

2 May 2025

Private and Confidential

The Rt Hon Baroness Harriet Harman KC
Chair of the Independent Review of Bullying and Harassment at the Bar

By email only: Bhreview@barcouncil.org.uk

Tēnā koe Lady Harman KC,

RESPONSE TO QUERIES ABOUT BULLYING AND HARASSMENT

Thank you for your letter dated 11 April 2025. The New Zealand Law Society Te Kāhui Ture o Aotearoa (**the Law Society**) is pleased to assist with the Independent Review of Bullying and Harassment at the Bar. The Law Society is committed to ensuring that all lawyers are treated with respect, courtesy and fairness and addressing all forms of unacceptable conduct in the profession, including bullying and harassment that exists within parts of the legal profession in New Zealand.

Our response is structured in two parts: an overview of the steps taken to address bullying and harassment in the New Zealand legal profession and the answers to your questions.

Background

The Law Society is the regulator for all lawyers (both barristers and solicitors).

The Law Society has undertaken considerable work in recent years to address bullying and harassment in the profession following accusations of sexual harassment at some law firms and the launch of the #MeToo movement in early 2018.

Once these accusations came to light, the Law Society commissioned a survey into bullying and harassment in the legal profession ([2018 Survey](#)). The purpose of this survey was to ascertain the degree to which lawyers were experiencing this type of behaviour in workplaces around the country. It also commissioned an independent working group to inquire and report on whether regulatory change was required to enable better reporting, prevention, detection and support in respect of bullying and harassment.¹ The working group's report and the results of the 2018 Survey led to amendments to the Rules of Client Care and Conduct (**Rules**) being made in 2021 to include specific reference to bullying, discrimination and harassment and to introduce a designated lawyer regime for each law practice, with specific responsibilities to report this type of conduct (**2021 Amendments**). A follow up survey to determine what changes, if any, had occurred since 2018 was completed in 2023 ([2023 Survey](#)).

¹ [Report of the Working Group](#).

The Law Society has also taken steps to make broader structural changes to the lawyers complaints system and is actively seeking legislative reform in this area². The current complaints system was designed to deal with consumer complaints and is not well suited to dealing with sensitive complaints such as bullying and harassment. For example, the governing legislation imposes strict confidentiality restrictions on complaint matters. This has led to concerns about lack of transparency and accountability, particularly and problematically related to complaints about bullying, harassment and discrimination. There is also no ability to triage complaints, which leads to inefficiency and delay. The Law Society commissioned an [independent review](#) of the regulatory framework in 2022 which recommended significant changes to the complaints system as well as other reforms.³ The Law Society accepted most of the recommendations in principle and is now seeking for those changes to be implemented by Parliament.⁴ However, the current government has indicated that major amendments are unlikely to be a priority in its current term.

Responses to questions

We have responded to each of your questions below.

1. *To what extent, if any is bullying and harassment in the legal profession an issue in your jurisdiction?*

Bullying and harassment remain an issue within parts of the legal profession in New Zealand; however, improvements are being made in terms of eliminating this behaviour. In the 2018 Survey, 10% of lawyers reported experiencing sexual harassment in the past five years, and this had reduced to 7% in 2023.⁵ Significantly, lawyers in 2023 who had been harassed in the past five years were much less likely to feel this behaviour was 'common' in their workplace at the time of the harassment - from 23% in 2018 to 12% in 2023. There was also a 9% reduction in those who had encountered sexual harassment as a bystander (from 28% to 19%).

In the 2018 Survey, 52% of lawyers responded that they experienced bullying at some point in their career and 21% had experienced in the last six months. In 2023, this had reduced slightly and 50% of lawyers reported experiencing bullying at some point, and 17% had experienced it in the past six months.

2. *Please could you share with us a copy of the relevant provisions in your Code of Conduct which deal with bullying and harassment? In your view are the standards of behaviour required of barristers as set out in the Code clear and sufficiently robust?*

² The governing legislation is the [Lawyers and Conveyancers Act 2006 \(the Act\)](#).

³ A summary of the independent review can be found [here](#).

⁴ [Response to the Independent Review \(dated 24 August 2023\)](#).

⁵ It is noted that the two surveys used different measures of sexual harassment: the 2018 survey used the Human Rights Commission definition of sexual harassment and the 2023 survey used the definition provided in the Rules as part of the 2021 Amendments. Some care is therefore needed in comparing the two.

