e) **Flexibility** – We will use a range of regulatory tools to promote compliance with our regulatory arrangements, of which this enforcement strategy covers one part. Enforcement, supervisory and other regulatory approaches (such as setting

education standards) will be used together where appropriate to address issues in a proportionate and effective way.

- f) **Fairness and openness** – When taking enforcement action, we will be as fair and open as practicable and will give regulated persons a reasonable opportunity to respond;
- g) **Timeliness** – we will take enforcement action, where necessary, in a timely and prompt way, having regard to the circumstances and complexity of the matter

Sources of information that may result in enforcement action

- 10. The potential need to take enforcement action may be identified from a range of information sources including, but not limited to, the following:
 - a) complaints made to us from external sources such as clients, members of the public, lawyers or judges, law enforcement agencies or other regulators;
 - b) information that comes to our attention via other external sources, including the Legal Ombudsman;
 - c) information that comes to us from BSB regulated persons as a result of their duty to report certain matters as required by the Code of Conduct;
 - d) information from the Supervision Department concerning breaches, particularly by chambers or entities; and,
 - e) information from other departments within the BSB.
- 11. We will only consider taking enforcement action in relation to information that discloses a potential breach of our regulatory arrangements. Some types of information are less likely to result in consideration of enforcement action such as, for example:
 - a) information about conduct in the private life of an individual regulated by the BSB; and
 - b) internal disputes within an entity or chambers.
- 12. Where information received is inconclusive, or relates to a matter such as those set out in paragraph 11, we would not normally conduct an investigation. However, in such cases we may retain the information for purposes of risk assessment and, in the case

of chambers and entities, assess the risk posed by those bodies in order to determine the appropriate level of ongoing supervision required.

Options other than enforcement

13. On receipt of information as outlined at paragraph 10 above, the options listed below are available to us, as well as the enforcement tools described in paragraph 15:
 - a) to refer the matter for supervisory action;
 - b) to refer a complaint submitted from an external source to another, more appropriate, body for consideration, for example referring an authorised (non-BSB) individual to their approved regulator; and,
 - c) to dismiss a complaint, with or without advice, because it does not reveal a potential breach of the Handbook or there is no realistic prospect of securing a finding of professional misconduct and it is not in the public interest to pursue disciplinary proceedings.

14. As stated in paragraph 13, we may decide to refer a case to our Supervision Department to address non-compliance through supervision tools as opposed to enforcement tools. When deciding whether this approach would be appropriate, we will consider:
 - a) the seriousness and nature of the non-compliance identified;
 - b) whether the matter can be addressed through supervision without the application of sanctions; and,
 - c) whether applying supervision tools will be a proportionate response to the non-compliance identified.

Enforcement tools

15. The enforcement tools available to us include:
 - a) imposing a non-disciplinary administrative sanction in the form of a warning or a fine;
 - b) referring a case to disciplinary action by the Determination by Consent Procedure with powers to impose sanctions up to the maximum of a fine;

- c) referring a case to disciplinary action by a Disciplinary Tribunal with powers ranging from a reprimand to disbarment; and
- d) imposition of a disqualification order preventing a person working for a BSB regulated person.

Circumstances in which enforcement action will be taken

- 16. We will only take enforcement action where we have investigated a matter.
- 17. In determining which of the enforcement tools, if any, to apply, we will consider the risk posed to, or the impact on, one or more of the regulatory objectives, taking into account a range of factors including but not limited to:
 - a) whether any of the outcomes in our Code of Conduct have been adversely affected;
 - b) the impact of the act or omission taking into account our regulatory priorities as stated from time to time;
 - c) the impact on clients or others if we take action compared with the impact of not taking action including the number of individuals affected and the seriousness of the adverse impact (or potential adverse impact) on those individuals (particularly if vulnerable persons are affected);
 - d) the impact on public confidence in the profession and the administration of justice;
 - e) evidence or a record of insufficient care being taken over compliance or of recklessness, deliberate breaches, or dishonest behaviour;
 - f) whether the breach is an isolated incident or part of a pattern of repeated breaches and the period of time over which the act or omission took place;
 - g) whether the regulated person self-reported and has taken, or intends to take, steps to correct the breach and to provide appropriate redress;
 - h) whether the breach, if proved, would amount to a criminal offence; and/or,
 - i) whether the regulatory resources required are disproportionate to the likely sanction.

Applying our enforcement tools

- 18. In relation to the enforcement tools set out in paragraph 15, we will consider by reference to the factors at paragraph 18 whether a matter should be:

Part 1 – Public

- a) treated as a breach of the Handbook not amounting to professional misconduct and referred for consideration of the imposition of administrative sanctions (the Complaints Regulations at Part 5 of our Handbook identify the administrative sanctions that can be imposed including warnings and fines), in which case the standard of proof applied will be the balance of probabilities; or,
 - b) referred to disciplinary action as potential professional misconduct, whether via Determination by Consent or Disciplinary Tribunal, where:
 - i. the imposition of an administrative sanction would not be appropriate or proportionate, and,
 - ii. there is a realistic prospect of securing a finding on the criminal standard of proof and pursuing disciplinary action is in the public interest (the Enforcement Regulations at Part 5 of our Handbook set out the range of sanctions available, including disbarment, suspension, disqualification or the imposition of a - fine.)
19. We may impose an interim order, in the form of a suspension, disqualification or condition on a BSB regulated person, to prevent them from practising until their case is considered by a Disciplinary Tribunal. In very urgent and serious cases an interim suspension or disqualification may be imposed immediately where we are satisfied this is necessary to protect the public. The regulations relating to Interim Panels, including the available sanctions, are in the Interim Suspension and Disqualification Regulations at Part 5 of our Handbook.
20. In all instances where enforcement action has been taken, the Professional Conduct Department will consider whether follow-up supervision would be effective in reducing the risk of non-compliance and, if necessary, refer the matter to Supervision.

Decision-makers

21. Decisions to take enforcement action under this strategy can be taken by any of the following depending on the nature of the case and the relevant decision making authorities given under Part 5 of the Handbook:
- a) our Professional Conduct Committee or authorised groups or individuals of that Committee;

- b) staff within our Professional Conduct Department as authorised by the Professional Conduct Committee and/or its Chair;
 - c) members of Disciplinary Tribunals; and,
 - d) any persons/bodies authorised by the Professional Conduct Committee from time to time
22. All those involved in taking decisions under this strategy and the relevant provisions of the Handbook are trained and are given guidance so that decisions are made consistently and appropriate sanctions applied. Decisions are monitored to promote consistency.

