

Independent review of bullying and harassment at the Bar

Call for submissions response form

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[REDACTED]

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?

Multiple reasons including:

- Old-fashioned attitudes towards B&H – being dismissive of it, believing people are fussing about something which is insignificant and/or something which they should just put up with or handle themselves
- Reluctance to come forward for help or action when someone sees or suffers B/H – believing it won't be appropriately handled by eg their chambers, including brushing it under the carpet, breaching confidentiality and/or treating the complainant less favourably as a result of them reporting it
- Lack of understanding by perps as to where the line is drawn (through their own failure to educate themselves, or to take on board modern standards)

- Lack of understanding by victims as to where the line is drawn (i.e. thinking they might be overreacting or should not complain unless it's something really serious)
 - Judicial bullying not being dealt with appropriately by judicial leadership – defensive attitudes
 - BSB and JCIO investigations taking far too long
 - Lack of genuine buy-in from senior members of the Bar in management positions – they will often say the right things but still try to sweep issues under the carpet rather than deal with them
- b. Are there particular dynamics or working practices at the Bar which allow for bullying, harassment and sexual harassment to persist?

Yes:

- barristers have influence over more junior members' careers since they can bad-mouth them to colleagues, clients and clerks. This results in a reluctance to report barristers' conduct, and a reluctance to report concerns to barristers in management positions (since if they have outdated views, they will think badly of the reporting person)
 - judges have influence over barristers' court experiences so there is a reluctance to report any poor conduct for fear the judge will learn that they complained – the judge can continue to bully them at future hearings, and further a dislike of a barrister could influence a judge's decision on a case.
- c. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment known, clear, accessible, and sufficiently robust?

No. The BSB Handbook does not provide sufficient clarity nor are the relevant sections easily accessible. A statement of behavioural expectations would be clearer and more accessible. Also, some barristers do not fully understand what counts as bullying, harassment or sexual harassment so these terms would need to be explained in any such statement.

- 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](#)

They are not sufficiently mainstreamed. Most barristers never look at the Code of Conduct/Handbook and would not be able to tell you what it says on anything with any particular accuracy. Barristers tend to refer to it when a difficult ethical situation arises in their practice. Those who are bullying & harassing will not read it before bullying & harassing! Plus as above the Code of Conduct/Handbook is not straightforward to navigate.

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?

Very negative.

It often undermines one's confidence, personally and professionally, which results in anxiety, loss of enjoyment of the job and potentially poorer professional performance (eg a nervous advocate is unlikely to perform as well in court as a confident advocate).

It can leave one feeling unable to trust those they work with, as they can't be confident who will treat them appropriately and who will not.

It can leave one resentful of one's chambers, for not providing appropriate support/action.

It can leave one isolated, through avoiding similar situations (often networking and social events).

It can result in illness, time off work, and leaving the profession.

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

Yes.

Good barristers can be lost from the profession.

Others who witness or become aware of such conduct, unless appropriate action is taken (and publicised, to a degree, so that people know appropriate action has been taken), are likely to feel less comfortable in the workplace and will perform less well and be more likely to leave the job.

Litigants, witnesses and observers in Court who witness judicial bullying are likely to lose confidence in the justice system and they will conclude the judge will base their decision on a preference for the other barrister rather than on the evidence.

3. Reporting mechanisms, resources, and sanctions

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

As above, believing appropriate action will not be taken, inappropriate action may be taken, confidentiality may be lost, and there may be a negative impact on their career and professional relations.

Also fear of losing control once others are involved.

So far as BSB and JCIO are concerned, fear of the process becoming adversarial and stressful, concern as to how long it will drag on for and belief that it may well result in no action being taken (i.e. putting oneself through something really difficult, for no reason).

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

Very clear and serious sanctions for victimisation and breach of confidentiality – both internally to chambers and through BSB. If people in senior positions knew that they could be easily disciplined if there was any blowback for the complainant, they might take this more seriously.

- 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?

It seems to be moderately known (perhaps more than some other BSB duties) but not widely known; it is poorly understood given the lack of clarity as to what amounts to “serious misconduct”; and is probably implemented only in relation to the most serious conduct and only when that comes to the attention of chambers management and is reported by them. Individual barristers (who are not themselves victims) are reluctant to get involved with the BSB so are inclined to bury their heads in the sand or find a reason that justifies them not reporting.

- 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?

There is a reasonable amount of support for complainants but it does not seem to be widely known about. There is arguably insufficient support for persons accused – whilst presumably they could use some of the same resources as complainants, its not advertised as being available to them. Support for those accused should include helping them to understand applicable standards, and de-escalating. Those accused probably just think of taking legal advice rather than seeking other support, and advice from lawyers is likely to be counterproductive to resolving situations in a pragmatic way.

- 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?

Yes absolutely. Appropriate exclusions would depend upon what the accusation is – for example if they apparently misbehaved at a networking/social event, they should be excluded from these (or not allowed to drink alcohol at them). Excluding them from practice would need to be used only in exceptional circumstances as this would have lasting repercussions for their finances and professional relationships.

- 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?

No.

BSB takes far too long. Difficult to judge how robust and fair they are as details are never published.

Ditto JCIO.

