

**BAR  
STANDARDS  
BOARD**

REGULATING BARRISTERS

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

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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 <sup>1</sup>

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

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<sup>1</sup> [https://www.barstandardsboard.org.uk/media/1663630/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1663630/bsb_handbook_sept_2015.pdf)

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 Strategy<sup>2</sup>, 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:

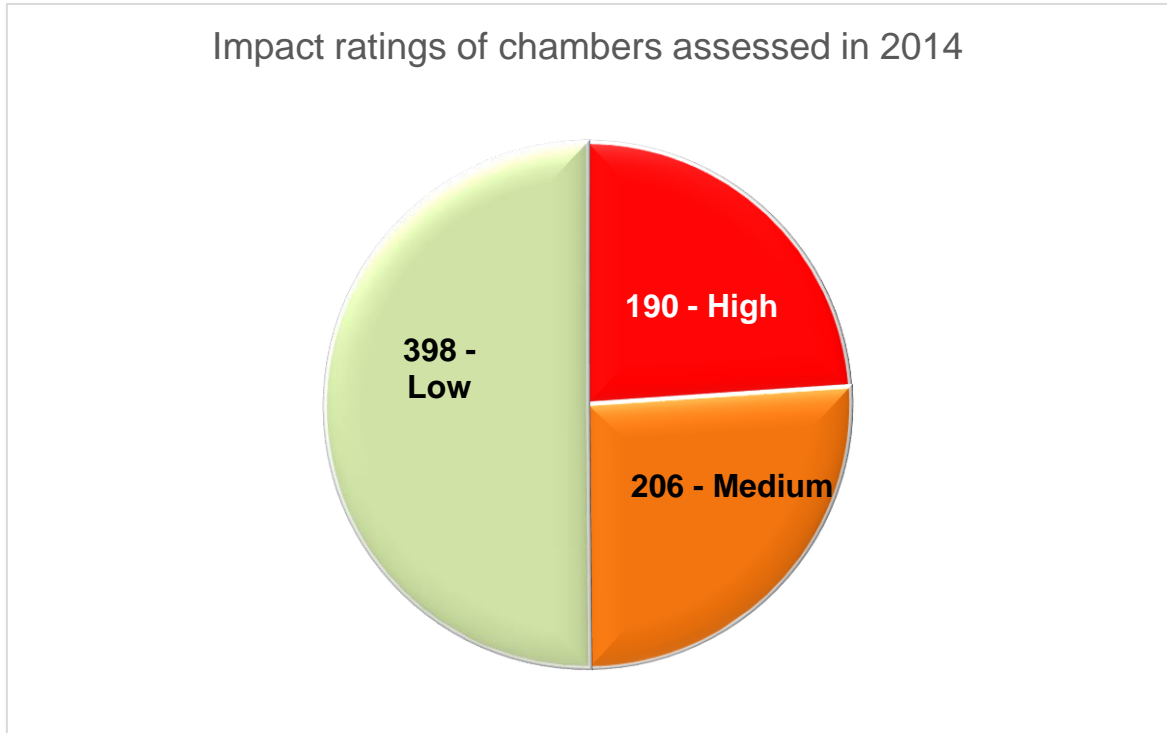
1. Protecting and promoting the public interest
2. Supporting the constitutional principles of the rule of law
3. Improving access to justice
4. Protecting and promoting the interest of consumers
5. Promoting competition in the provision of services
6. Encouraging an independent, strong, diverse and 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.

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<sup>2</sup> 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 compliance<sup>3</sup> 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

<sup>3</sup> 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.

