



Supervision Strategy

Summary of Approach

The purpose of this policy is to set out the strategic approach to the risk-based supervision of chambers, entities and individuals regulated by the BSB.

The approach will involve supervision resources being targeted at those chambers, entities and individuals who present the greatest risk of non-compliance and therefore the greatest likelihood of negative impacts on consumers and the regulatory objectives.

The intention of supervision will be to reduce the likelihood of these negative impacts occurring by encouraging chambers and entities to manage risk and through working with those who have engaged in non-compliance to ensure that it does not recur. It will involve earlier and more constructive engagement with those that the BSB regulates.

In order to achieve these goals the BSB's supervision activity will have three main facets:

- (i) Supervision of chambers (including sole practitioners) and BSB regulated entities;
- (ii) Supervision of individual barristers; and
- (iii) Evidence gathering targeting specific areas of risk

The approach that will be taken on each area will vary and therefore each is dealt with separately below.

Governance of strategy

This strategy sets out the processes and the framework within which risk-based supervision will operate. Supervision will be managed by BSB staff in the Supervision Department.

However a panel of experts, invited from across the BSB's committees, will be available to provide advice where necessary.

(i) Supervision of chambers and BSB regulated entities

Scope

This facet of supervision is concerned with the regulatory requirements that apply at a chambers and entity level, including those that apply to sole practitioners (references below to chambers therefore include sole practitioners).

Objectives

Supervision of chambers and entities has two main purposes:

- A) **Supervise chambers and entities:** Under risk-based regulation, supervision of chambers and entities will be proportionate, leading to a more efficient use of resources. This method of supervision will also incentivise chambers and entities to manage their own internal risk.

- B) **Identify and address non-compliance:** Supervision will also identify specific instances of non-compliance with the Bar Handbook. Where evidence of non-compliance is identified, the Supervision Department will assess the non-compliance and address it through the use of a range of supervision tools. The aim will be to address the non-compliance and prevent its recurrence.

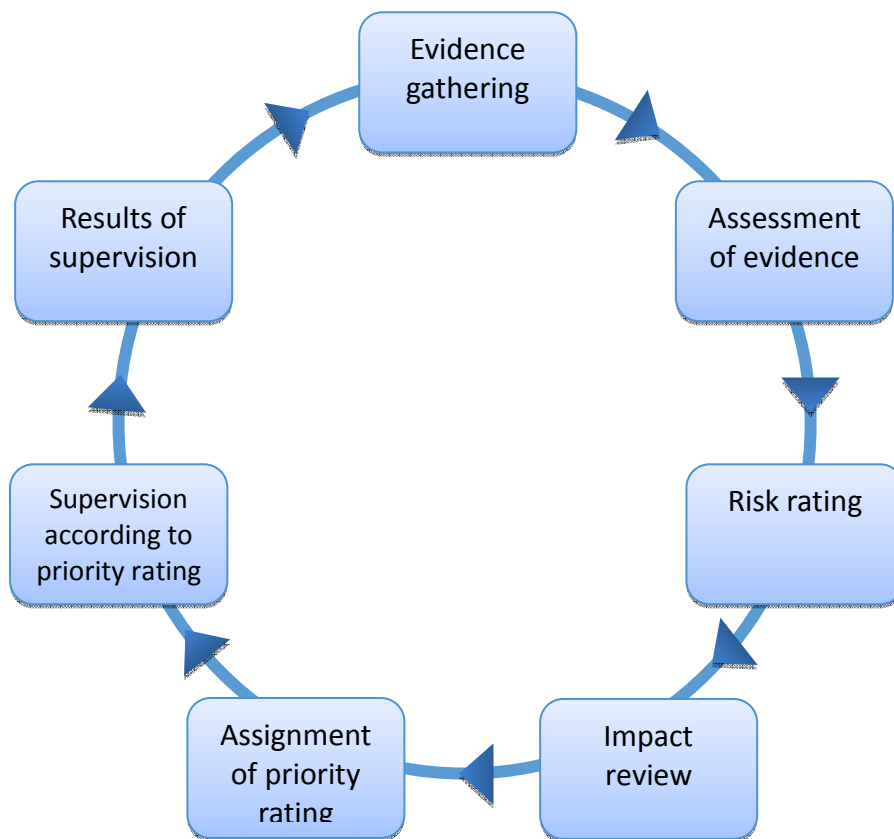
These two objectives will be achieved through separate processes, which are set out below.

