

# Independent review of bullying and harassment at the Bar

## Call for submissions response form

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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](mailto: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):

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- ☐ 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)

Planning and Environmental Bar Association ('PEBA') (submitted by Victoria Hutton (equality and diversity officer for PEBA), in consultation with the committee and having gathered views from members)

## 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?

By way of introduction, the particular issue which PEBA wishes to make representations about is the inappropriate behaviour of advocates at planning inquiries, both towards other advocates and towards witnesses. This is an issue which has been reported by our members anecdotally for a number of years. Whilst it is by no means universal it is not uncommon.

Whilst it is difficult to be definitive about the causes, there are some factors which are likely to contribute to the persistent nature of the issue.

There is a perception that some clients like their advocates to be 'robust' and aggressive. This can lead to barristers being more aggressive than they would otherwise be and tipping over into bullying behaviour.

It is the case that some behaviour which occurs at planning inquiries would not occur in court. This indicates to PEBA that advocates expect judges to be much less tolerant of inappropriate behaviour than tribunals such as the Planning Inspectorate. It is the case that some inspectors take a very 'hands off' approach in respect of advocacy, for example repeatedly allowing advocates to interrupt each other.

It is unknown whether PEBA's members tend to report bullying behaviour at planning inquiries. If not, then there may be barriers to reporting (which we comment on below).

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

One aspect of planning appeals is that it is often the case that one party is much less well resourced than the other. It is sometimes the case that the local planning authority has engaged a junior barrister and a limited team who will be pitted against a team with a silk, possibly a junior and numerous expert witnesses. This can lead to an uneven power dynamic between the two parties.

PEBA is aware of a concern that poor behaviour at inquiries can be excused on the basis that where it is exhibited by senior/older practitioners then it is assumed that the behaviour will die out. However, PEBA considers that this cannot be assumed and there is a risk of more junior barristers adopting the behaviours of more senior ones, particularly if that behaviour is expected (or perceived to be expected) by a client.

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

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- 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](#)

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## **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?

It is clear to PEBA that the impact of bullying behaviour at planning inquiries can be devastating for those on the receiving end of it.

Planning inquiries can be lengthy (sometimes lasting for a number of weeks) and often occur with advocates staying away from home. Therefore, if one advocate is bullying another advocate, or witnesses, then there is little let up. Further, the barrister on the receiving end of the behaviour will have their client present which can add to the humiliating nature of the experience.

PEBA is aware of anecdotal evidence of certain barristers choosing not to pursue planning inquiry briefs as a result of the type of advocacy which can be experienced there. This anecdotal evidence has involved female barristers. It is therefore possible that poor behaviour at planning inquiries runs contrary to the need and desire to improve diversity in all sectors of the bar. This is of particular concern given planning inquiries can be some of the highest paid work at the planning bar.

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

PEBA has been made aware of expert witnesses raising concerns about the manner in which they have been cross examined and the fact that nothing was done about it. Planning inquiries are played out in public and therefore if this behaviour is not effectively challenged there is clear potential for reputational risks for the profession as well as the potential for individuals to be discouraged from participating in an inquiry, either as an expert or as a third party.

### **3. Reporting mechanisms, resources, and sanctions**

- a. What are the barriers to reporting incidents of bullying, harassment and sexual harassment?

Again, it is difficult to be definitive but PEBA would point to the following potential barriers to reporting.

1. There can be a tendency to downplay bullying behaviour as 'robust' advocacy. This is either in the mind of the person on the receiving end of the behaviour or by others. PEBA is aware of one incident where one of its members called 'Talk to Spot' to report bullying at a planning inquiry and the service asked whether the incident was simply 'robust advocacy'.
  2. To make a silk application a junior barrister needs to provide up to 12 cases where they can provide references from both the tribunal and the opposing advocate. There may be an unwillingness to report bullying behaviour if the case is one which a junior barrister would like to cite in support of a silk application.
- b. What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment?

Preserving the anonymity of the claimant would aid to prevent any repercussions. However, this may well be difficult to do.

- 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?

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- 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?

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- 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?

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- 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?

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- 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?

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#### **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?

PEBA considers that there may be a number of potential measures which could be undertaken, these are both 'bottom up' and 'top down'.

Starting with the bottom-up measures, PEBA considers that there is room for the bar associations to do more to encourage their membership to self-police effectively. One way organisations like PEBA might do this is to issue good practice notes to remind their members that bullying and oppressive behaviour at planning inquiries will not be tolerated. PEBA is considering doing this.

The reports which PEBA has received of bullying at planning inquiries has often involved a more senior member behaving inappropriately towards a more junior member of the planning bar. PEBA considers that there would be considerable merit in the encouragement of strong leadership to counter such behaviour. To that end PEBA considers that one option would be to make good leadership part of the assessment process for taking silk. There could, for example, be an additional competency assessed which is that the barrister concerned must show that they have demonstrated leadership of the type which encourages

against the use of inappropriate behaviour at the bar. Or, this issue could be covered by the 'working with others' competency.

Given members of the bar are often appointed to judicial rolls (whether as deputy high court judges or as full-time judges) it may be worth considering whether the issue of bullying could feature more highly in decisions over appointments.

Above, PEBA has noted that some of the behaviour which occurs at planning inquiries is very unlikely to be practised by advocates in court. To that end PEBA considers that there may be merit in encouraging the planning inspectorate to take a more active role in preventing such behaviour. This could be through additional training and also through the publication of a good practice guidance note.

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

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- c. In what ways could the judiciary, clerks, chambers professionals, and others work together with the Bar to bring about change?
- d. Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?

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

Click or tap here to enter text.

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

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