

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.

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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Name

Jonathan Jones KC & Adrian Keeling KC, as Joint Heads of Chambers

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

No5 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?

There are many well recognised reasons, including the self-employed nature of the profession, lack of HR in most chambers, gender imbalance and power imbalances. There is also a degree of ongoing cultural acceptance of poor behaviour, more so in some sectors of the Bar than others.

Some of these are integral to the profession and will not change; others (for example the gender imbalance) are changing but slowly, over many years; others (lack of HR) are perhaps more easily addressed by some chambers than others due to financial constraints.

At No5 we have extensive measures in place to reduce the risk of bullying & harassment and to address it effectively when we hear about it, but recognise that there is no room for complacency: proactivity is essential.

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

The dynamic of senior barristers holding sway over junior barristers' reputations, client relationships and practices (more so in some practice areas than others) is likely a factor. Working practices including long hours/stressful work and alcohol-based socialising likely contribute.

The latter seems easier to tackle than the former.

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

Arguably not. There are differing perceptions as to what constitutes "bullying" and "banter", and the invidious nature of microaggressions leaves an arguably "grey area" in people's minds.

At No5 we have, within our "Respect" policy, the focus of which is addressing bullying, harassment and other objectionable behaviour, some "rules of thumb" which we believe help to provide clarity:

- *Would you say or do it to someone of a different gender or ethnicity to the person you are addressing?*
- *Would you say or do it to someone of the same level of seniority as yourself?*
- *If in doubt, don't do it.*

- 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](#)

It is likely that everyone at the Bar understands that they should not bully or harass. There may be less understanding as to the nuances of what constitutes bullying or harassment. Further the very limited mention of such in the Code of Conduct could be perceived to give the impression that bullying and harassment are not significant concerns. At No5 we recognise the importance of Chambers promoting its own behavioural expectations.

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 personal impact can be devastating in terms of upset, anxiety, loss of confidence; there can also be a professional impact, through time off/reduction in workload due to stress; avoiding professional situations for fear of repetition; damage to professional relationships

and even leaving the profession. At No5 we recognise the need for wellbeing support in chambers, alongside efforts to tackle bullying & harassment, and make the provision of such support, as well as signposting to other sources of support, an integral part of our management of concerns about bullying & harassment.

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

A perception that bullying & harassment is tolerated has a profoundly adverse effect on others in the workplace, discouraging people from voicing their own concerns, encouraging poor conduct by others, potentially resulting in loss of valued staff/clients and/or loss of diversity. A perception from outside that the legal profession tolerates bullying & harassment would potentially have a profound effect on perceptions of the justice system: how can a system be fair if it tolerates such unfair behaviour?

Further, there is a wider impact on chambers' business: the potential loss of income resulting from people taking time off or even leaving chambers or the profession; the loss of income and/or internal use of resources resulting from people dealing with incidents of bullying/harassment; and the reputational impact to a business if it becomes known as somewhere that tolerates such behaviour. Quite apart from the moral case to act, there is a clear business case.

3. Reporting mechanisms, resources, and sanctions

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

The key barriers seem to be a belief or fear that concerns will not be dealt with appropriately and a belief or fear that there will be adverse repercussions to reporting incidents. In a collective of self-employed individuals where many individually hold "soft power" it is extremely difficult to completely remove the risk of victimisation. At No5 we recognise the essentiality of confidentiality, and deem victimisation to be a serious disciplinary matter which could result in expulsion from chambers.

- b. What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment?

There are potentially two aspects to the risk of victimisation – victimisation by the chambers (i.e. by chambers leadership which filters down eg to clerking) and victimisation by the person against whom allegations are made (and/or their allies). The latter can be mitigated by a strong anti-bullying/harassment culture within a chambers, actively promoted and supported by chambers leadership who themselves have a genuine belief in the need for change and have taken time to educate themselves on equality, diversity & wellbeing issues.

More prominent inclusion of victimisation in the Code of Conduct would go some way to mitigate both, and raising the profile of chambers' and individuals' potential liability (to a claim for compensation and/or disciplinary action as well as reputational damage) could also act as a deterrent.

