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Getting in Shape for BSB Supervision

By the time you read this, the Bar Standards Board (BSB) will have launched its Impact Audit form. You will probably be wondering why you are now being asked to respond to a number of questions about how you run your chambers or practice. This article will discuss ways in which to prepare for what is to come and to get back to basics when it comes to understanding "risk" and how to maximise the benefits of taking a mature stance at how risk management can work favourably for your business.

What is Risk?

All too often we think of risk in the negative sense of the word. Risk is bad and must be avoided at all costs. Really? Two definitions of "risk" are shown below. Which would you prefer to work to?

Definition 1. "***The effect of uncertainty on objectives***"

Definition 2. "***The threat or possibility that an action or event will adversely or beneficially affect ability to achieve objectives***"

Definition 2 may not trip off the tongue but it makes the point that risk can be both a good and bad thing. We need to remember this as we take a more detailed look at assessing risk and identifying ways to reduce its impact on your business.

What is the purpose of the Impact Audit?

Providing the BSB with details of the choices you make to run a successful chambers will provide them with valuable insight into your strategic thinking and robustness when considering current and future hurdles potentially impacting the success of your business. In other words, the BSB want to know if you are fit for purpose and whether your operation demonstrates a greater likelihood of causing you and the public problems, in future. The Impact Audit is the first of the tools by which the BSB intend to assess your perceived levels of risk and will be followed by others, depending on the outcome of initial assessment of chambers.

How to Assess Risk

Vulnerability to a particular risk is a combination of the **likelihood** of the risk materialising and the **impact** if it does. The question yet unanswered is how the BSB will measure the information you provide and on what basis they are going to judge whether the impact and likelihood is potentially detrimental. Despite seeking clarification direct from the BSB, at the time of writing this article, we had not received a response to this question. The following guidance is therefore based on general good practice and not a specific methodology being implemented by the BSB.

We need to consider what these two measurements actually mean and provide yardsticks by which to quantify them.

Impact is the effect felt if a risk actually materialises into an event. An example might be that the risk of losing a key practitioner who is leading the way in developing a new practice area for chambers. There may be a number of reasons for their departure such as moving to another set or serious illness. The cause isn't the issue; the impact of their loss, is.

Likelihood is the chance of something happening. Some measure this mathematically but for the purposes of most businesses a broader assessment of probability is generally used.

In order to measure the impact and likelihood of a risk, we need to establish an appropriate methodology. In other words, a scoring mechanism (or yardstick) by which to assess and measure them. A common approach is to develop a matrix, as below. For the purpose of this example, a 4 x 4 ratings table is shown. By multiplying impact scope by likelihood score, you achieve an overall risk score, from which you decide the priority and degree of response. The higher the score, the higher the perceived risk.

Likelihood High	4	8	12	16
	3	5	9	12
	2	4	6	8
Low	1	2	3	4
	Impact Low			High

Impact ratings could be categorised as follows:

1 = Low/insignificant/minimal - this may equate to an inconvenience but no significant impact to chambers/clients (for example minor short term disruption in clerks room)

2 = Medium/moderate/unsustainable – this may equate to experiencing difficulties resulting in significant time and/or resources to manage (for example non trivial financial problems)

3 = High/significant/major – this may equate to high visibility, significant and/or sustained issues for chambers (for example serious injury to clerk/staff, serious complaint resulting in reputation damage to chambers)

4 = Severe/catastrophic – this may equate to an issue so severe the viability of chambers may be threatened (for example sustained unacceptable behaviour of individuals resulting in removal from chambers (staff or barristers)

Likelihood ratings could be categorised as follows:

1 = Low/unlikely - This is not expected to occur. Almost inconceivable.

2 = Medium/possible –This is conceivable but more likely to not happen than to happen.

3 = High/likely/probably – This is more likely to happen than not.

4 = Almost certain/inevitable – High percentage (say 80%) probability of happening.

As part of its Supervision Strategy, the BSB makes frequent reference to the Code of Conduct and the recently issued BSB Handbook. It also mentions specifically section **C5** of the Conduct Rules. We therefore recommend chambers remind themselves of this content. (From page 56 of the Handbook).

Identifying Risks

As part of its information support, the BSB has identified five principal areas of risk which it expects chambers to be competently managing. It has also provided some examples under each risk area https://www.barstandardsboard.org.uk/media/1543159/chambers_risks.pdf

However, the BSB has also indicated that other risk areas may be included in their audit and it is on this basis that you should approach your risk assessment programme. Below is an expanded list of risks which take into account a broader approach to running chambers and should prove useful to those of you coming to this subject for the first time.

1. Control Mechanisms within Chambers

I. Lack of/poorly managed committee structure/s
II. Lack of reporting and analysis of chambers information including financials, client feedback and Health & Safety reviews
III. Poor control over financial management including fees, rent, bank payments, client monies
IV. No internal review of current working practices and/or opportunity for staff/clerks feedback
V. Culture within chambers does not encourage ownership and responsibility by all individuals (members and staff)
VI. Poor/disorganised client management practices leading to confusion and potential conflict
VII. Poor record keeping (impacting billing, diary/fee management and critical renewal dates)

2. Outward Looking Chambers

I. Poor planning and strategic approach to developing a progressing and adaptive business
II. Poor planning to anticipate and meet the needs of chambers (pupil and staff recruitment)
III. Lack of appreciation for the changing marketplace in which chambers operate
IV. Failure to maximise opportunities to liaise with clients and understand their needs and expectations of chambers service/s and to manage complaints effectively and promptly
V. Lack of vision for business development via seminars and other events
VI. Lack of appreciation of how issues may negatively impact chambers' reputation (and how this may manifest itself as a slow creep or a quick hit on chambers)
VII. Failure to operate as a commercial business

3. Inward Looking Chambers

I. Failure to consider the needs and expectations of staff/clerks and to fulfil the responsibilities of an employer
II. Failure to proactively encourage an open and fair culture to all individuals within chambers
III. Failure to acknowledge and implement Health & Safety, Equal Opportunities and other fundamental requirements
IV. Failure to recognise the need for and offer opportunities for staff development and training

If we return to our second definition of risk; "***The threat or possibility that an action or event will adversely or beneficially affect ability to achieve objectives***", you can see that by considering the risks listed above, a proactive approach to addressing them will offer chambers opportunities which it might otherwise overlook.

By adopting a positive attitude to risk and working as a management group, chambers can take steps to identify issues and agree ways by which to minimise or eradicate the impact these risks may have on the successful running of chambers. So, take the initiative and develop a risk assessment procedure for your chambers and you will be well placed to manage the challenges you face both in the day to day operation of chambers as well as the BSB Supervision Team.

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