Processes

A) Supervise chambers and entities

There are seven major stages in the supervision process. The stages are a cycle, with stage 7 feeding back into stage 1. This is depicted in the diagram below.

Diagram 1 – Chambers and entities supervision cycle



1. Evidence Gathering

This stage involves gathering evidence from multiple sources.

Evidence sources may include:

- BSB departments (e.g. the Professional Conduct Department)
- The Legal Ombudsman
- Client complaints
- Complaints from other sources

- Chambers' and entities' past record
 - Record of compliance/non-compliance (e.g. as identified through the Chambers Monitoring scheme)
 - Record of engagement/non-engagement with the BSB within the last 5 years (e.g. whether requests for information have been answered promptly)
- Supervisory activity
 - General reviews (e.g. questionnaire in the style of Chambers Monitoring 2010, covering a broad range of areas)
 - Targeted monitoring (e.g. requests for specific information from particular chambers)
 - Inspections (e.g. visits to chambers or entities to investigate matters in more detail)
 - Supervision on specific areas of risk. This will be undertaken under a separate process set out in section (iii) of the strategy (below) but relevant results will be factored into the supervision of chambers and entities.

2. Assessment of Evidence

The evidence gathered in stage 1 is then assessed in order to determine the likelihood of the chambers/entity not complying with their regulatory requirements. This is done by 'weighting' the evidence for and against this probability.

As part of the 'risk framework', all relevant evidence will be listed and given a weighting dependent on the significance and seriousness of the evidence. For example, persistent non-engagement with the BSB would be considered very serious and therefore have a high weighting whereas a previous, minor non-compliance issue which has since been corrected, would receive a low weighting score.

The evidence used in this assessment can be positive or negative; for example, just as 'a record of non-compliance' will be taken into account, so will 'a record of compliance'.

Steps can be taken to decrease the likelihood of not complying, including obtaining voluntary accreditation such as the Bar Business Standard as well as providing evidence of regular consumer engagement/satisfaction surveys. All of this would be included in the evidence 'for chambers being compliant'.

The balance of evidence for/against chambers or entities will be used to suggest the likelihood of non-compliance. It is the results of this assessment that will inform the risk rating.

3. Risk Rating

The assessment of evidence will result in all chambers and entities obtaining a score which represents the likelihood of them not complying with their regulatory requirements. This is their risk rating.

4. Impact Review

Each chambers/entity will have an impact analysis on their profile, which relates to the potential negative impact of non-compliance on consumers and the regulatory objectives.

The impact review will therefore consider any factors, inherent to the chambers/entity, which would increase the negative effect of non-compliance.

Examples of impact factors may include:

- Size of chambers or size of client base
- Vulnerability of client base
- Services offered

An impact factor could make a relatively minor non-compliance issue far more serious. For example, failure to have a proper complaints procedure is potentially more serious if a set of chambers is large or has a large client base as it is likely to have received more complaints.

Impact factors will be assessed by reference to specific, identified non-compliance risks. For example, the fact that a chambers has a particularly

vulnerable client base may not be relevant where the risk assessment has identified a problem concerning (for example) employees' maternity leave, as here the negative impact would be felt primarily by members of chambers and staff.

If any of the impact factors are considered relevant this might increase the overall priority rating that a chambers or entity receives for the purposes of supervision.

5. Assignment of Priority rating

Once the risk rating has undergone an impact review the final priority rating is assigned.

This priority rating will be used to determine the amount and nature of the supervision activities a chambers/entity will undergo.

By informing chambers/entities of their priority rating and any relevant reasons for this, the BSB hopes to incentivise them to actively manage their own risk through best practice and mitigating actions.

A chambers' or entities' priority rating will remain the same until evidence is obtained suggesting that it needs to be revised either upwards or downwards. The record of compliance over the last 3 years, as assessed through the chambers monitoring questionnaire, will be considered as evidence and will affect the priority rating.

6. Supervision of Chambers/Entities According to Priority rating

As explained in stage 5, the level of supervision that each chambers or entity attracts will correspond to their supervision priority rating. The tools that will be available to supervise chambers and entities within each category are set out below.

