

Independent review of bullying and harassment at the Bar

Call for submissions response form

Submissions can be sent in any format directly to the review team via BHReview@barcouncil.org.uk.

If you find it easier, you can complete any or all of the questions below and email your completed form to BHReview@barcouncil.org.uk.

Unless told otherwise, submissions will be published alongside the final report on the Bar Council's website.

Please indicate how you would like your responses to be treated (check the box):

- ☒ Published in full
- ☐ Published anonymously (the content will be published but not the name of the submitting party)
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If you would like to submit your answers completely anonymously and confidentially, please use [Talk to Spot](#).

Name (optional)

Click or tap here to enter text.

Organisation (if you are responding on behalf of an organisation)

Red Lion Chambers

1. Reasons for bullying, harassment, and sexual harassment

- a. In your view, why is bullying, harassment and sexual harassment a persistent problem at the Bar?

- The inability to challenge or effectively challenge it:

- The nature or structure of the profession leads to a fear of the consequences of reporting behaviour on career, income and reputation.
- It is a small profession and there is fear that any complaint 'will come out'.
- Whilst existing resources such as the Bar Council's helplines, guidance and Talk to Spot are available, many people will not see them as effective measures. Victims of these behaviours

need support, re-assurance and confidence that something will be done, if they are to take the next step and make a formal report. This situation is not helped by the fact that many Chambers will not operate formal HR departments or sufficiently robust internal structures that are equipped to deal with these behaviours and in which complainants can have real confidence. The same can be said of the Courts themselves where the perpetrator is a Judge.

- **Culture:**

- Litigation is adversarial where 'winning' is the object. There is still a perception that combativeness and toughness are part of an effective advocates armoury, but this all too easily spills over into aggression and bullying.
- Poor and bad behaviour can be perceived or explained as 'only part of the job'. This too can lead to a reluctance to report.
- Power dynamics – the Bar is still a closed and hierarchical profession where those perpetrating the poor or bad behaviour, have been recipients of it and then repeat it.
- Class, race, gender and sexuality continue to be important factors for those who are bullied and suffer harassment.
- A lack of diversity at the top of the profession leads to the maintenance of outdated views of what is acceptable behaviour and an inability or outright resistance to change.
- There is a lack of real accountability that dissuades people from coming forward to make a formal complaint.
- There is either a lack of support or guidance and/or a perception that there is none for those who 'call out' behaviours as and when they happen.

b. Are there particular dynamics or working practices at the Bar which allow for bullying, harassment and sexual harassment to persist?

- The difficult and highly pressurised environment in which cases are required to be dealt with and sometimes with limited professional client support creates a tense and stressful working environment.

This environment allows poor/bad behaviour to be explained away and/or justified.

- There is a lack of independent oversight or perception there is none. Few would wish to make a complaint to the BSB. What they need are effective processes that are ready to hand and easy to access. These might be thin on the ground for many people where a lot of Chambers do not operate formalised HR departments or have effective processes in place. As to effective mechanisms to seek redress from the Courts in the case of a Judge, these are practically invisible. Victims of behaviours need truly independent reporting mechanisms and systems that effectively police / monitor behaviours.
- The structure of some Chambers and their internal policies dealing with complaints may mean a complaint is directed to a Head of Chambers' or a Senior Clerk which raises a risk of damage to reputation of the victim and Chambers itself with the potential consequence of losing work and/ or opportunity. Thus, if a complaint is about someone else at Chambers, possibly a bigger earner, it is an unattractive proposition to report it to someone who has power over the direction of one's career. Ideally, there would be a third party who was independent of Chambers' to whom complaints could be made. While there is the BSB, triggering a BSB complaint is a big step and many will not be happy to do that.
- The Bar is a small place which exacerbates this issue. It is also very hierarchical. As this type of abuse is usually about power – often those at the top of the hierarchy are the abusers and often they are in the positions of power – senior barristers, judiciary and clerks. Absent a truly independent body that one can go to within each set of Chambers and each Court centre, complaints are likely to be limited and thus behaviour goes unchecked.
- Barristers are self-employed and making a 'nuisance' of oneself by making a complaint is risky financially and time consuming when the priority is case work.

- c. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment known, clear, accessible, and sufficiently robust?

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You must not discriminate unlawfully against, victims or harass any other person on the grounds of race, colour, ethnic or national origin, nationality,

citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity.

- They are clearly set out and supported by draft policies, guidance and training provided by the Bar Council. Accordingly, the standards should be well known. Moreover, each set of Chambers should have its own policies in place to deal with equality and diversity, harassment and dignity at work and are under a duty to investigate and /or report incidents.
 - Giving effect to them is the issue, where there is a reluctance to raise the matter or have it investigated makes it difficult to assess how fit for purpose Chambers structures are. They may be seen by many, and possibly with some justification, as window dressing.
- d. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment sufficiently mainstreamed within barristers' professional obligations? Should they, for example, be included within the Core Duties set out in the [BSB Code of Conduct](#).
- No and yes, they should be included within the Core Duties. Such a step may promote awareness, increase training and help to change behaviours and culture.