Openness and transparency

23. **Right of appeal or review** – Where we have taken enforcement action the regulated person concerned will always have an opportunity to appeal the decision or have it reviewed. The precise nature of the appeal or review will depend on the type of decision and enforcement action taken.
24. **Publication of information on decision making** – We publish our written policies and guidance documents to ensure that the details of our decision making processes are transparent and available to the public.
25. **Publication of outcomes** – We will publish general statistics about the types of complaint received and all outcomes so that the levels of compliance by BSB regulated persons can be understood. We will also:
- a) publish findings as a result of disciplinary action on our website, and/or the website of the independent body that administers Disciplinary Tribunals (the Bar Tribunals and Adjudications Service), including decisions on disqualifications;
 - b) ensure that members of the public who search our on-line register will be able to access any published disciplinary findings/disqualifications against a BSB regulated persons;
 - c) provide details of any disqualification to the LSB and all other Approved Regulators;
 - d) formally record administrative sanctions but not make them public otherwise than in accordance with Regulations 90 and 91 of the Complaints Regulations; and,

- e) publish the details of any conditions imposed on an authorisation or licence.

Strategy Consultation, Review & Evaluation

- 26. This strategy came into effect 6 January 2014. We will consult with stakeholders to evaluate its effectiveness after two years' of its operation and amend where appropriate. In the meantime, we welcome any feedback on the strategy's content, implementation and effectiveness.
- 27. All the regulations and procedures referred to in this strategy are available on our website at <https://www.barstandardsboard.org.uk>.

Equality considerations

- 28. We are committed to ensuring the application of this strategy is fair and equitable and does not disadvantage anyone because of their age, disability, gender reassignment, marital and civil partnership status, pregnancy and maternity, race, religion or belief, sex or sexual orientation. BSB regulated persons subject to this strategy should advise us of any reasonable adjustment or specific requirements they have. These will be accommodated as far as is reasonably practicable and in line with our obligations under the Equalities Act 2010.
- 29. We will monitor any enforcement action under this strategy to ensure there is no disproportionate impact on any equalities groups within the community we regulate.

First version: January 2014
Reviewed: October 2015

Complaints against barristers working for or on behalf of the Bar Standards Board

Status:

1. For noting.

Executive Summary:

2. From time to time, albeit rarely, the BSB receives regulatory complaints about barristers who are employed by, or working on behalf of, the BSB, ie barrister staff members, Board/Committee members or members of the BSB Prosecution Panel. Such complaints could arise directly from the barristers' work for the BSB or from circumstances entirely unconnected with that work.
3. In response to a recommendation of the Independent Observer in her Interim Report for June to December 2014 (see paragraph 7 below), the BSB Executive has produced a policy and guidance document setting out the principles on which such complaints should be handled: the document does not reflect a change in approach but codifies our previously undocumented practice. It is attached at Annex 1.

Recommendations

4. The policy and guidance document at Annex 1 is presented to the Board for noting only. It will be of particular interest to the barrister members of the Board who could be subject to regulatory complaints.

Background

5. As reported by the Independent Observer at the Board meeting on 23 September 2015, she has looked at the approach the BSB takes to addressing regulatory complaints made about barristers employed by or working on behalf of the BSB. Her observations are included in both her Interim Report for June to December 2014 and her Annual Report for 2014/15.
6. The Independent Observer's research showed that the incidence of such complaints is "extremely rare": in the last five years 34 such complaints have been received of which only four related to the barrister's work for the BSB and the other 30 arose from the barristers' professional practice outside their BSB role.
7. The Independent Observer commented that the BSB does not have separate policies or procedures in relation to those working for or on behalf of the BSB such as members of staff, prosecutors or Board/Committee members. However, she also noted that the same policies, processes and standards are applied to such complaints as for any other barrister. She recommended that:

"the BSB formalises the principles it expects the PCC to apply when handling regulatory complaints involving barristers who undertake work on its behalf and draws these to the attention of barristers undertaking BSB enforcement work (i.e. PCC, staff, prosecutors) and to complainants where relevant."

8. In meeting the terms of this recommendation the policy and guidance document at Annex 1 has been produced and agreed at Executive level.

Comment

9. The policy sets out the general principle that all formal complaints received from external sources about barristers working for, on behalf of, the BSB should be addressed and processed under the Complaints Regulations, Part 5, Section A of the Handbook (the Regulations) in the same way as any other regulatory complaint. This ensures equality of treatment and consistency in approach across the Bar.
10. The policy also sets out the factors that should be taken into account when considering, at the preliminary assessment stage, what action to take on a complaint. Where the complaint is connected with the barrister's work for the BSB, the policy indicates that consideration should be given to whether the issues could be more appropriately dealt with under the internal BSB processes and therefore should be referred under Regulation E28 to be dealt with as an internal matter. The policy lists the factors that should be taken into account when taking this decision which include whether the complaint arises directly from activities normally associated with the role of a barrister or whether it relates to the barrister's operational role for the BSB. The former would indicate that the matter should be dealt under the regulatory processes, the latter would indicate that referral to the BSB's internal processes could be more appropriate.
11. The policy does not require formal approval by the Board. However, in line with the Independent Observer's comments at the Board meeting in September, it is important that the Board is aware of the policy and also aware of the steps that will be taken to draw it to the attention of those that are directly affected by it (see paragraph 18 below).

Resource/financial implications

12. No staff resources or additional costs are required to implement the policy.

Equality Impact Assessment

13. Consideration has been given to whether the policy might impact adversely on any of the equality groups and no specific issues were identified. There is currently no evidence of any disparity in treatment in relation to the few barristers who have been previously been subject to the type of complaints in question. However, the outcomes of complaints made against barristers working for or behalf of the BSB will be monitored closely.

Risk implications

14. There is a risk that if we do not have a, publically available, policy in place on this issue we could be accused of lack of a transparency and potentially perceived as treating "our own" in a preferential manner. The creation and publication of a formal policy mitigate these risks.