[The Rules](#) set the minimum standards of professional and ethical conduct for lawyers in New Zealand. The relevant rules in terms of bullying and harassment include:

Professional standards

10 A lawyer must promote and maintain professional standards.

Respect and courtesy

10.1 A lawyer must, when acting in a professional capacity, treat all persons with respect and courtesy.

Reputation of profession

10.2 A lawyer must not engage in conduct that tends to bring the profession into disrepute.

Bullying, discrimination, and harassment

10.3 A lawyer must not engage in conduct that amounts to 1 or more of the following:

- (a) bullying:
- (b) discrimination:
- (c) harassment:
- (d) racial harassment:
- (e) sexual harassment:
- (f) violence.

The Rules also provide a definition of each of these forms of unacceptable conduct:

behaviour includes the use of language (whether written or spoken), the use of digital or visual material, and physical behaviour

bullying means repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm

discrimination means discrimination that is unlawful under the Human Rights Act 1993 or any other enactment

harassment—

- (a) means intimidating, threatening, or degrading behaviour directed towards a person or group that is likely to have a harmful effect on the recipient; and
- (b) includes repeated behaviour but may be a serious single incident

racial harassment means behaviour that—

- (a) expresses hostility against, or contempt or ridicule towards, another person on the ground of race, ethnicity, or national origin; and
- (b) is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person)

sexual harassment means—

- (a) subjecting another person to unreasonable behaviour of a sexual nature that is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person); or

- (b) a request made by a person of any other person for sexual intercourse, sexual contact, or any other form of sexual activity, that contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment

violence includes the following:

- (a) physical violence:
- (b) psychological violence:
- (c) sexual abuse:
- (d) sexual assault.

The Law Society considers that the Rules are sufficiently robust and clear in terms of prohibiting bullying and harassment. Conduct of that nature is clearly defined and prohibited under the Rules. There is also clear guidance from the New Zealand Lawyers and Conveyancers Disciplinary Tribunal (**the Tribunal**) that this conduct constitutes serious misconduct and will be met with significant penalties.⁶ The Tribunal has found on multiple occasions that sexual harassment constitutes misconduct and has imposed lengthy periods of suspension ranging from 18 months to the maximum suspension period of three years as a penalty.⁷ The Tribunal has similarly found that bullying and harassment constitutes misconduct and has imposed significant fines and suspensions as a penalty.⁸ These decisions reinforce the message that such behaviour has no place within the legal profession and that lawyers who engage in such conduct will face serious consequences.

3. *Do lawyers in your jurisdiction undertake any training on bullying and harassment? If so:*
- a) Is this training voluntary or mandatory?*
 - b) In your view is the training effective?*
 - c) Please could you share a copy of any relevant training materials with us?*

All lawyers practising on own account must ensure their practice has effective policies and systems in place to prevent and protect everyone engaged or employed by the practice from the effects of specified behaviour prohibited under the Rules (being bullying, harassments, discrimination and violence). Training would be a recognised component of these types of policies and systems.

There is currently limited training available to the profession on bullying and harassment in the workplace specifically targeted at legal workplaces.

Following the 2021 Amendments, the Law Society provided guidance to help lawyers understand their new obligations in terms of reporting unacceptable conduct and how terms like bullying and harassment are defined. A copy is [attached](#).

There is other training that lawyers can access through the Law Society's Continuing Legal Education (**CLE**), and other external providers. Examples of previous free webinars offered by CLE are available [here](#). The topics include the amendments to the Rules, designing

⁶ The Tribunal is the only body that can make findings of misconduct and can impose suspensions and order strike off.

⁷ See for example *NSC1 v Gardner-Hopkins* [2021] NZLCDT 21, [2022] NZHC 1709, *NSC1 v Palmer* [2022] NZLCDT 42, [2023] NZLCDT 13, *NSC2 v Q* [2023] NZLCDT 14, and *NSC2 v ZKA* [2025] NZLCDT 18.

⁸ See for example *NSC2 v Tingey* [2023] NZLCDT 22, [2023] NZLCDT 43, and *CWSC2 v U* [2024] NZLCDT 4, [2024] NZLCDT 10.

bullying and harassment policies for law firms and preventing and dealing with bullying and harassment. There is also training on dealing with clients who engage in bullying [here](#). More generally, training and guidance on this topic is also available through other entities such as [WorkSafe](#) (New Zealand's health and safety regulator).