2. Impact of bullying, harassment, and sexual harassment

- a. What is the impact of bullying, harassment and sexual harassment on those who are subject to such misconduct?
- The starting point is that the impact of bullying, harassment and sexual harassment is vast and wide ranging. This is largely because people are impacted differently. In its most subtle form it is incredibly undermining. More overt behaviours are damaging to individual self-esteem and confidence, particularly within a profession as demanding and stressful as ours. Sometimes the damage is long lasting and never truly overcome. Many are left feeling useless.
 - The impact of such misconduct has the potential to 'spill' into a person's performance at work resulting in reputational damage and lead to a significant impact on a victim's (or a wrongly accused's) mental health. Feelings of frustration, stress, depression and anxiety are not uncommon at the Bar and they are exacerbated by these behaviours.

- The behaviours leave victims feeling suspicious and mistrustful of an entire group of people based on their experience of bullying / harassment (e.g. judges, male barristers etc).
- There is a risk those impacted feel marginalised by the misconduct to the point where they no longer believe it is the profession for them.
- The perception, and we believe it is a widely held one, that there are limited avenues available to effectively challenge these behaviours make the position of those impacted very difficult. A negative spiral exists where incidents are not reported, behaviours remain unaddressed (and sometimes become more entrenched), victims are left unheard and marginalised and behaviours persist.

b. Is there a wider impact upon barristers' staff, clients (professional and law), or the justice system more broadly?

- These behaviours can and do undermine the barrister-client relationship, particularly where the bullying emanates from a judge.
- Has the potential to undermine a fair trial where the misconduct occurs within the courtroom. For example, judicial bullying can affect the way a jury views counsel and the subsequent submissions they make, it may make counsel less likely to challenge evidence/pursue a line of cross-examination (impacting the result of a trial). Misconduct from a barrister in a trial may affect performance of opposing counsel.
- May discourage vulnerable people entering / remaining within the profession with the consequential impact on diversity.
- It reflects poorly on a profession where many of its practitioners work in areas involving discrimination and harassment, and leaves us vulnerable to allegations of hypocrisy.
- The behaviours may put off users of the justice system from seeking access to the Court.
- There are likely to be examples of barristers bullying clerks – indeed, we suspect this is an unexplored problem.

3. Reporting mechanisms, resources, and sanctions

- a. What are the barriers to reporting incidents of bullying, harassment and sexual harassment?
 - The nature of the profession leads to a fear of the consequences to career, income and reputation of reporting behaviour, particularly where members are self-employed, as is commonly the case. In a profession where future career prospects still depend to an important extent on word-of-mouth recommendations from instructing solicitors or leading senior counsel, junior counsel are less likely to make complaints.
 - Counsel may be concerned that a complaint would make the situation worse, fear being seen as a trouble-maker, or be concerned about the stress and anxiety involved in the process of reporting it.
 - Complainants often feel nothing will change even if they do complain. In fact, they often feel they will fare worse in the long run.
- b. What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment?
 - Chambers' are required to assist complainants and in addition state clearly that any complaint or complainant is protected and that any repercussions against the complainant will result in serious disciplinary action.
 - A monitoring system may assist.
- c. The Bar Standards Board (BSB) rules place a duty on barristers to report to the BSB in circumstances where there are reasonable grounds to believe there has been serious misconduct (with an exception set out in guidance for victims). Is this duty to report known, understood and implemented in practice?
 - The duty to report is clear, however we believe that compliance in practice is rare. There are many reasons for this and some are set out above. But a classic example is where a complainant has expressed the strongly held position that they do not want the complaint to be taken forward due to fear over personal repercussions. This might be improved if good behaviour was championed.
- d. Is there sufficient support in place both for complainants and persons accused of bullying, harassment, or sexual harassment? Do the existing

mechanisms appropriately balance the need for confidentiality and transparency?

- In our view this depends on the individual Chambers and the support structures that exist within them. Some will be very good, others poor and then there is everything in between. This may produce a lottery for those subjected to these behaviours. There is also a role to play for the leadership of the profession in this regard including the Circuits and professional Bar associations. However, in an increasingly pressurised and demanding environment it might be the case that Heads of Chambers, Circuit Leaders and leaders of specialist Bar associations have less time in the present day to make themselves available. In addition, professionals now mix less in person, which does not allow the same opportunities for support and advice to be given.
 - Confidentiality for the abused is critical. However, in our view if there was more openness about who was accused more people may feel able to come forward.
- e. Should there be interim measures which permit a person accused of bullying, harassment, or sexual harassment to be subject to a precautionary exclusion from Chambers, their employer, or from practice during the adjudication of a complaint?
- This has the potential to be unfair to the person accused but is clearly within the range of actions which could be taken by Chambers if deemed necessary to protect the complainant or others. However, we question whether regulation is the answer in all of these cases. We as a profession have been trying to regulate these complaints for years and with a low degree of success. Changing the culture of the profession and focusing on positive behaviour in order to bring about cultural change may be more effective. We would advocate for a focus on acknowledging and rewarding good behaviours rather than focusing exclusively on punishing bad behaviour.
- f. Are investigations into complaints (by the BSB, Chambers or any other relevant body) concerning bullying, harassment or sexual harassment sufficiently independent, prompt, robust, and fair?
- How robust, prompt or fair these investigations tend to be is dependent on the individual Chambers. We suspect that the picture may be a patchy, with examples of very good and poor practise. Much will hinge on the ethos and set-up of Chambers. We do not feel sufficiently informed about the BSB's track record in this area to comment on it.