Impacts on other teams / departments or projects

15. There are no impacts on other sections or projects.

Consultation

16. The policy does not impact on our regulatory arrangements and therefore does not require public consultation. However, it has been considered by: the senior managers of the PCD;

staff in the PCD; the Office Holders of the PCC (which included one previous member of the Board and two new members); the Director General; and the Independent Observer. This internal consultation is considered sufficient to ensure the policy is robust and has taken into account all relevant factors.

Regulatory objectives

17. As the policy relates to the application of the BSB’s enforcement powers, it engages and addresses the following regulatory objectives:
- a. protecting and promoting the public interest and the interests of consumers;
 - b. supporting the constitutional principle of the rule of law; and
 - c. promoting and maintaining adherence to the professional principles.

Publicity

18. Proactive external publicity is not considered necessary. However, the policy will be posted on the BSB website and drawn to the attention of all BSB Committee members via an email communication. Additionally, articles on the policy will be included in the next editions of the PCC and Prosecution Panel Newsletters.

Annexes

19. Annex 1 – “Complaints about barristers acting for or on behalf of the BSB”.

Lead responsibility:

Sara Jagger, Director of Professional Conduct

<p>BAR STANDARDS BOARD</p>

REGULATING BARRISTERS

Professional Conduct Department	
Title: Complaints about barristers working for or on behalf of the BSB	
Document type: Policy and guidance	Date of issue: October 2015 Reviewed: Reference: PG25
Status: Internal and External	Version: 1 Review date: October 2016
Distribution: Professional Conduct Department (PCD) Professional Conduct Committee (PCC) BSB Website	Owner : Director of Professional Conduct

1. Introduction

- 1.1. This document sets out the approach the Bar Standards Board takes when dealing with formal regulatory complaints about barristers who are either employed by the BSB or are working on behalf of the BSB. Such complaints could either arise directly from their work for the BSB or from circumstances unconnected with that work.
- 1.2. This document covers barristers who are:
- members of the BSB's Committees or Board;
 - members of the BSB Prosecution Panel who represent the BSB at disciplinary tribunals and
 - members of staff employed by the BSB.

2. General principle

- 2.1. All barristers called to the Bar, whether practising or not, are subject to the obligations set out in the BSB Handbook as applicable to their status. Members of the public and

others are entitled to make complaints about those working for, or on behalf, of the BSB in the same ways as complaints can be made about any other barrister.

- 2.2. In order to ensure equality of treatment and consistency in approach across the Bar, the general principle is that all formal complaints received from external sources about barristers working for, on behalf of, the BSB should be addressed and processed under the Complaints Regulations, Part 5, Section A of the Handbook in the same way as any other regulatory complaint.
- 2.3. However, the decision at the preliminary assessment stage as to what action should be taken on such complaints should take into account the factors and issues covered in the paragraphs below.

3. Complaints about matters unconnected with the barrister’s work for the BSB

- 3.1 Where a formal regulatory complaint is received about a barrister who the Professional Conduct Department knows works for, or on behalf of, the BSB and the matter of complaint is unconnected to the barrister’s role at the BSB, there are no particular factors that should be taken into account when considering what action to take: the complaint should be processed applying the relevant decision making criteria. Examples of such complaints are matters arising from a barrister’s self-employed practice or, in the case of staff, matters arising from their personal life.

4. Complaints about matters connected to the barrister’s work for the BSB

- 4.1 Where a complaint arises from the barrister’s BSB role, the first consideration should be whether the matter could more appropriately be dealt with by the BSB in its role as an employer, or in its role in monitoring the performance of Committee/Board members, and therefore whether it should be referred, under rE28 of the Complaints Regulations¹, to the BSB to deal with under its internal processes.
- 4.2 When considering the issue of referral under rE28, the factors set out in the following paragraphs should be taken into account. However, it should be emphasised that each complaint must be taken on its merits according to the circumstances. Further once the decision has been made on whether or not to make a referral under rE28, the procedure to be followed will be dictated by the relevant agreed procedures which can be found elsewhere and are not covered in this document.
 - 4.2.1. Consideration should be given to whether the complaint arises directly from activities directly associated with the role of a barrister or whether it relates to the barrister’s operational role within the BSB. An example of the former would be representing the BSB at a Tribunal as an advocate and an example of the latter

¹ Regulation rE28 provides: “If it appears to the PCC that a complaint received in respect of a relevant person related to a matter which might more appropriately be dealt with an Inn, Circuit, employer or any other professional or regulatory body (including, for the avoidance of doubt, any other approved regulator), it may refer the complaint to such body. If having referred a complaint to another body under rE28, the PCC subsequently considers that the complaint has not been dealt with by that other body within a reasonable time or fully or satisfactorily, the PCC may in its discretion then choose to consider the complaint in accordance with [the other relevant provisions of the Complaints Regulations].”

would be a Committee or staff member taking actions or decisions on a regulatory complaint as part of the complaints process.

- 4.2.2. If the matter arises directly from the performance of tasks normally associated with the work of a barrister, then it is unlikely that the BSB's internal procedures would be an appropriate avenue by which to address the complaint and a referral under rE28 will probably be inappropriate. As members of the BSB Prosecution Panel are at all times acting under formal instructions from the BSB, they will by definition be providing their services as a barrister and therefore complaints about Prosecution Panel members should be dealt with under the regulatory complaints procedure.
- 4.2.3. On the other hand, complaints arising from BSB operational activities are more likely to be appropriately addressed by the BSB taking action under its internal processes rather than via the regulatory system. This is because the BSB has more appropriate powers to address such issues. This is particularly so where the nature of the complaint is effectively a challenge to a previous decision taken under the enforcement procedures. A referral to the BSB's internal processes could consist of one or more of the following:
- a. Referring the complaint to the BSB's service complaint procedure under which the option is available for redress to be provided to the complainant in the form of an apology and compensation (redress is prohibited under the regulatory complaints procedure) and also for improvements to be made to the BSB's processes;
 - b. Referring the complaint to the BSB in its role as regulator on the basis that the complaint represents a challenge to a previous enforcement decision which could result in a decision being made to reopen or reconsider the original decision under regulation 90 of the Complaints Regulations;
 - c. Referring the complaint to the BSB's Director General for arrangements to be made for an investigation of the employee's alleged behaviour in line with the Bar Council's agreed procedures which could result in action under the BSB's staff grievance and disciplinary procedure; and
 - d. Referring the complaint to the Chair of the relevant BSB Committee and/or the Chair of the BSB for enquires to be made into the alleged behaviour of the Committee/Board member which could result in a formal investigation and termination of an appointment.
- 4.3 In general, complaints against barristers working in the BSB will arise from operational activities and not be related directly to the normal activities associated with a practising barrister. Such complaints are likely to be more appropriately dealt with under the BSB's internal processes via a referral under rE28 to the BSB as an employer. However, in some circumstances, the actions of a BSB barrister employee may cross over into activities associated with a barrister's role and thereby should more appropriately be dealt with under the regulatory complaints system. An example of this would include complaints arising from BSB employees providing representative advocacy services at Disciplinary Tribunals.

