

## **BULLYING & HARASSMENT**

### **Submission to the Harman Review by the Bar Standards Board**

The Bar Standards Board welcomes the opportunity to submit further evidence to Baroness Harman's review. These submissions should be read alongside the note submitted to the review in October 2024.

As set out in that initial note, the Bar Standards Board takes the views that the root causes of the prevalence of bullying and harassment at the Bar lie in culture and, in particular, in the close personal and deferential relationships which underpin the professional advancement of barristers. The power imbalances inherent in these relationships -between pupils and supervisors and between senior and junior barristers - are intrinsically at risk of exploitation. The closeness of the relationships also tends to inhibit the reporting of misconduct because those who experience bullying or harassment fear that their careers will be de-railed by more powerful patrons who occupy respected positions within chambers and the profession. Chambers themselves are often small and can lack the critical mass to establish and enforce effective policies to combat harassment and to support those who experience misconduct.

It is for these reasons that the Bar Standards Board in its consultation on the revision of its *Equality Rules* sought to clarify the accountability of chambers' tenants for chambers' policies and practices by proposing a proactive core duty to advance equality, diversity and inclusion. The Bar Standards Board is now considering responses to that consultation, and whatever that decision, this will remain a priority for the Bar Standards Board.

Effective enforcement and supervision by the Bar Standards Board have an important part to play in complementing a more proactive stance by chambers and by employers. Regulatory action can strengthen chambers' policies and deter misconduct by demonstrating that it will not be tolerated and that the penalty for such conduct can be the loss of career. It can also reassure those who experience bullying or harassment that there are effective remedies and, accordingly, that reporting misconduct is right, worthwhile and will not harm their own careers.

Accordingly, the Bar Standards Board attaches a high priority to maintaining the reporting obligation, to supporting those who come forward to report that they have

experienced bullying or harassment and to taking forward enforcement cases as quickly and as effectively as is compatible with fairness.

## **Modernisation review**

The Bar Standards Board's Reform Programme has three principal aims:

- proactive, consumer-focused regulation anchored by a much deeper, intelligence-based understanding of the market we regulate;
- modernised delivery which will enable us to deliver our gatekeeping, supervision, authorisation and enforcement functions quickly, efficiently and responsively with no loss of quality; and
- engaged, agile and committed people.

Our programme of work to modernise delivery includes projects aimed at enhancing the efficiency of our end-to-end enforcement process by implementing the recommendations of the Fieldfisher Review which the Bar Standards Board commissioned and by making consequential changes to our Enforcement Regulations and to the supporting IT systems. These projects are fully on track. The re-design of the end-to-end enforcement process will be completed by May. That will pave the way for consultations on revised regulations in the Summer. We expect revised regulations and updated IT systems to be in place by the end of 2026, but some process enhancements not dependent on regulation changes to be effective later this year.

One impact of these changes will be to improve the speed of our enforcement work. Please note, however, the quality of our enforcement decision-making, which is independently audited, is already very high and will not be diminished by our process enhancements. And, as our latest published quarterly performance report shows, performance against other dimensions, including speed, is also improving.

## **LSB's regulatory performance assessment**

You can find our response to the latest Legal Services Board assessment here:

<https://www.barstandardsboard.org.uk/resources/press-releases/the-bar-standards-board-response-to-the-legal-services-board-regulatory-performance-assessment.html>

## **Recent cases**

The BSB has successfully conducted a number of cases<sup>1</sup> in this area recently, including against prominent members of the Bar. These cases have included comments and behaviours towards women who have come into contact with, and work alongside, members of the Bar. In one of these cases, the Disciplinary Tribunal made an order of disbarment because of the barrister's repeated behaviour.

The cases underline that the regulator can and will take effective action in response to serious misconduct of this kind even if the respondent is high profile.

Though timeliness is also important, public and professional confidence depends above all on the outcome. Achieving these outcomes required our team to demonstrate meticulous attention to detail, to reassure and take statements from the witnesses, who were all vulnerable, to deal fairly and patiently with barristers' various challenges to the process and to work to the timetable set by the Tribunal. Cutting corners in any of these respects would have jeopardised what mattered most: ensuring that we could present the strongest possible case to the Tribunal.