- g. Following an upheld complaint of bullying, harassment or sexual harassment, are the sanctions imposed appropriate and fair? Is enforcement action sufficiently robust to act as a deterrent?
 - The range of available sanctions are probably adequate and imposed fairly. Perhaps there should be an emphasis in many cases on reparation and compulsory training. However, in terms of deterrence the real question is whether the threat of enforcement action is real or not.

4. Potential reforms to tackle bullying, harassment, and sexual harassment

- a. Are there any preventative steps which can be taken to tackle bullying, harassment, and sexual harassment? In particular, what could be done in the court room, in Chambers, and at the Bar more widely, to assist in preventing such misconduct?
 - Instances of good behaviour being acknowledged and rewarded. The focus being on positive behaviours such as kindness would promote those positive behaviours. Focussing on the behaviours you wish to see is a recognised method of behavioural change. It would not be commonplace for bad behaviours to exist or go unnoticed or unreported if the focus was shifted to acknowledging and rewarding good behaviours such as kindness.
 - Messaging and reminders about zero-tolerance for bullying and harassment in obvious places ie. Chambers newsletters. Examples of conduct should be circulated (or included on signs) so that people can be better informed about less overt conduct which crosses the line. The Bar Council and BSB could lead a media awareness campaign on the issue. The Senior Judiciary should be seen and heard on the topic.
 - Chambers should have mandatory anti-harassment training once a year for all members delivered by an experienced third-party provider who is able to educate on less direct forms of harassment, why certain types of conduct can amount to sexual harassment and the impact of harassment on those experiencing it. There is also a benefit in ensuring that training is not just about harassment which is about conduct towards a particular person. Members of the Bar engage in conduct ie., conversations of a sexual nature, conversations about people's looks / level of attractiveness, what someone is wearing in robing rooms or at social events. Although the conversation may not be directed at a particular individual in their presence it is obviously inappropriate and makes others within earshot uncomfortable, particularly younger women at the Bar. The training should also encourage members of the Bar to think more carefully about power differentials and perceptions of power imbalance and the potential for other types of conduct to lead to uncomfortable situations, particularly for women ie. asking a younger female solicitor or barrister out for a drink / meal alone on the basis that it is to 'network' or discuss a case.

- Anti-harassment / bullying representatives or 'champions' within Chambers. The champions should comprise not only women but others, including senior men, within Chambers interested in calling out sexual harassment and inappropriate behaviour. It could be open for the champions to have a role within Chambers to receive complaints and confidentially discuss matters with the person coming forward and/or to be involved in shaping future training. They would ensure there is consistent messaging within the Chambers environment that harassment and bullying is prohibited and good behaviour is expected and that this position is endorsed by a range of people, across different call bands, within a chambers environment.

- The question is whether the Bar collectively via Chambers should do more by collectively taking a stand against bad behaviour, whether as individual sets or by banding together with other Chambers to call it out. For instance, Chambers could take stock and reflect on known issues of bullying / sexual or other harassment in practice. If there are judges known to be bullies there is scope for Chambers to raise the matter whether as a complaint or a concern. If there is a concern that young female barristers are subjected to sexual harassment by security guards in certain court centres then a set or sets of Chambers could (and have) refused to work in those court centres until the matters were properly addressed. If a senior member of the Bar is known for making inappropriate comments about women in the robing room a Chambers could raise this informally or formally and submit a complaint about them. This supports and removes the burden on individuals to take on poor behaviour on their own.

b. What improvements could be made to existing reporting mechanisms and support services?

- A non-BSB / non Bar Council third party whistleblowing line for sexual harassment, bullying and inappropriate behaviour. Ideally it would allow for online submission reports as well as telephone reporting and provide scope for the person who makes a report to be completely anonymous.
- Within a Chambers structure the anti-harassment / bullying champions (as suggested above) could also serve as an internal reporting mechanism. It would be important for the champions to come from different call bands as a person who has a complaint to raise may be more comfortable going to a person who is more on their 'level' rather than a person who is very senior who may have been in Chambers for years with the person who has allegedly engaged in harassing behaviour.

- c. In what ways could the judiciary, clerks, chambers professionals, and others work together with the Bar to bring about change?
- Clerks rooms tend to be rather masculine environments and there should be a drive to recruit and promote more women, including to positions of leadership within the clerks room.
- d. Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?
- Companies that have an excellent wellbeing culture and support their employees with training etc are well known for having fewer instances of this type of behaviour

5. Is there anything else you would like to share with the review?

Please answer as many of the questions as you are able and submit your answers via email to BHReview@barcouncil.org.uk. Please note your responses will not be seen by the Bar Council unless you have opted to have them published.

The review team is not able to respond to specific concerns or reports. Please report these via the usual channel in Talk to Spot or to the BSB. [Find out more](#).