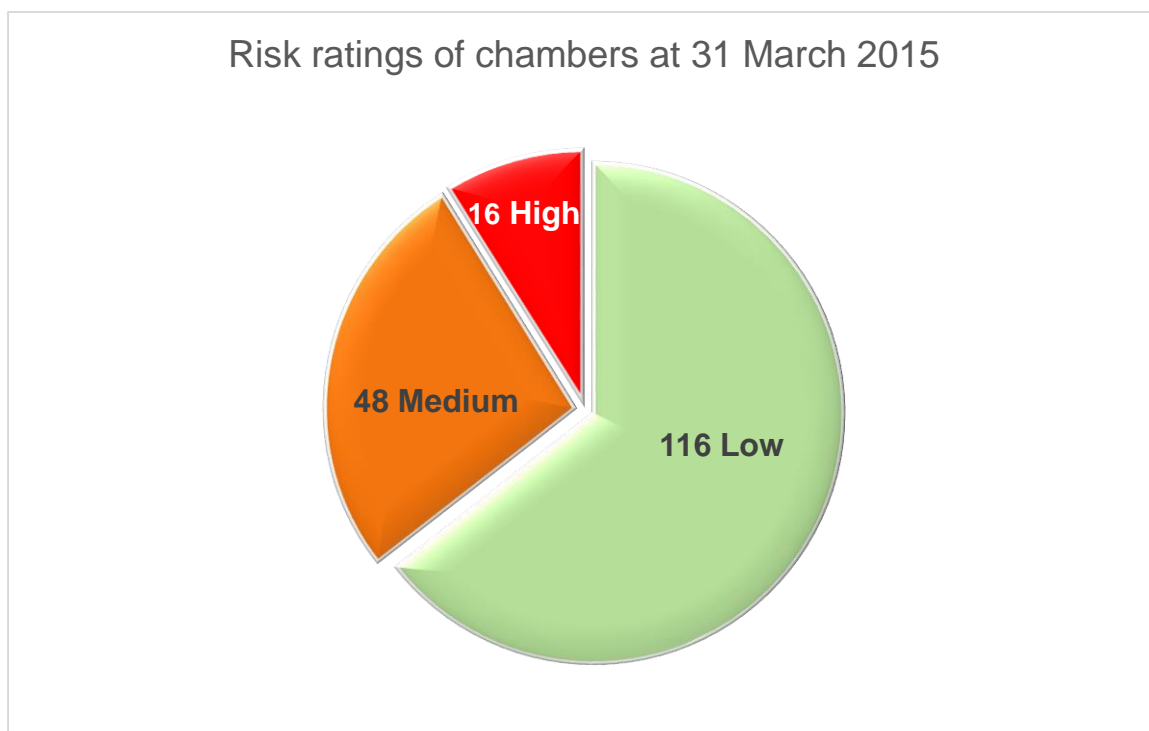
*You must take steps to manage your practice, or carry out your role within your practice, competently and in such a way as to achieve compliance with your legal and regulatory obligations. The Supervision Return was not designed to cover all aspects of compliance with your legal and regulatory obligations 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 <sup>4</sup>

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

<sup>4</sup> [https://www.barstandardsboard.org.uk/media/1663630/bsb\\_handbook\\_sept\\_2015.pdf](https://www.barstandardsboard.org.uk/media/1663630/bsb_handbook_sept_2015.pdf)



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 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 Index<sup>5</sup> 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 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

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

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:

<b>Do you foresee any changes in external factors over the next 12 months in the environment in which your chambers operates?</b>		
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 QASA<sup>6</sup> and the growing focus on the need to improve equality and diversity in the Bar.

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

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.”

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.



<b>Have you carried out an assessment of your compliance with the BSB Handbook that was issued in January 2014?</b>		
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.

<b>How many complaints has your chambers received in the last 12 months?</b>	
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.

<b>Have you set a benchmark for the number or proportion of complaints that you would reasonably expect to receive?</b>	
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.

<b>CFA as a % of income</b>	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**

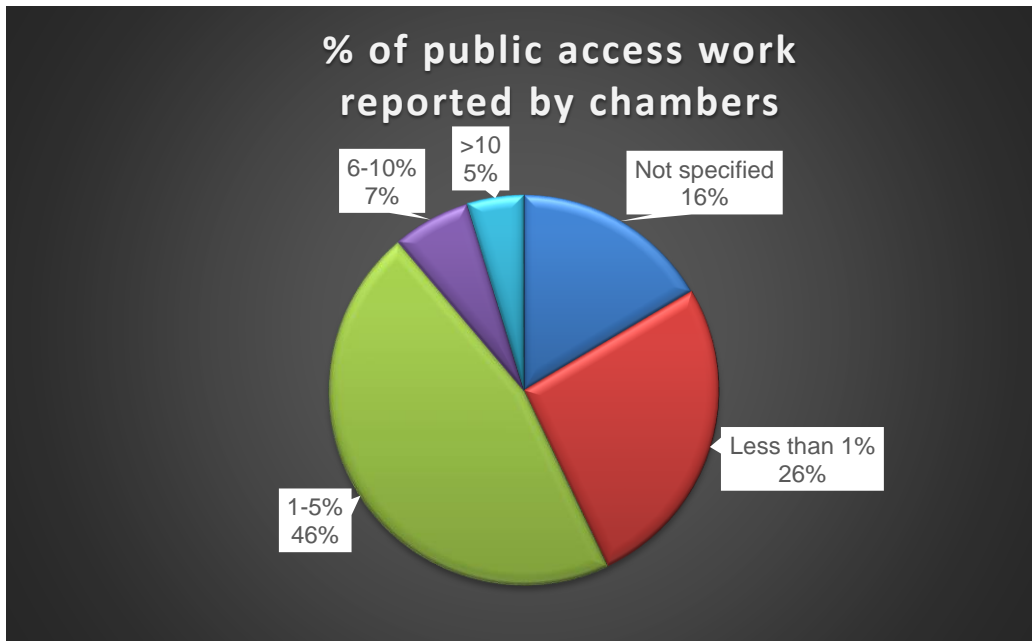
#### ***Regulatory Risk 5.1 Failure to provide a proper standard of service***

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 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.<sup>7</sup>
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.
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”

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

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.