Within each category the Supervision Department will have a degree of discretion as to which tools to employ.

Low priority may include:

- General reviews (e.g. questionnaires in the style of Chambers Monitoring 2010)

Medium priority may include:

- General reviews
- Targeted monitoring (requests for specific information from specific chambers or entities)
- Supervised action plans
- Chambers/entity inspections where appropriate

High priority may include:

- General reviews
- Targeted monitoring
- Supervised action plans
- Automatic chambers/entity inspections

All chambers and entities might also be required to participate in supervision concerning specific areas of risk (see section (iii) below).

7. Results of Supervision

The results of supervision activity have three major uses. The first is to be included in the evidence gathering stage (stage 1) of the supervision process. The results of supervision activity form a significant part of the evidence used to assess a chambers' likelihood of non-compliance. This feedback process completes the cycle of evidence, analysis and supervision.

The second use of the supervision results is to identify non-compliance. Where evidence of non-compliance is identified, the Supervision Department will normally assess and address it through the use of a range supervision tools. The aim is to not only address the non-compliance but to prevent its recurrence. The details of this process are set out below.

The third use is to identify areas of regulatory concern. The results may show, for example, that non-compliance is particularly frequent in relation to certain

rules. This may suggest that there are problems about the interpretation of the rules or that improved education or communication is needed.

B) Identify and address non-compliance

Supervision will not only inform risk assessment but also it will ultimately result in the identification of non-compliance.

As set out above, identified non-compliance will affect an entity/chambers priority rating and the level of supervision that they are subject to. However, it will also begin a separate process concerned with addressing the non-compliance itself.

In these circumstances, the first stage will be to assess the impact of the non-compliance on the regulatory objectives. The BSB's priority will be to ensure that the chambers/entity involved addresses the issue in order to prevent the non-compliance reoccurring and to remedy its consequences (where applicable). However, for non-compliance with the most serious and immediate impact on the regulatory objectives, the issue could be immediately escalated to the Professional Conduct Department to consider enforcement action. Similarly, if the chambers or entity has a history of repeated non-compliance this might result in immediate referral to the PCD.

In all but the most serious and immediate of cases, the Supervision Department will inform the chambers/entity about the issue identified and provide them with a period of time in which to prove that they have established procedures or undertaken other measures (such as organising appropriate training) necessary to address the non-compliance and prevent recurrence and, where appropriate, have taken reasonable steps to remedy any adverse effects on clients resulting from the non-compliance.

The Supervision Department will alert chambers/entities to any resources that are available to assist them to address their non-compliance.

Where appropriate, the Supervision Department may ask the chambers/entity to provide an action plan for how it proposes to address the non-compliance.

Ultimately the Supervision Department might also feel that an inspection is required to confirm that non-compliance has been addressed and is unlikely to

reoccur. Such inspections could also be used to assess compliance with other regulatory requirements.

Results from this process will be factored into the “evidence gathering” stage of the supervision process and will therefore result in risk assessments being updated. The results of this process form a significant part of the evidence used to assess a chambers’ likelihood of non-compliance. Therefore those chambers or entities that are able to prove that they have addressed non-compliance in a manner which should prevent similar future non-compliance will have their priority rating reduced.

Once the chambers/entity has been given the opportunity to address the non-compliance, if the Supervision Department has remaining concerns that the non-compliance has not been sufficiently addressed, it will prepare a report for the Professional Conduct Department recommending enforcement action. This report will explain the non-compliance and the action that has been taken to address this. It may also include reference to previous non-compliance to identify those chambers/entities with a record of non-compliance.