### **The duty to report**

The duty on barristers to report serious misconduct is the source of 9% of all the reports received by the Bar Standards Board and of 21% of bullying and harassment cases. Over the last three years we have received 24 reports on sexual harassment and bullying by this route and have taken regulatory action in response.

We reviewed the duty to report in our 2022 publication *Addressing bullying and harassment at the Bar*<sup>2</sup>. This noted that, though some barristers viewed the duty to

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<sup>1</sup> <https://www.tbtas.org.uk/wp-content/uploads/hearings/137383/BSB-Wheetman-Report-of-findings-and-sanction.pdf>

<https://www.tbtas.org.uk/wp-content/uploads/hearings/137374/KEARNEY-Report-on-Sanction.pdf>

<https://www.tbtas.org.uk/wp-content/uploads/hearings/137399/KING-Approved-Report-of-Finding-and-Sanction-amended.pdf>

<https://www.tbtas.org.uk/wp-content/uploads/hearings/137352/SIDHU-Published-findings-190325.pdf>

<sup>2</sup> <https://www.barstandardsboard.org.uk/static/81339cf0-2422-4f74-8535b5e37d988793/7e20e7e9-c55a-4c7d-a3785ecd663d9708/Bullying-and-harassment-report.pdf>

report as too high stakes, particularly for what were perceived to be low level incidents, the balance was in favour of retaining the duty. Our report concluded:

*Furthermore, there are those who feel that the duty to report can be an enabler to reporting. This is demonstrated by some interviewee responses in the YouGov research, in addition to feedback from barristers who have made a report to us. In some cases, the duty to report may help by providing those who have experienced bullying or harassment with a regulatory justification for making a report. Without this, the focus will be on individuals to make a personal decision whether to report. Some barristers have informed us that they would not have reported an incident to us had they not been obliged to do so. We have also received feedback that the duty to report helps the profession and the public to see that the BSB takes these issues seriously.*

*Given the mixed evidence gathered in relation to the duty to report, we do not believe it appropriate to remove the duty or create a formal exemption for those subject to harassment within the rules. Equally, we do not believe that those subject to bullying and harassment should have that experience compounded by fear of regulatory action, should they feel unable to report it. This view was supported by many participants at our roundtable discussions.*

This remains our view.

## **Personal versus professional conduct**

The Bar Standards Board's guidance on the regulation of non-professional conduct can be found here: <https://www.barstandardsboard.org.uk/static/e803d194-972c-43b4-84bf162568cee383/60838a0a-904d-4a15-92af9e236b2ed1a2/Guidance-on-the-regulation-of-non-professional-conduct-September-2023.pdf>

The Guidance sets out the circumstances in which the Bar Standards Board may have a regulatory interest in conduct in non-professional life. We apply this guidance in assessing whether enforcement action is appropriate in response to reports about barristers' non-professional conduct.

## **Regulating online speech**

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The Bar Standards Board's guidance on barristers' use of social media can be found here: <https://www.barstandardsboard.org.uk/static/61d13750-880c-4423-a4bf80cf96d3f06c/4590471b-3272-4f66-ad8684a76315cdd0/BSB-social-media-guidance-September-2023.pdf>

The Guidance sets out the circumstances in which the Bar Standards Board may take regulatory action in response to social media posts by barristers.

### **Confidentiality and transparency**

The Bar Standards Board is very conscious that transparency about the conduct of enforcement action in cases of bullying and harassment can reinforce public confidence in regulation, encourage others who have experienced harassment or bullying to come forward and act as a deterrent. Transparency has, however, to be balanced against the entitlement of a barrister to confidentiality while reports are being investigated and before a case is referred to a Tribunal, as the allegation alone may be highly prejudicial and career threatening. Against this background the Bar Standards Board is re-considering as part of its wider review of the enforcement process when it would be appropriate to make public information about enforcement cases, including those of bullying and harassment. We are also reviewing whether directions hearing, preceding a Tribunal hearing, should be held in public.

It remains our view that Tribunal hearings themselves should generally be held in public in the interest of transparency and open justice, save where medical or other confidential evidence or testimony is introduced.

### **The Supervision Team**

The Bar Standards Board views supervision as an important part of its regulatory armoury in combatting bullying and harassment.

The [Supervision team](#) is responsible for supervising barristers, chambers, BSB entities and Authorised Education and Training Organisations that provide vocational training and pupillage. It covers the whole barrister career from training through to practice. The team works with those we regulate to improve regulatory compliance with the BSB Handbook and with our authorisation frameworks and to manage risks occurring or recurring.