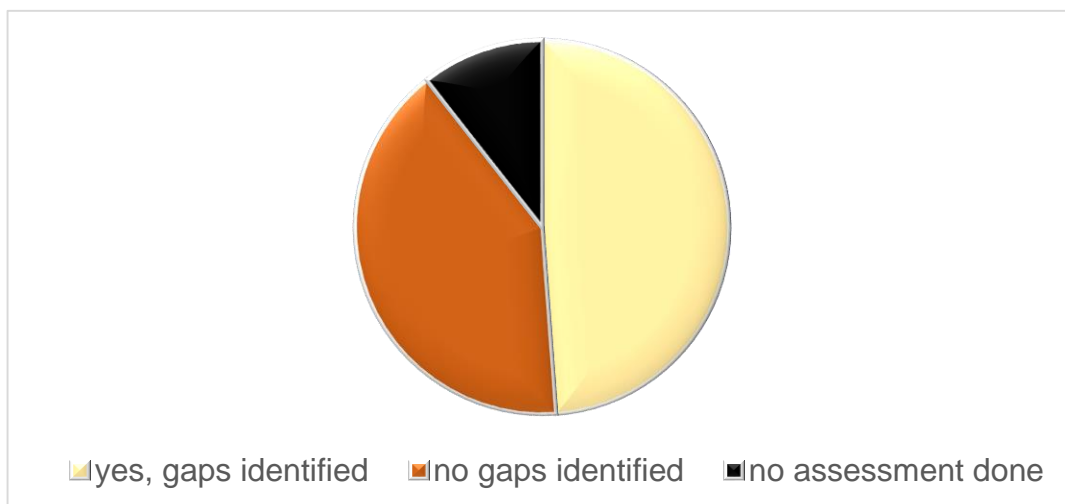
- Some chambers struggle to get the support of enough members to provide data because they don't necessarily appreciate why it is needed. Support from the BSB/Bar Council in this regard would be welcomed.

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?*<sup>8</sup>  
*Outline the gaps that you have identified and explain how you plan to address them.*



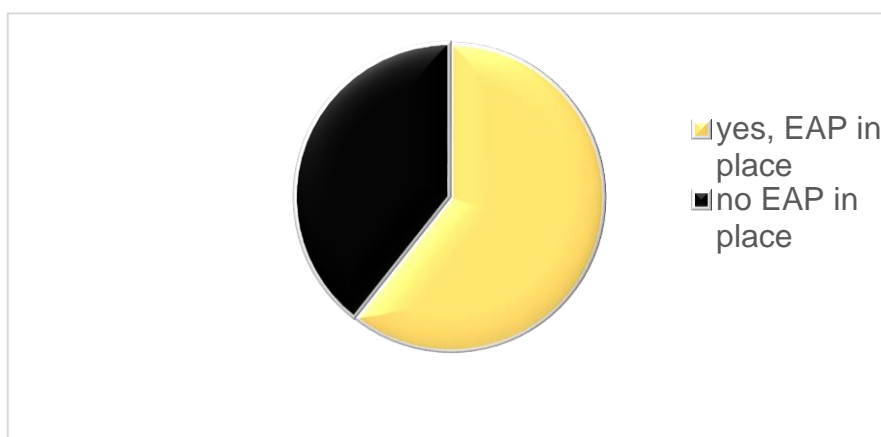
18 of the High Impact chambers had not done an assessment of their compliance with the BSB Handbook.

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

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

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.



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:
- 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.
  - 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 report<sup>9</sup>, 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.”

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



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.

“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 Plan<sup>10</sup>:

“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<sup>11</sup> 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.

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<sup>10</sup> This information has been shared with the Equality team.

<sup>11</sup> <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 <sup>12</sup> 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.

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<sup>12</sup> <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"<sup>13</sup> 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.

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<sup>13</sup> Chambers Closure Guidance is available in the resources section here: [www.barstandardsboard.org.uk/supervision](http://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”<sup>14</sup> 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](http://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 Regulations<sup>15</sup> 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.

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

<sup>15</sup> <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,<sup>16</sup> 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.

#### **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.

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

*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 government<sup>17</sup>. The Ministry of Justice is currently consulting on “Enhancing the Quality of Criminal Advocacy<sup>18</sup>”. 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)<sup>19</sup> 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](mailto:supervision@barstandardsboard.org.uk) or by calling 020 7611 1444 and asking to speak to a member of the Supervision Team.

## 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.<sup>20</sup> 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 2015<sup>21</sup>. Aside from the more obvious risk of the loss of confidential and highly

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

<sup>18</sup> [https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/consult\\_view](https://consult.justice.gov.uk/digital-communications/enhancing-the-quality-of-criminal-advocacy/consult_view)

<sup>19</sup> [http://www.barcouncil.org.uk/media/342215/rivlin\\_report\\_final\\_march\\_2015\\_.pdf](http://www.barcouncil.org.uk/media/342215/rivlin_report_final_march_2015_.pdf)

<sup>20</sup> <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/>

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

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”.<sup>22</sup> 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.”

135. The Bar Council has issued some guidelines<sup>23</sup> 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.

<sup>22</sup> 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&gclid=CK2ovfWGsMgCFYOy2wodl6UE3Q](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&gclid=CK2ovfWGsMgCFYOy2wodl6UE3Q)

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

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 controllers<sup>24</sup>.
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.

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

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.