Chambers will vary enormously. However where Chambers attempt to conduct investigations or apply a formal process themselves (i.e. barristers doing the work) it is very difficult for this to be independent, prompt, robust and fair. As expanded upon below

- Barristers cannot be “independent” when assessing complaints by and/or conduct of their colleagues. They can try their best to be unbiased but the reality is that they will likely fail as this is incredibly difficult
- An investigation or process carried out by people who are working full-time as barristers will never be prompt as their diary will be full for coming weeks and they cannot simply return work to make time for an investigation. If a panel is convened to consider matters the delays will be even worse.
- Whether the process is robust will depend on who conducts it but unless they are an experienced employment law practitioner they will likely get some aspects wrong; where sexual harassment is alleged, unless they have undergone the specialist training for criminal barristers dealing with sexual offences they may well make unjustified assumptions about complainants (see more on this below)
- For all of these reasons, the process is unlikely to be fair.

- 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?

Difficult to know whether JCIO or BSB sanctions are appropriate and fair as insufficient details are published.

The current enforcement regime is not a good deterrent, as proven by the ongoing rates of harassment & bullying. People who behave badly either don't realise their conduct crosses the line or assume they won't be reported. This may be changing for the worst types of conduct, where there has been some media reporting in recent years of BSB action, but the more common “lower level” conduct is never/rarely reported as resulting in enforcement action.

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?

Top down strong leadership on expected standards of behaviour – clear information & regular reminders.

Better planning & management of social & networking events: clear expectations of not getting tipsy, less freely-flowing alcohol, greater availability of soft drinks & food.

More publicity around actual disciplinary proceedings & sanctions imposed.

Genuine encouragement within chambers to come forward with complaints/concerns – sending the message to potential perps that action will be taken if they cross the line.

In terms of judicial bullying, spot checks on judicial conduct would both deter such behaviour and facilitate its detection, so that appropriate action can be taken. This would need to be discreet so the judge was unaware when it was happening and so behaved in their “normal” way rather than putting on a show for the assessor. It could involve an anonymous observer in Court (this would work well in the criminal courts where someone sitting in the public gallery would draw no attention, but not in private hearings eg many family cases involving children, nor in district judges hearings in their chambers) and/or listening back to audio

recordings of a random selection of hearings shortly after they take place (which would be more discreet but would miss body language which contributes to the effect of bullying). Judges, knowing they could be subject to this at any time without their knowledge, would hopefully feel compelled to behave well; and those who didn't and were caught could be spoken to and monitored for a period.

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

Outsourcing (from chambers) of reporting, management, investigations & sanctions to HR professionals would likely result in better action and more confidence in the system and in confidentiality. Because these problems are reported to chambers only infrequently, those in management positions/in charge of dealing with such complaints/concerns will do so only infrequently meaning that they will never be experts in handling these very difficult situations. Further,

- the training available to them will never be comprehensive enough to cover all the many permutations and complexities that can arise.
- Unless they happen to practice in employment law they will likely have very little understanding of the legal framework for making determinations of whether something amounts to harassment (or is eg racist) or eg victimisation. Concepts such as Islamophobia and Anti-Semitism are fraught with complexity and controversy such that only specialist barristers would be able to apply these concepts confidently and correctly.
- Where sexual harassment (or indeed assault) is alleged, there are important nuances regarding how complainants may or may not behave after such an incident – criminal lawyers and judges receive specialist training on this, juries are given specific directions about this. Barristers who do not work in this field will not have a good understanding of this and therefore are at risk of making unjustified assumptions and therefore unfair decisions.
- barristers should not be in a position of making judgments/findings about allegations made by and/or against one of their colleagues: not only is it extremely difficult for them to be wholly unbiased, when they will know those involved, but great resentment is likely to result, from the person who findings are made against (whether that be complainant or accused) and their allies in chambers, causing bad feeling in chambers and potentially members leaving.
- dealing with complaints is incredibly time-consuming and stressful. It is too great a burden to expect barristers to volunteer their time to conduct investigations, hearings, write reports etc; and trying to do this alongside their busy practice means it will inevitably take longer than it should to resolve complaints

HR professionals would be able to deal with complaints efficiently, effectively, independently and without making any legal errors.

In terms of judicial bullying, there is an informal route whereby a leadership judge will consider a complaint about a judge's conduct and "have a word" if they think it appropriate. Whilst this is sometimes a productive route,

- some leadership judges do not seem to have a good understanding of where the line should be drawn and deem unacceptable conduct to be acceptable

- some leadership judges are better than others at managing these situations – being prepared to have awkward conversations, and doing so in a constructive way which results in change
- some leadership judges are better than others at monitoring conduct moving forwards
- leadership judges may be friends with those complained of and so less inclined to deem their conduct unacceptable

There should be extensive training for leadership judges on these issues (there is now some, which is great) and oversight of how they handle informal complaints so ensure consistency and good practice.

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

Judiciary need to engage in open & constructive dialogue about judicial bullying and how to solve it. They may well feel that the Bar contributes to the problem eg by being underprepared for cases such that they waste the judge's time or take bad points, by not having taken sufficient instructions in advance such that they are unable to answer judge's questions, by being less respectful of judges than in the past (eg interrupting/talking over). If so then this is something the Bar needs to address – but if they won't engage then we don't know!

Everyone else – as set out above.

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

Not aware of any

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

Nil

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](#).