- 4.4 Where the decision is taken to refer a matter to any of the internal BSB processes, the progress and outcome of the referral should be monitored and, in accordance with rE28, if necessary the PCC can exercise its discretion to consider the complaint again under the regulatory complaints system.
- 4.5 In some cases, the issues of complaint may cover both operational matters and matters associated with the activities of a barrister. In such circumstances, consideration should be given to whether it is appropriate, and possible, to deal with the different issues in parallel by referring relevant matters to the BSB internal processes and addressing the others under the regulatory complaints system. If it is not possible to do this it is likely that the appropriate course of action will be to deal with the totality of the complaint under the regulatory complaints process. However, consideration should be given to whether, action, outside the terms of the Complaints Regulations, should be taken under the BSB's internal processes.
- 4.6 If following consideration of the issue, a decision is taken that it would inappropriate to refer the regulatory complaint, or part of it, to the BSB's internal processes under rE28, the complaint should be dealt with in accordance with the other relevant provisions of the Complaints Regulations. Such a decision does not preclude the matter also being addressed as an employment issue under the BSB's internal processes. The Director General of the BSB should be informed of the regulatory complaint and it will be for the Director General to determine whether, and at what stage, any action should be taken by the BSB in its role as an employer.

5. Notification and decision makers

- 5.1. Careful consideration needs to be given by staff in the PCD as to who should take the decisions on progressing complaints about those working for and on behalf of the BSB to avoid the perception of, and the potential for, bias.
- 5.2. In all cases, where someone working for or on behalf of the BSB is the subject of a regulatory complaint, the complainant should be informed of the person's role within the BSB. In most cases the complainant will already be aware of this but nevertheless it is important that the BSB formally acknowledges and confirms the role played by the person.
- 5.3. To avoid any perceived, or indeed actual, bias in the decision making process the following principles will apply:
- 5.3.1. Decisions on regulatory complaints about staff employed by the BSB should not be taken by staff members in the PCD and such complaints should be referred to the Chair of the PCC for the appointment of two suitable members (one lay and one barrister) of the PCC to carry out the assessment, and if necessary, the investigatory functions normally performed by PCD staff. This may require the Chair to put in place temporary authorisations under regulation E3 of the Complaints Regulations.

5.3.2. Initial decisions on complaints about barristers working on behalf of the BSB, such as Committee members, can be taken by PCD staff members where there is no apparent conflict of interest or reasons for perception/actual bias. If there are concerns about potential bias or conflict, the complaint should be referred to the Chair of the PCC to consider who would be the most appropriate person to carry out the initial assessment: this may include authorising someone outside the PCC/PCD to carry out the task e.g. a member of another BSB Committee or an external party.

Chair's Report on Visits and External Meetings, September – October 2015**Status:**

1. For noting

Executive Summary:

2. In the interests of good governance, openness and transparency, this paper sets out the Chair's visits and meetings since the last board meeting.

List of Visits and Meetings:**Sir Andrew Burns**

17 September	Attended the Chairmen's Committee (BSB and Bar Council)
19 September	Attended the Bar Council annual general meeting
23 September	Attended BSB drinks reception for Simon Lofthouse QC
24 September	Met and marshalled with Recorder Oliver Sells QC at the Old Bailey
29 September	Met and had lunch with Timothy Dutton QC
30 September	Attended a meeting with the Solicitors Regulation Authority
30 September	Attended a dinner at the Law Society to mark the opening of the legal year
01 October	Attended the Opening of the Legal Year service at Westminster Abbey
01 October	Attended the Lord Chancellor's drinks reception to celebrate the opening of the legal year
05 October	Gave a speech at the BSB's event on risk-based regulation
06 October	Met and shadowed Andrew Langdon QC at Bristol Crown Court
08 October	Attended the PSU annual reception
12 October	Met with Lord Justice Vos at the Royal Courts of Justice
12 October	Attended the Sir Thomas More annual lecture and dinner at Lincoln's Inn

14 October	Met with the Chancellor of the High Court (Sir Terence Etherton)
15 October	Met with Ken Fleming, Chairman of the Independent Appointments Panel
15 October	Attended the Chairmen's Committee (BSB and Bar Council)
17 October	To attend the Annual Bar Conference
22 October	To meet with the Chair of the Legal Services Board (Sir Michael Pitt)
22 October	To attend the Middle Temple Grand Day dinner

Equality Impact Assessment

3. No Impact

Risk implications

4. These reports address the risk of poor governance by improving openness and transparency.

Consultation

5. None

Regulatory objectives

6. None

Publicity

7. None

Lead responsibility:

Sir Andrew Burns KCMG

Director General's report - BSB meeting 22 October 2015

For consideration and noting.