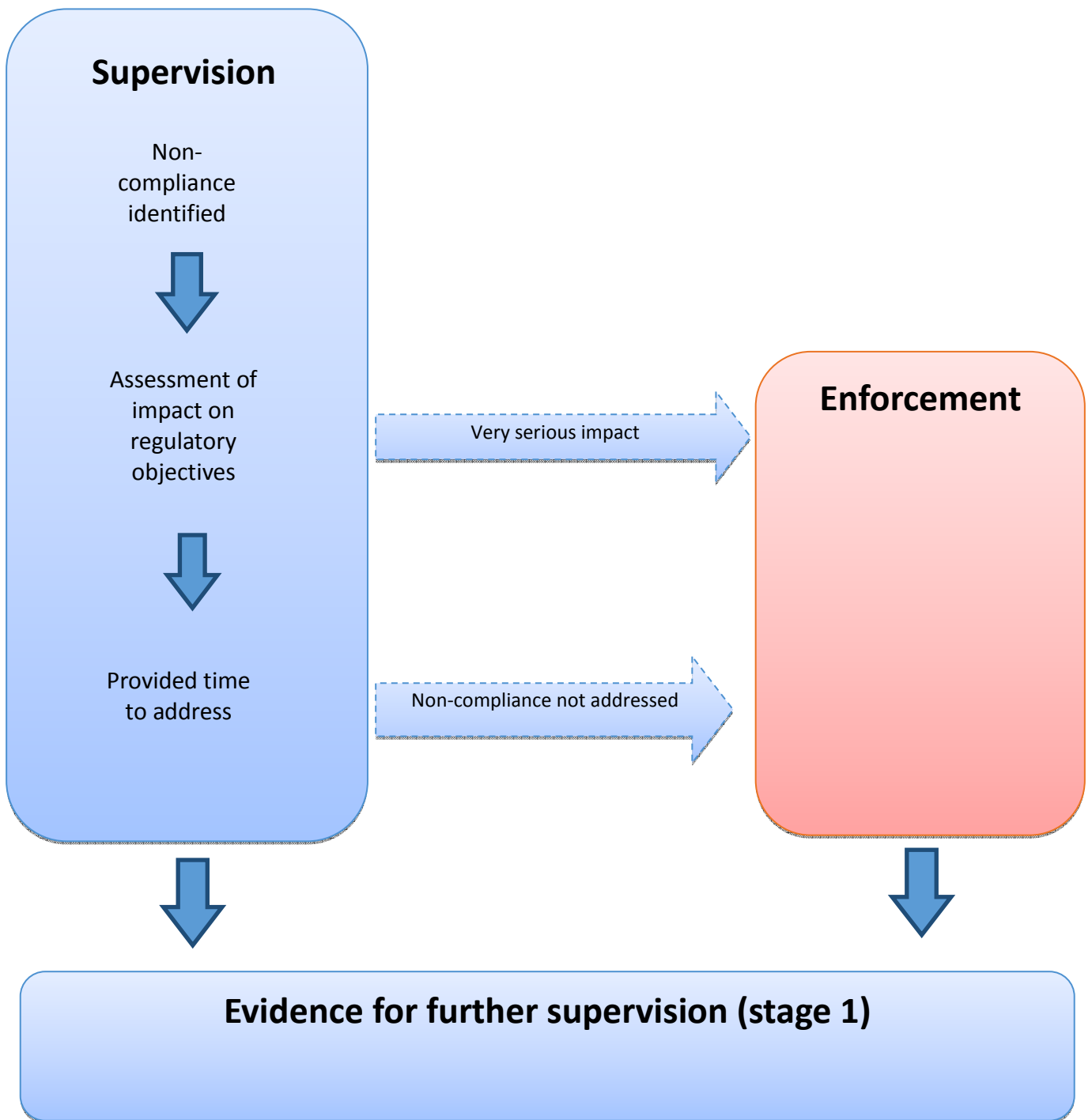
The presumption will be that those who have adequately addressed concerns and taken appropriate steps to prevent reoccurrence will not be subject to additional enforcement action. However, for the most serious cases of non-compliance which have had a significant negative effect on the regulatory objectives, or for chambers/entities with a poor record of non-compliance, the PCD will consider what action to take in line with its enforcement strategy.

The PCD will always pursue further action against those chambers/entities which have not adequately addressed concerns.

The results of the Supervision Department and PCD’s involvement in addressing non-compliance will be factored back into supervision as evidence (see above). This might trigger further specific supervision activity.

The processes for addressing non-compliance are depicted in the diagram below.

Diagram 2 – Addressing identified non-compliance



(ii) Supervision of individuals

All individuals regulated by the Bar Standards Board are already supervised to a certain extent. The main area of individual supervision currently undertaken concerns compliance with requirements around Continuing Professional Development. The annual authorisation process also provides a degree of supervision.

In addition, an individual could be subject to additional supervision in the following circumstances:

- As an alternative to the BSB pursuing enforcement action
- Following enforcement action

In both circumstances the Supervision Department will have a similar range of tools available.