Training in relation to bullying and harassment is not currently mandatory. As part of the 2021 Amendments, the rules relating to continuing professional development were amended to allow the Law Society to include a mandatory component that would require lawyers to undertake a specific activity.⁹ The Law Society has not introduced any mandatory training at this point. However, 'Stepping Up' which is the foundational pre-requisite course for lawyers applying to practise on their own account covers professional responsibility obligations related to unacceptable behaviour in the legal workplace.

The Law Society intends to provide further training and resources on this topic as part of its commitment to addressing the culture of bullying and harassment within the profession.

4. *Are law firms regulated entities in your jurisdiction?*

The focus of regulation in New Zealand is on individual lawyers. However, there are some aspects of the regulatory framework that apply to law firms in New Zealand. .

An individual lawyer can operate a law firm as a sole practitioner or form a partnership with other lawyers. These types of firms are not distinct legal entities, but the principals of the firm can be the subject of disciplinary action in their individual capacity. For a partnership, this would mean that each of the partners is the subject of a separate disciplinary action for actions taken (or not taken) in the course of managing the practice. There are also incorporated law firms which are distinct legal entities and can be the subject of disciplinary action.

Since the 2021 amendments to the Rules, all "law practices" have also been required to meet certain obligations to address bullying, discrimination, and harassment, and in respect of complaints by clients. A law practice is every lawyer practising on own account as well as any entity that provides regulated services to the public.

It is noted that the independent review panel recommended the introduction of direct entity regulation of law firms which are not separate legal entities. This would broaden the focus of regulation to include obligations on the individual and the legal practice and the legal firm or practice could be sanctioned. The Law Society supports this recommendation as it would lead to increased accountability for law firms and a greater ability to address systemic issues within a firm such as poor culture or inadequate policies and processes. This recommendation was strongly supported by the Law Society and the profession.¹⁰

5. *What obligations, if any, do law firms have to prevent and/or respond to incidents of bullying and harassment?*

There are clear expectations on law practices to protect all employees. Law firms are required to have policies and systems in place to prevent and protect all persons engaged or

⁹ [Lawyers and Conveyancers Act \(Lawyers: Ongoing Legal Education – Continuing Legal Education- Continuing Professional Development\) Rules 2013](#)- see r 2, 4 and 6 for mandatory component.

¹⁰ See Law Society Response, above n 3 , at page 27.

employed by the practice from the effects of unacceptable conduct, including conduct which amounts to one of more of the following:¹¹

- (a) bullying:
- (b) discrimination:
- (c) harassment:
- (d) racial harassment:
- (e) sexual harassment:
- (f) violence.

Law firms are also required to have a designated lawyer who is responsible for notifying the Law Society about unacceptable conduct. Any lawyer practising on their own account must ensure that their practice has a designated lawyer who is required to notify the Law Society within 14 days if any person is issued a written warning or dismissed by the practice for unacceptable conduct including bullying and harassment.¹² The designated lawyer must also report if any person leaves the practice within 12 months of being advised that the practice was dissatisfied with or intended to investigate them in respect of unacceptable conduct (including bullying and harassment). The designated lawyer is also required to certify annually that the firm has complied with its mandatory reporting obligations, that it has appropriate policies in place to protect staff and the designated lawyer has complied with their obligations.

6. *What informal and formal reporting mechanisms are available to lawyers who have experienced or witnessed bullying or harassment either by (i) other lawyers; (ii) judges; (iii) clients; or (iv) clerks or other employees? How effective are these mechanisms?*

The Law Society regulates the conduct of lawyers and employees of law practices. Lawyers can complain about bullying or harassment where the perpetrator is a lawyer, law clerk or other employee. If a lawyer is unsure about whether they want to make a complaint, they can lodge a 'concern' and a professional standards officer will call them to discuss. Lawyers can also make confidential reports about unacceptable conduct, but this can lead to practical issues in terms of further action being taken in some cases.

Lawyers can raise concerns about the conduct in court by judges with the Law Society through an [informal process](#) which has been agreed with the Heads of Bench. Lawyers can also make a formal complaint to the Office of the Judicial Conduct Commissioner. There is no particular body which deals with the conduct of clients, but a lawyer is able to terminate a retainer if the client's conduct towards the lawyer or a person associated with the lawyer's practice amounts to bullying, discrimination, harassment, racial or sexual harassment, threatening behaviour or violence.¹³

There is also support and advice available to lawyers through the Law Society outside of complaints processes. Lawyers can access free counselling through the Law Society. There is also a dedicated free phone line called LawCare where lawyers can discuss sensitive matters

¹¹ [Rule 11.2](#)

¹² [Rule 11.3](#) and [11.4](#).