Some of the work the team does is proactive, such as conducting thematic reviews (gathering information to support assessment of risk and engaging with the profession where risks have been identified) and some of its work is reactive, such as responding to reports of bullying and harassment.

When a report of bullying and harassment has been made, it will usually be referred to both Supervision and Enforcement teams at the same time. For example, the individual barrister may be subject to enforcement action for their misconduct, but there may also be an indication that, at an organisational level (the chambers, entity or training provider), policies and processes may be inadequate or could be strengthened as a result of lessons learned. More widely, it may have been identified that there is a poor culture in that organisation which necessitates actions around, for example, training or development.

When a report of bullying and harassment is received by Supervision, this will be prioritised by the team, and will typically involve:

- speaking to the person subject to misconduct to set out the role of Supervision, gather further information, and providing guidance on next steps that the team will be taking, as well as further signposting to sources of help available;
- reviewing the control environment, ie the policies and process that are in place, such as the grievance policy, the anti-harassment policy, the Equality and Diversity policy etc, and the guidance available to people on how those policies are applied in practice (sometimes the policies look good on paper, but how they should be applied in practice is unclear);
- setting actions with accompanying deadlines where they identify areas for improvement; and
- monitoring follow-up until all actions have been completed, and they are satisfied that the organisation can be assessed as low risk.

For more complex cases, the Supervision team will arrange a visit, which may be conducted in person or by video conference. This will involve speaking to key people such as the Head of Chambers, the Head of Pupillage, the Equality and Diversity Officer, or Pupil Supervisors. The team may also speak to pupils or clerks, depending on the issues raised, to obtain a full picture. Following on from the visit, a report will

be sent out detailing the actions they require the organisation to complete. Examples of actions the team usually set in the area of bullying and harassment include:

- amending key policies such as anti-harassment policies, complaints or grievance policies, equality policies and action plans;
- making recommendations around changes to appointments in the organisation eg the Equality and Diversity Officer, or pupil supervisors;
- ensuring support has been introduced such as a mentor, or making sure there is adequate communication to the people concerned; or
- introducing training or improving the Equality plan.

In addition, there may be specific actions relevant to the particular case. For example, actions concerning how pupillages are managed or the arrangements if a pupil is moving to another organisation.

The Supervision team may also refer the matter to our Authorisations team where there are concerns about an individual's suitability to be a pupil supervisor.

### *Case study*

A report was received by the BSB about the sexual assault of junior barristers on a night out. It was referred to both Enforcement and Supervision teams. Chambers had initially carried out an internal investigation, which had resulted in an internal disciplinary hearing and a fine.

The barristers subject to this misconduct spoke to Supervision and were critical of the way that Chambers had handled the report. Issues were identified with the handling of the initial complaint, and in particular the communication from Chambers on the internal investigation and the support that was provided to them. A Supervision visit took place primarily to discuss their process of handling such reports, and to ensure that their policy and processes would deal with reports fairly and robustly going forward, which resulted in the following actions:

1. a review of the anti-harassment policy and accompanying process;
2. a review of the grievance policy, with recommendations being made on raising awareness of the process;

3. a review of the support provided to both victims and the perpetrator, with advice being provided;
4. the introduction of Chambers-wide anti-harassment training;
5. the Equality and Diversity Officer (EDO) carrying out a review of the internal report and making associated recommendations to the management committee; and
6. a recommendation on considering further the role and responsibilities of the EDO in Chambers, with the EDO to review and update all E&D policies.

Chambers subsequently carried out a lessons learnt exercise, and the actions were completed. It was also referred to the Authorisations team to update our records that the perpetrator was someone unsuitable to be a pupil supervisor in the future.

A further harassment case was opened in relation to another unconnected matter sometime later in Chambers, but Chambers this time handled the complaint robustly and effectively using their revised policies and procedures and acting on the recommendations the Supervision team had previously made, and the Supervision file was subsequently closed with no further action needed.

### **Live or forthcoming consultations of relevance to the scope of the Review**

As noted above, we expect to consult on revised enforcement regulations in the summer. And we will publish our response to the *Equality Rules* consultation shortly.

Bar Standards Board

April 2025