Director General

1. This month has seen intensive work following on from the Board's decisions about budget and governance in September, to ensure successful implementation plans are in place, including within the context of the ASPIRE programme (see below). I have also overseen the bringing together of the BSB's submission to the LSB's Regulatory Standards Framework self-assessment, which appears elsewhere on this month's agenda. I have also been in direct contact with a number of our guests at the Risk event detailed below, from both the wider public and consumer constituencies as well as the Bar. We have had helpful and generally positive feedback.
2. With the assistance of Lynne Callegari, the work to recruit a new Vice Chair of the Board has progressed to the point of advertisement. Details can be found on our website: applications close at noon on 9 November and the post will be available from 1 January 2016 when our current Vice Chair Patricia Robertson QC steps down. We are also now working on the preparatory stages of the recruitment of a Chair of the Independent Appointments Panel to succeed Dr Ken Fleming who has served for just over six years. This process is being handled by the BSB in accordance with the LSB Internal Governance Rules which were revised in March 2014 in this regard. We expect to advertise for a chair and independent members in the New Year.
3. I have attended the first of what are likely to be quarterly meetings of the CEOs of front-line regulators and the LSB, to advance appropriately collaborative work across the sector. These meetings follow on from the initiative launched originally by MoJ in 2013.
4. We are expecting to have a successful BSB session at the Bar / Young Bar Conference on 17 October, focusing on the duty to report serious misconduct and the rules on fair allocation of work. We will also have a stand and participate in other sessions – I am very grateful to the Board members and staff who are giving up their Saturday to assist.
5. Finally, I would like to take this opportunity to note a formal thank you and farewell on behalf of the BSB to Smita Shah, the Records Manager in Resources Group, who has served the Bar Council and BSB for 23 years. Smita's customer service skills in handling the profession and the public and her care for her staff team have been exemplary. Smita is leaving at the end of the month to concentrate on family responsibilities and we wish her all the very best.

ASPIRE

6. The ASPIRE (Accessing Staff Potential to Inspire Regulatory Excellence) Programme was established to manage the work required for the BSB to achieve a "satisfactory" rating against the LSB's Regulatory Standards Framework.
7. The first meeting of the Programme Board took place in September at which the primary programme documentation and plans were signed off. The programme places particular emphasis on embedding consumer engagement, risk and evidenced based regulation and our governance arrangements within our ways of working. The main focus of the last few weeks has been the preparation of the BSB's self-assessment against the Regulatory Standards Framework, which will be considered by the Board at this meeting. This provides an articulation of the significant progress that has been made over the last 12 months and highlights the programme of work that is to be implemented over the coming 12 months. It is an opportunity for staff and the Board to

reflect positively on the journey so far whilst noting that more change and development is to come.

8. In practical terms, we have seen a number of initiatives launch this month:
9. Consumer engagement and awareness training has commenced for all staff. This is delivered by the BSB jointly with the Legal Services Consumer Panel and provides training and guidance to staff on what consumer engagement means and how it applies to the work that we all do. Consumer awareness guidance is launched at the training and will provide staff with a range of tools to use when deciding how best to engage with consumers on all aspects of regulation such as policy development or decision making.
10. The risk event took place on 5 October which highlighted the BSB's commitment to risk based regulation and outlines the key themes in our risk work over the coming 12 months. Staff have been engaged in considering how risk can be applied consistently to our work and further training will be provided to all staff during the course of November.
11. Staff will receive training and guidance on the introduction of the policy development framework which aims to provide a structured and consistent means of developing regulatory policy. The framework will ensure that all regulatory initiatives have been the subject of rigorous assessment, engagement and prioritisation and that resources and a pragmatic timescale have been allocated to the project's delivery.
12. All staff briefings, delivered by the Director General and the Chair of the Board, on the governance proposals took place on 14 and 15 October. These briefings gave an overview of the proposed governance changes and the phasing of those changes and provided staff with an opportunity to raise any questions or concerns. The proposals were generally well received.

Regulatory Policy

Standards

13. Work on the immigration thematic review is progressing well. Key staff from the Project Board have met to map various client journeys and discuss key risks and issues relating to different types of journey. A provisional date has been set to meet with the reference group (stakeholders who have agreed to help us shape the review). The initial meeting will be used to share our work on mapping client journeys and to discuss holding focus groups with consumers of barristers who have provided immigration advice and services. A meeting has also been arranged with the Solicitors Regulation Authority to discuss opportunities for joint working.
14. We have agreed to undertake some research jointly with the LSB to inform the public and licensed access review. This jointly commissioned research will focus on the supply side of the market. Staff in Professional Standards are working with the BSB Research team to scope out work for the demand side of the market. Data has also been received from the Supervision Department in relation to public access, which the team is analysing.
15. Good progress has been made on designing the methodology and identifying key work streams for the Handbook review in conjunction with the Research team. Five key strands of work have been identified which now need to be scoped out in detail. A prioritisation exercise also needs to be undertaken to determine the timing of each

stage of the review. Priority will be given to those areas where the perceived risks are greater.

16. The team have also been busy developing a consumer guide to barristers. An initial draft of the guide has now been completed and will be circulated to various consumer groups and organisations for comment. We are planning to publish the guide in the New Year.
17. The team continues to be involved in ABS implementation and has been working closely with the Supervision Department to produce responses to comments received from mandatory consultees on the Licensing Authority application.

Regulatory risk

18. On 5 October, the BSB welcomed guests to the Chair's first keynote speech during a networking event held at Lincoln's Inn. Guests included leaders from consumer bodies, organisations championing equality & access to justice and representatives from the Bar and wider legal profession. A panel comprising the Chair, Vice-Chair, Director General and the Chairs of the PCC and Education & Training Committee fielded a lively set of questions, which stimulated further debate over refreshments. This provided a strong first step in our external engagement around regulatory risk, with an opportunity to set out the BSB's stall around key issues faced by the market and invite dialogue to help to inform our response. Early indications are that the approach was met positively and that there will be benefit in persevering with more regular opportunities for engagement.
19. Planning is already in train for a follow up event hosted jointly by the Regulatory Risk and Equality & Access to Justice teams to focus in more detail on anti-discrimination practices and building cultural competence. This will help to inform part of the next phase of our risk outlook work, together with more detailed analysis work being led by the risk team.
20. Engagement and learning is also taking place through stakeholder events on how innovation & diversity can shape the legal profession (hosted by The First 100 Years initiative championing the involvement of women within the legal sector) and the modernisation of the courts and tribunals service (a Westminster Policy Forum conference).
21. With our analyst now in post, work has also begun on a risk assessment strategy which we can use to drive consistency in decision making and to help us in building a meaningful aggregate view of risks across the organisation. We are also developing regulatory risk reporting to pilot with the Senior Management Team before the end of 2015.
22. The team continues to actively support various projects around the business, including the assessment of incoming information, thematic review of immigration & asylum work and ABS implementation project.

Equality and Access to Justice

23. The Equality and Access to Justice (E&AJ) team met with the equality and diversity teams and consumer leads at the Solicitors Regulation Authority and CILEx Regulation to discuss common objectives and partnership working to address issues of disability access and creating an equality and access to justice directory for consumer engagement.