¹³ See [rule 4.2\(f\)](#).

with a Law Society staff member. These calls are confidential, and staff are able to offer callers a range of options and support services to assist in dealing with their concerns. Another form of support is the National Friends Panel (Sensitive Matters) which are a group of practising lawyers who volunteer their time and can be contacted to discuss sensitive matters and provide support on a confidential basis to other members of the profession.

We consider these mechanisms for reporting are effective and we are continually working to improve the processes in place to enable support reporting.

7. *Have you identified any barriers to reporting incidents of bullying or harassment?*
 - a. *If so, what are those barriers?*
 - b. *What efforts are being made to overcome these barriers and how effective have these efforts been?*

Although the Rules, as amended in 2021, include a 'non-victimisation' rule to protect reporters of unacceptable conduct, there remain barriers within the profession to reporting bullying and harassment. The 2023 Survey noted that only 8% of lawyers who had experienced sexual harassment in the past five years and 14% of those who had ever experienced bullying had made a complaint. The most common reasons for not reporting the conduct were fear of the consequences and distrust in the process or outcome. Fifty-eight percent of lawyers who had experienced bullying or harassment did not complain about it due to fear of the consequences. The two most feared consequences were the impact that reporting would have on their career (43%) and that reporting would make the situation worse (40%). Forty-eight percent of lawyers who had experienced bullying and harassment did not complain about it due to distrust in the process or outcome. The main specific concerns of this nature were that the lawyer felt it would make no difference (38 %) and the lawyer did not feel the process would be kept confidential (21%).

The Law Society is addressing these barriers by ensuring that complainants have access to support and advice and reducing the stress the process can have on them where possible. There is a specialist inhouse team that provides frontline support in respect of all sensitive matters (whether they are raised as a complaint, concern or confidential report). We have two specialist standards committees that consider sensitive matters (increased from one in 2021). We also have an inhouse investigation team which means that investigations into sensitive matters are carried out in an efficient and consistent manner. We consider that the distrust of the system is largely driven by the unsuitability of the current complaints process for dealing with sensitive matters and are continuing to work to achieve legislative change to remove this as a barrier.

There has been an increase in complaints opened in relation to unacceptable conduct matters, such as bullying, harassment, and sexual harassment. While we have not been able to definitively determine the cause for this, we consider this is likely due to the 2021 amendments to the mandatory reporting requirements and publicity around several high-profile cases in the Tribunal.

Despite this increase, there is further work planned, including training to ensure that people, particularly bystanders, can recognise the types of conduct that should be reported and understand the reporting process.

8. *What is the threshold for triggering regulatory action in cases of bullying or harassment?*

If a confidential report of bullying and/or harassment is made, then it will be allocated to a standards committee if there is a reasonable basis to indicate there may have been misconduct or unsatisfactory conduct.¹⁴ All complaints must be referred to a standards committee for consideration. We have a separate sensitive complaints team and two committees who deal with these types of reports or complaints.

Bullying and harassment can lead to findings of misconduct or unsatisfactory conduct. These terms are defined in [ss 7](#) and [12](#) of the Act. Misconduct is defined as a reckless or wilful breach of the Rules or conduct that would reasonably be regarded as disgraceful or dishonourable by lawyers of good standing. Unsatisfactory conduct includes conduct which is in breach of the Rules or is conduct which would be regarded by lawyers of good standing as being unacceptable.

9. *Are lawyers under a duty to report certain misconduct to the regulator? If so:*

- a. When is this duty triggered?*
- b. Is this an effective mechanism?*

New Zealand lawyers are subject to a mandatory reporting obligation. Under the Rules, lawyers must make a confidential report to the Law Society if they have reasonable grounds to suspect another lawyer may have engaged in misconduct. There are limited exceptions to this, which include:

- The information was received in the course of confidential advice, guidance and support unless disclosure is necessary to prevent the commission of a crime or fraud or prevent a serious risk to the health or safety of any person;
- A lawyer who is the victim of the suspected misconduct; and
- Circumstances where the lawyer reasonably believes that disclosure would pose a serious risk to the health (including mental health) of safety of a victim.