(a) Alternative to enforcement action

When dealing with any complaints, whether from external or internal sources, the Professional Conduct Department (PCD) will assess this evidence in order to determine whether the application of one of the supervisory tools is more appropriate than immediately pursuing formal enforcement action. Such an assessment could take place either on initial receipt of the complaint or following a formal investigation. In circumstances where the PCD refers a matter for supervision, the Supervision Department will have the following tools available:

- Individual practice monitoring: The Supervision Department might feel that a complaint raises issues of significant concern to justify a degree of monitoring of the individual's overall compliance with their regulatory requirements. This would help the barrister concerned and the BSB to understand the extent of their non-compliance and any reasons for this.
- Explaining concerns to the individual and providing them with a period of time in which to confirm that they have taken appropriate measures to prevent future non-compliance. The Supervision Department will make the barrister

aware of any relevant guidance or other resources that are available to assist them to address the concerns.

- Chambers/entity inspections: Evidence obtained about individuals will also be factored into the supervision of the chambers or entities from which they practise (as set out above in Part B). Therefore if the Supervision Department receives evidence suggesting that a member, or number of members of the same chambers or entity, is not complying with regulatory requirements it might suggest the need for a chambers/entity inspection in order to ascertain the extent and potential causes of problems.

It is hoped that in most cases individuals will engage with the Supervision Department in order to address any identified concerns and take appropriate measures to prevent recurrence. This would mean that enforcement action could be avoided.

The Supervision Department would only refer matters for enforcement if an individual does not sufficiently address the non-compliance or if in the course of supervision it identifies evidence of any additional non-compliance which requires fresh consideration of enforcement action.

(b) Supervision following enforcement action

If the PCD considers that enforcement action might be appropriate it could result in one of the following outcomes:

- Dismissal
- Dismissal with advice (the PCD has some concerns that there may be merit in a complaint but does not propose to pursue enforcement action on this occasion)
- No further action (non-compliance has occurred but enforcement action will not be pursued on this occasion)
- Fine or written warning imposed by PCD (for certain instances of non-compliance a fine or written warning can be imposed without consent from the barrister)

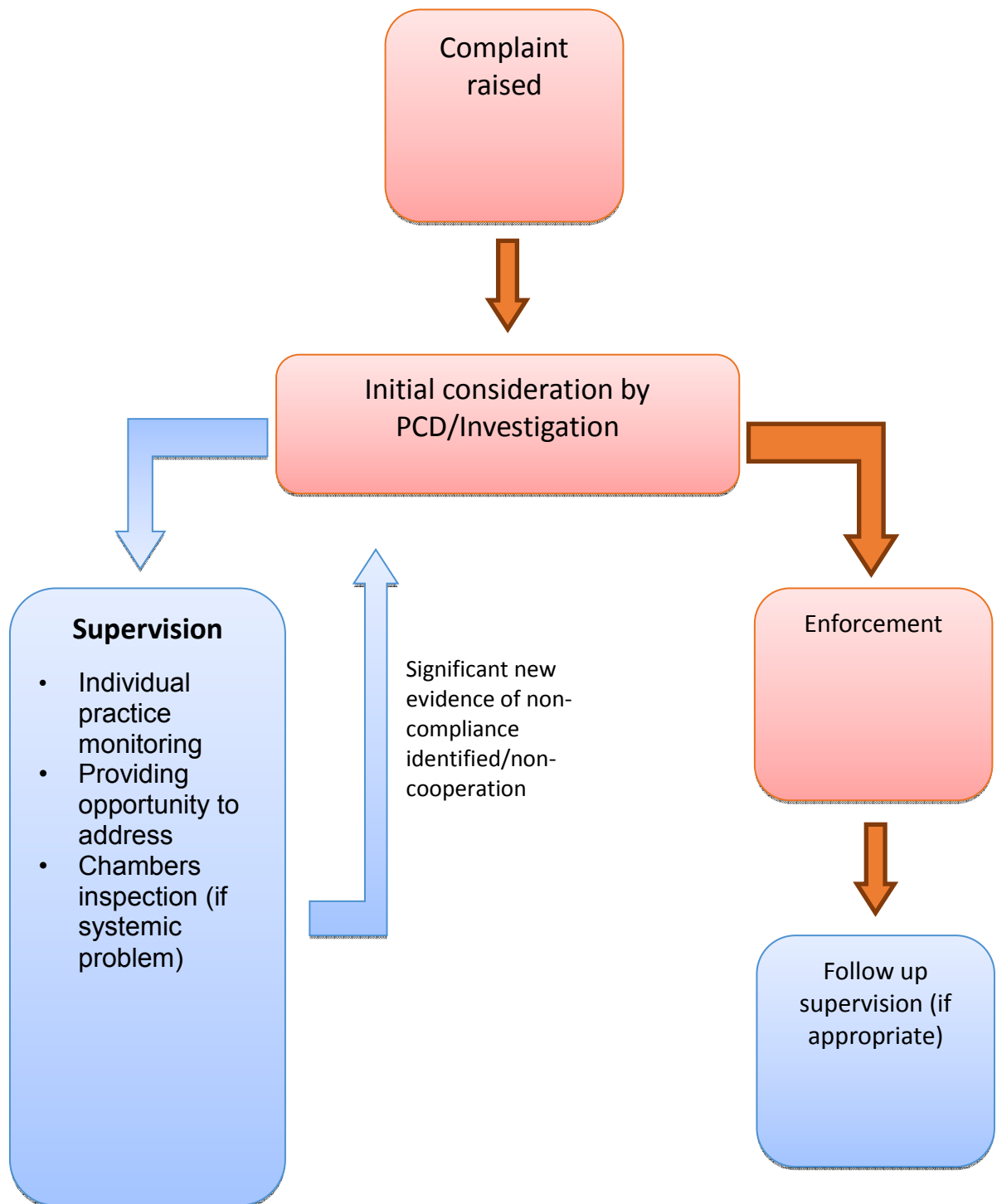
- Determination by consent (the barrister concerned has agreed that they have breached the code and potentially accepted a fine or other sanction)
- Tribunal finding (the barrister has disputed the alleged misconduct, or it is very serious, and therefore the matter has been decided at Tribunal)