24. The E&AJ team organised its third and fourth Knowledge Sharing Sessions which are open to all BSB and Bar Council staff, as well as BSB Board and Equality and Diversity Committee members; approximately 54 people attended a session on 9 September with Jonathan Cooper OBE, a barrister from Doughty Street Chambers, with a focus on gay, lesbian, bisexual and trans experiences of the legal profession. Another session has also been planned and will be presented by John Twitchin on 9 December that will address raising intercultural competence within the profession. The sessions continue to attract high numbers of delegates and have encouraged further employee engagement with our E&AJ projects.
25. To further promote work on intercultural competence, an area of risk within our framework, the E&AJ policy manager, supported by colleagues in the education and training and research teams, has embarked on a programme to research intercultural competence within the profession; this builds on gaps highlighted by providers who attended an intercultural communication workshop at the 2015 BPTC conference.
26. The E&AJ team has delivered two Equality Impact Assessment training sessions that have received excellent feedback. The Equality Impact Assessment framework has also been revised and updated; the new framework will be launched in November 2015. An Equality Impact Assessment has been undertaken for the governance review consumer guides and is currently being undertaken for the ABS programme.
27. The E&AJ team took a proposal to the Equality and Diversity Committee to address women's experience of the Equality Rules. The proposal has been approved with the further commitment of EDC members participating in a "task and finish group" to inform the overall programme of work.
28. The E&AJ policy manager, director of regulatory policy, supervision manager and investigations and hearings team manager attended a meeting at the invitation of the Bar Council (BC) that included BC equality and policy leads and chairs of the BC ethics and equality and diversity committees. The focus of the meeting was to discuss the recent launch of BC wellbeing research. The research attracted 2,456 respondents and highlighted concerns particularly about mental health. The BSB is considering the regulatory implications of this.

Supervision

29. In 2014, we carried out an *impact* assessment of all 794 chambers and sole practitioners. The survey sought to measure the potential impact of a range of *risks* to the achievement of the Regulatory Objectives, should they materialise at a chambers.
30. 169 chambers and sole practitioners were categorised as Medium Impact and they were asked to complete a Supervision Return by July so that we could assess the level of *risk*.
31. Through the Supervision Return, which comprised 47 questions (with a shorter version for sole practitioners), chambers were required to provide a self-assessment of their control environment - how chambers are administered and how regulatory compliance is achieved in the following key areas:
 - Governance arrangements
 - Risk management
 - Internal control environment and compliance (delivery of services, equality and diversity, pupillage and finance and administration)
32. The responses were then risk assessed by the Supervision team.

33. We completed our risk assessment of the returns in September. Our assessments are as follows:

Assessment	no.	%
High Risk	16	10
Medium Risk	53	31
Low Risk	85	50
Submitted after 30 Sept. and now being assessed	8	5
Not yet submitted and being chased	7	4
Total number of Medium Impact chambers/sole practitioners	169	100

34. We are in the process of contacting all chambers individually to confirm these ratings, agree follow-up actions where relevant and, for High Risk chambers, schedule visits.
35. We would like to take this opportunity to thank chambers for their co-operation in completing the returns. We know that many spent a considerable amount of time completing them. This has provided a wealth of information that is enabling the team to target its resources at the areas of highest risk and to identify emerging themes that are being used to develop regulatory decisions by the BSB. It has opened up constructive engagement between the Bar Standards Board and those that it regulates.
36. Following the establishment of the Supervision Team in 2014, risk-based supervision is now well under way. 335 of the highest impact chambers and sole practitioners have now been risk assessed.

Continuing Professional Development

37. The CPD Assessment Team is undertaking a CPD Spot Check of compliance by barristers with 2014 requirements. There has been a particular focus on New Practitioners and High Risk Barristers.
38. The Contact Phase has finished and barristers' returns are being assessed. It is anticipated that the assessment phase will have ended by 21 October 2015.
39. So far compliance rates are currently at 96%. It is encouraging that individual barristers who were required to complete Corrective Action last year are at lower rates of non-compliance this year.
40. The development of the New CPD Scheme is ongoing. The Consultation that was launched has now finished. There was a comparatively good response rate of 82.
41. The results have now been collated ready for detailed analysis. Preliminary analysis suggests that the majority of respondents support the proposals. However a sizeable minority have various operational concerns. These concerns are principally about terminology and guidance and will need to be addressed.

Entity authorisation

42. At time of writing authorisation decisions have been issued to 33 entities with a number of additional decisions imminent.
43. Whilst some 162 applicants have registered their interest and been given access to the online portal, the conversion and completion rate continues to be low.
44. The IT automated end to end system is now operational. The only addition that needs to be finalised is a detailed reporting function.
45. The timeframe for the implementation of authorisation of Alternative Business Structures has now been agreed for 3 October 2016. There will be a pilot in mid-June-mid September 2016. The ABS Implementation Plan to meet this target is currently underway.

Education and Training***Future Bar Training***

46. The Programme Board met on 1 October, and a plan was approved for development of the second substantial phase of Future Bar Training. “Phase One” culminated in the agreement of the Professional Statement, completion of consultation on the complete proposal for CPD regulation and the publication of a consultation on future structures for pre-authorisation training. “Phase Two” will include the agreement of Threshold Standards to support the Professional Statement and preparation for launch of the new CPD regulatory scheme in January 2017. The greatest focus of phase two will be upon a second substantial phase of policy development on future structures for pre-authorisation training, which will result in proposals for changes to the Part 4 of the BSB Handbook in late 2016/early 2017, and work that will be undertaken in parallel to modernise our systems and processes in preparation for any changes. This will include the alignment of all our existing and future work in the area with the Professional Statement.
47. Following the late withdrawal of the successful candidate for the position of Legal & Policy Assistant for the programme, recruitment has been started again, leaving a period potentially of some six to eight weeks at an important time with this vacancy unfilled. Measures have been put in place to ensure that work can progress on the development of Threshold Standards.