Because victimisation is more often invidious than overt, and the effect of victimisation is likely to be incremental (a failure for one's practice to develop as quickly/successfully as one

expected, over some years) it can be very difficult to prove, and therefore sanction, victimisation.

Increasing mutual respect and kindness across the profession would help discourage and dampen the effects of “bad-mouthing”.

- 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 rule is reasonably well known but anecdotally there may sometimes be a reluctance to make a report to the BSB due to concerns as to what this may lead to (lengthy, time-consuming & stressful investigatory process; reputational damage to chambers and individuals). There is also arguably a lack of clarity as to what amounts to “serious misconduct” and therefore whether a particular incident ought to be reported.

No5 has and will always report serious misconduct to the BSB, and provide support for those involved in a BSB process.

- 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?

No5 can and does offer such support, from colleagues and through signposting. The former may not always be maximally effective, given the lack of formal training, the voluntary nature and the lack of time to devote to providing such support alongside a busy practice. Professional support is available through the Employee Assistance Programme provided by the Bar Council however many barristers seem to be unaware of this and anecdotally people are reluctant to access it.

- 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 would be very punitive for self-employed barristers who are reliant on their chambers' income, and would seem to run counter to the principle of “innocent until proven guilty”. If safeguarding is necessary, this can be put in place without preventing the accused from practising – for example barring the individual from professional social events, or from drinking alcohol at such events.

- 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?

It is difficult for chambers, without an HR department, to conduct investigations in a way that is perceived to be sufficiently independent, robust, fair and prompt. BSB investigations are anecdotally perceived as taking too long.

- 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?

It is heartening to see that the BSB has recently consulted upon, and increased, sanctions for bullying & harassment. The impact of these changes has perhaps yet to “trickle down” to the consciousness of the wider profession but may well do so over time.

It is however difficult to ascertain the sanctions imposed for individual cases of harassment & bullying and therefore difficult to form a view as to whether they are appropriate, fair or robust. Greater visibility of sanctions imposed and enforcement action taken would increase confidence in the system.

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?

A genuine change of attitude across the Bar and throughout the judiciary will be the most effective way to prevent bullying & harassment. Education may be the most useful tool here – for example including appropriate education at Bar School, in the NPP, as an annual CPD requirement and with an elevated requirement for those in chambers/Bar management positions; as well as throughout the judicial career pathway.

Greater awareness within chambers of the “business case” for preventing bullying & harassment may help motivate.

For chambers with limited resources, free or low-cost provision of policy, training and HR resources could help.

At No5 we have designed and delivered bespoke in-house training to all those in management positions within chambers and a significant proportion of other members of chambers.

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

It would undoubtedly be beneficial if BSB investigations could be dealt with more timeously. The BSB’s recent profile-raising and awareness roundtables, explaining how their processes work, have helped increase transparency; this could be supported by greater provision of information on their website.

At Chambers’ level, No5 has found that having informal routes to raise concerns encourages more people to come forwards, as does our policy of intervening when information reaches us “on the grapevine” – there does not need to be a specific concern raised through a specific route for us to take action and provide support.

- c. In what ways could the judiciary, clerks, chambers professionals, and others work together with the Bar to bring about change?

Ongoing open dialogue is daunting on a topic such as bullying & harassment but is essential to tackling the problem. We want the Bar - and indeed the entire justice system - to be the

best it can be and welcome input from other legal sectors so that we can continue to improve. Equally we recognise the essentiality of dialogue with those other sectors when we seek solutions to the ongoing problem of bullying & harassment in the wider profession. Working together with shared goals is always the most effective way to tackle problems.

- d. Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?

It is difficult to know which other sectors have succeeded in their efforts – bad behaviour makes the news; good behaviour (and policies) generally does not.

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

No5 Chambers is very supportive of this review and looks forward to acting on the recommendations made in due course, to strengthen our existing provisions and continue in our spirit of proactivity, making chambers, and the Bar, the most safe, supportive and respectful working environment it can be.

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](#).