Mandatory reporting has always been a feature of professional responsibility in New Zealand. However, 2021 amendments to the Rules on the Working Group's recommendation were aimed at supporting and enhancing reporting including incorporating protections and exceptions for people affected by unacceptable conduct and those who report it. The specific inclusion of bullying, harassment and discrimination in the Rules, also clarified the position and put it beyond dispute that these are matters of regulatory concern. Our view is that these changes have led to increased reporting of unacceptable conduct matters (as set out above), and we consider this will continue as it becomes more engrained within the scope of professional obligations.

10. *In your view, is the regulator effective in handling cases concerning bullying and harassment?*

We consider that we are effective in handling cases concerning bullying and harassment despite the limitations of our current regulatory framework. We have implemented additional resourcing in terms of the frontline team, specialist standards committees and the

¹⁴ See [s 130\(c\)](#) of the Act.

inhouse investigation team. While there is still work to be done to reduce bullying and harassment within the profession, there are improvements being made and the decisions from the Disciplinary Tribunal demonstrate that a firm line is being taken against such conduct. As previously noted, we are seeking legislative change to put in place a better structural framework for dealing with sensitive complaints, and we consider that will allow for improved handling of concerns involving bullying and harassment.

11. In particularly sensitive cases concerning sexual misconduct, are there any bespoke mechanisms in place to support complainants?

Throughout the complaints process, complainants in cases involving sexual misconduct will receive regular updates and support from Law Society staff. Complainants or affected people who work in legal workplaces can access the Law Care phone line, free counselling, and the National Friends Panel (Sensitive Matter).

If the matter is referred to the Disciplinary Tribunal, it is an established precedent that complainants/affected persons will be given permanent name suppression. Other measures are taken to reduce the stress of the process for them, including giving evidence remotely to avoid being in the same room as the perpetrator and having a support person with them while they give evidence. It is also common for complainants/affected persons in sexual misconduct cases to receive emotional harm payments as part of the penalty orders which are designed to compensate them for the impact on their emotional and mental wellbeing. For example, in *Q* and *Palmer*, emotional harm payments of \$10,000 were made to affected persons.¹⁵

12. Is there a problem with judicial bullying in your jurisdiction? If so:

- a. How has this problem been identified?*
- b. What mechanisms are in place for lawyers to report judicial misconduct?*
- c. To what extent are these mechanisms used?*
- d. In your view, are these mechanisms effective?*
- e. What sanctions are available in response to a finding of judicial bullying and are the sanctions sufficiently robust?*

Our 2023 survey showed that lawyers who have been bullied are less likely to be bullied by judges than in 2018. 11% reported the perpetrator as a judge 2023 (a drop of 4%). The biggest drop was those practising criminal law where the results dropped from 44% to 29%.

Lawyers can raise concerns about the conduct in court by judges with the Law Society through an [informal process](#) which has been agreed with the Heads of Bench. Lawyers can also make a formal complaint to the [Office of the Judicial Conduct Commissioner](#).

At any given time, there is usually one matter being looked into (approximately 12 per year). However, these are triaged and sometimes the conduct could best be described as firm but not equating to bullying. In those circumstances, the individuals are offered support (through friends from the friends panel) and senior mentoring. Both the individual and their support people are encouraged to come back to us if there are more incidents or if there is escalation. No

¹⁵ See n 4.

more than two to three a year are raised with the relevant head of bench. We find that in almost all cases where conduct has been raised and the head of bench has spoken to the judge there is significant approval, particularly in the short to medium term. There has only been one occasion where a matter escalated when raised by the head of bench. The judge concerned was particularly litigious and did not respond well to informal feedback on his conduct.

There are no sanctions through the use of the informal protocol, which is why it can be used informally. For more serious conduct matters these need to go to the Judicial Conduct Commissioner. The Commissioner has the following options:

1. To take no further action.
2. Refer a complaint to a Head of Bench who will determine how to deal with the matter and consider responses such as asking the Judge to apologise to the complainant, or offering the Judge appropriate assistance to avoid the inappropriate conduct happening again.
3. Recommend to the Attorney-General that a Judicial Conduct Panel be appointed to inquire further into the complaint. This is used when the conduct complied of may warrant the removal of a judge.

The third option is the only one that would constitute a potential sanction (removal of the judge). It is rare for there to be a Judicial Conduct Panel recommendation (three since the office was established in 2005). No judge has been removed but this is usually because investigations stop when a judge ceases to hold office (eg they resign before the final outcome).

We hope that our response has been of assistance. We are happy to answer any follow-up questions that you may have or meet remotely to discuss in more detail.

Ngā mihi nui



Katie Rusbatch
Chief Executive Officer