Operational update

48. A single Request for Review in relation to the 2015 First Sit centralised assessments was considered by the independent Review Panel at a meeting on 4 October. The grounds for the request were many, and most lay outside the jurisdiction of the Panel; those that could be considered were not upheld.
49. Interviews are proceeding for the position of Senior Training Supervision Officer, a role which will support the Head of Training Supervision in sustaining the current regulatory arrangements and managing transition through 2017/18/19 to the new system that arises from the Future Bar Training programme of reform.
50. A Data Analyst is being recruited, initially reporting within the Centralised Assessments team where requirements grow for reliable data and analysis that supports the continual improvement of our assessments – drawing upon four years of data relating to candidate profiles, centralised assessment results and local (university-based)

assessment results. This new role has been created from a redeployment of resource in the team, and it is envisaged that the post-holder will support the evidence and information needs of Future Bar Training, and over time will join the corporate knowledge and information management team.

51. Recruitment is also progressing for the maternity cover posts of Operations Administrator and Assessments Officer, the incumbents of both roles having the birth of a son to celebrate within the past two weeks.

Qualification Regulations

52. The Qualifications Committee will next meet on 20 October 2015. It is due to consider three applications for review of decisions of its Panels and to discuss the Governance Review.

Professional Conduct

Staffing changes

53. The PCD are continuing to experience some issues with recruitment although recruitment exercises for each of the vacant positions are currently in train.
54. Interviews for the Projects and Operational Support Officer in the Operational Support Team took place in early October and a suitable candidate has been identified. This month the Operational Support Team have also said goodbye to Paul Martyn, the Reports and Data Analysis Officer, after five years. Paul is transferring internally to the role of Business Intelligence Officer in the Information Services Department. The vacancy is currently being advertised and interviews will take place in early November.
55. Re-advertising for the Casework Supervisors and Professional Support Lawyer (Enforcement) has proved successful and candidates have been shortlisted for both positions. Interviews for both posts are scheduled for before the end of October.

PCD work

56. Over the last month PCD staff have largely been focussing on business as usual and continuing to ensure that cases are progressed within the departmental KPIs. While casework remains the central focus, significant progress has been made on some of the PCD projects over the last month.
57. As part of the PCD Entity Regulation Implementation Project, staff have been working hard to ensure that the last remaining policy and guidance documents are revised and updated to make them applicable to entity regulation. However, the PCD is yet to receive its first entity-related complaint.
58. The organisation (Law for Life) commissioned to write sections of the new enforcement web pages for the Public Information Project, has now produced a significant amount of the new content. The aim of the project is to ensure that that all publically available information about the enforcement processes is clear and easily accessible. Staff involved in the project are reviewing the content written by Law for Life with a view to making it available to the public on the BSB's website early in the New Year. Subsequent content for the remainder of the enforcement web pages will be written by the project staff who are to receive specific writing skills training in November.

In house training programme

59. PCD staff attended a training session on the Data Protection Act on 2 October 2015. The session, which was led by Jane Oldham of 11KBW, covered the data protection principles, the definition of personal data, issues surrounding subject access requests, and, applicable exemptions under the Act.

Time recording

60. The PCD has now recorded nine months' worth of information on time spent on each aspect of our work in order to establish a sound basis for calculating the cost of complaints. It remains that case that the PCD need to see the conclusion of more disciplinary tribunals before we can accurately calculate the time spent on such cases.

Disciplinary Tribunal Regulations Review

61. The consultation on the Review of the Disciplinary Tribunal Regulations closed on 12 October 2015 and at the time of writing, seven responses have been received. The workshops, which took place on 21 September and 1 October and attracted seven attendees, were successful in enabling the PCD to collate the views and opinions of other interested bodies in a more informal setting. Feedback from the workshops will be incorporated into the Consultation Summary Report due for consideration by the Board in January 2016.

Judicial Reviews

62. Since the previous update the BSB has been informed that one case has been refused permission and this has not been challenged. Another has been converted to a High Court appeal as it was challenging a DT finding. This means that there are currently three matters. One of these remains at the permission stage and the other two are currently awaiting a listing before the Court of Appeal.

Strategy and Communications**Communications**

63. Since this report was prepared for the September Board meeting, the following press releases and announcements have been issued:
- 24 September: A statement announcing that due to last minute demand, the deadline for barristers requiring Public Access Top-Up Training has been extended to 4 November;
 - 25 September: Independent review (by the Independent Observer) shows Bar regulator's complaints handling process is operating well;
 - 30 September: Rohan Pershad QC to be disbarred following "cheating the public revenue" conviction
 - 1 October: JAG press release: "Regulators issue consultation on minor changes to QASA";
 - 5 October: BSB Chair Sir Andrew Burns sets his vision for the future of the Bar regulator.
64. The Board will have seen the fortnightly media coverage that the above announcements generated.

Work in Progress

65. At the time of writing, the following pro-active communications activities are scheduled over the next few weeks and months:
- Launch of the consultation concerning self-employed barristers;
 - Follow-up communications concerning the event on 5 October;
 - Forthcoming publication of the post-consultation Professional Statement;
 - Publication of the Youth proceedings advocacy review report;
 - Publication of the new BPTC providers' report.

Online and social media

66. During September, 27,106 users visited the BSB website. At the time of writing, we have 12,423 followers on Twitter.

Business Support***Governance***

67. With the agreement by the Board on how to forge ahead with the Governance Review, the executive is now planning the implementation and communications strategy.

Strategy, Business Plan and Budget

68. Further work is being carried out to refine and further develop the new Strategy for 2016-19. Quarter two for 2015-16 has just ended, so the team is currently working on mid-year management information reports and financial (re)forecasting.

Research

69. Since the meeting in September, work has progressed as follows:
- Finalising and roll out of a stakeholder engagement framework for business use;
 - Analysis of the results of the Alternative Business Structure survey undertaken in September;
 - Roll out of project template and research manual for cross departmental use;
 - Development of research tools for qualitative research work with those interested in setting up an ABS (recruited during the survey);
 - Preparatory background work prior to the first meeting of the immigration review stakeholder reference group;
 - Providing the BSB's responses to the European Commission for the Efficiency of Justice (CEPEJ) biannual survey;
 - Drafting of the literature review for the ASPIRE Consumer Research Programme;
 - Presentation and Board review of Youth Proceedings Advocacy Review;
 - Drafting of full research proposal for ASPIRE Consumer Research Programme.

Resources Group**Current Key Business Projects and Programme**

70. ***Property Strategy 2018/19***
- The first phase of the project is underway to research the drivers and options available to us.

- A timetable has been drawn up to achieve an agreed option in a business case for the end of March 2016.
- An outline for a flexible working model is being drawn up as a first step to shaping our options for the future.
- This is being shaped as a key programme of work with the PMO.