In many cases the outcome will be seen as sufficient to address the non-compliance that is in issue. However, in some circumstances it might be felt that the enforcement action that has been taken has not significantly reduced the risk of the same or similar non-compliance recurring in the future. If so, the PCD will refer the issue to the Supervision Department to consider whether the barrister concerned is deemed to be at an increased risk of future non-compliance and whether this risk could be managed or reduced through supervision.

In considering what action to take the Supervision Department would have the same options available as set out above under (a). These are:

- Individual practice monitoring
- Providing time to confirm that they have addressed concerns
- Chambers/entity inspections

Diagram 3 – Supervision of individuals



(iii) Evidence gathering targeting specific areas of risk

The Supervision Department will also undertake evidence gathering to cover specific high risk areas. This is a completely separate process to the supervision of chambers, entities and individuals. When new evidence is received regarding a particular risk and the BSB considers it necessary to gather more information, all relevant chambers and entities will be involved in the data gathering, regardless of priority ratings. This might relate to particular regulatory requirements, areas of work or business practices. This might relate to particular regulatory requirements, areas of work or business practices.

The specific areas that will require evidence gathering will be primarily informed by the BSB's Risk Assessment Framework, although it may also arise from a single one off piece of evidence. Evidence gathered from the supervision of chambers, entities and individuals will help to inform what areas might be considered to be high risk. Evidence gathering on specific areas of risk might cover all chambers and entities (for example if it relates to a particular regulatory requirement with universal application) or to all chambers, entities or individual barristers undertaking work within a certain category. It might also involve a sample of chambers, entities or individuals within a certain category.

This facet of supervision will therefore be based upon a risk identified with a particular regulatory requirement, area of work or business practice. It will not be based on the risk profile of the individual, chambers or entity that is being supervised. Therefore even low priority chambers or entities might be required to participate in this type of supervision. For this reason, this facet of supervision will be undertaken through separate projects outside of the normal operation of supervision that is set out in section (i) and (ii) above. The Supervision Department will seek to minimise the frequency of these projects and to combine reviews of different areas where possible in order to reduce the burden on those involved.

Evidence gathered through this facet of supervision will be fed into the supervision of chambers and entities as set out above in section (i).