The following fit underneath the umbrella of the Information Management Programme of work:

71. *Authorisation to Practise 2016*

- A kick off project meeting has taken place to plan out resources and tasks in preparation for the 2016 A2P.

72. *Human Resources Information System (HRIS) and Payroll*

- HRIS went live on 7 October.
- Outsourcing of payroll project is underway.
- Further enhancements and release are planned for HRIS.

73. *Supervision and Entities regulation*

- Supervision system operational and live and well received by the team – a project review is underway and looking at how we can showcase the success there.
- Entities Application System is live and receiving applications; project closure is underway.
- Entities Renewal project is being scoped out currently for implementation by April 2016.

74. *QASA*

- QASA project, particularly around processes and technology, is currently being scoped out for an April go live.

75. *Information Architecture – Defining the future “Single Solution”*

- Information Architecture complete; outputs produced: Full business process review; Information Architecture; Systems requirements for new CRM, Self-service Portal, Case Management, Finance and Management/Information Service; Data Governance Framework.

76. *Data Foundation*

- Includes data governance, data cleansing and preparation of data for migration.
- Initial audit of the quality and integrity of data across the organisation underway in conjunction with the information architecture project.
- Planned cleansing of data stored in our current systems is underway.
- Data Governance framework, including functions, processes and roles being scoped out for implementation.
- Data consultant is being recruited.

77. Management Information and Business Intelligence

- Recruitment of MI/BI Analyst complete.
- Business case for project agreed.
- Initial planning and kick off completed and project underway.

78. PCI Compliance

- Initial assessment of our compliance with the payment card industry standards has taken place.
- An initial scope of work is to be negotiated and implemented based on priorities; this has been prioritised in the programme of work to achieve compliance.

Key Resource Group Team Updates**Records – Lisa Smith**

79. The annual BMIF audit is near completion with final reminders being sent to five Barristers. The income audit is near completion with the BSB sending the final reminder to the remaining 20 who have yet to respond. Any issues will be referred to supervision and/or PCD early October.
80. Annual housekeeping continues, including auditing rights of audience and qualified persons data.
81. Chambers have been contacted to provide up to date Chambers data for staff and members and these are being completed by the end of October.
82. At the beginning of September BSB Communications sent reminders to 2,700 barristers who had not completed or notified they had completed public access top up training. To date 1,000 responses have been received and are being updated. Professional Practice have extended the deadline to complete public access top up training until 4 November 2015. After the cut-off date, any barrister who had not completed top up training will be removed from the public access register.
83. Testing for Authorisation to Practise 2016/17 commences from October until December 2015 and involves testing the new fees on the core database and that the renewals process works. Additionally testing to ensure that Barrister Connect process is working.
84. 180 application forms have been received from pupils who have recently completed pupillage in September/October and wish to commence practice: these will be updated in October.
85. We will be contacting the profession to log into Barrister Connect from November to ensure that we have the correct addresses and status for members and to ensure any password or log in queries are addressed in advance of Authorisation to Practice 2016-17.

Finance – Mark Ennals

86. We updated and revised the format of the monthly management accounts for the August reporting period, to provide greater transparency for managers and other stakeholders. Following positive feedback from various stakeholders we will be making further developments to improve clarity and ease of use, for example inclusion of reporting against Forecast and nominal ledger account numbers for reference purposes.

87. The review of departmental processes and procedures is still ongoing with changes being made where appropriate to ensure we aspire to and achieve best practice. Changes are being made to individual roles and responsibilities ensuring we have the appropriate people in place.
88. The process for the Quarter 2 reforecast is underway and the outcome will be available to the Finance Committee at their next meeting on 27 October.
89. Additionally the process that develops the final overall BC / BSB 2016/17 budget is about to start and Finance will issue the timetable for this during October.
90. Review and selection of alternative Finance systems is also about to get underway. There will be liaison with user groups across the organisation as this moves forward to gain insight into staff expectations as to how they may interact with and what they might anticipate from the new system.

Facilities – Sam Forman

91. All statutory obligations against health and safety have been met. Occupational health referral figures are lower than previous quarter.
92. Tenants on floors seven are subletting half their floor to a healthcare consultancy.
93. Property Strategy – work continues on shaping the property strategy programme and vision.
94. The FM team are continuing to seek volunteers to join a ‘Green Team’ in an attempt to identify schemes, initiatives and ways of reducing energy consumption.
95. A scanning solution is now available for scanning documents to the DMS as well as converting PDFs to Word and Excel formats.
96. Desk level training has been conducted with various staff on the StarLeaf Video/Audio Conferencing System. Board and Committee members are encouraged to trial the system with training provided by the FM team.
97. The FM team are relaunching their external print room services at the Bar Conference. The different ways of marketing the services are currently being explored.

Information Services – Tony Cook

98. IS Department Resources
 - The IS department has concluded its restructure to ensure we are properly resourced to deliver the IM Strategy, we are very pleased to report that Paul Martyn has joined the team in the role of IS Business Intelligence Specialist. We are also sad to report that Ryan O’Donoghue has elected to leave the Bar Council to pursue his dream of travelling Asia & Australia.
 - Additionally we are beginning the recruitment process for three further posts:
 - IS Solutions Developer (CRM development)
 - IS Systems Administrator (replacement for Ryan O’Donoghue)
 - IS Data Analyst (Contract post for Data Cleansing & Consolidation)

- We hope to conclude fill these quickly, however in the meantime we shall be closely monitoring our support services to ensure that we continue to deliver a high standard of support.

99. Case Management system (Flosuite)

- Following further discussions with Infographics we have can confirm that transfer of support from Thomson Reuters can take place from 1st June 2016.
- They have proposed a review of our current platform, to understand its suitability to migrate to their new platform. This is likely to take place during the first quarter of 2016.
- The benefits of the migration will provide us with an enhanced user experience and on a platform which can be integrated with MS Dynamics which has been identified as our preferred new CRM platform.

100. Other Key projects

- IS Corporate Policies
 - The IS polices have now been published on verity.
- CheetahMail
 - The CheetahMail bulk email solution is due to be phased out, and replaced with the more cost effective Mailchimp solution, this provides staff with a more user friendly tool for communicating with the profession.

Vanessa Davies
Director General BSB
15 October 2015