

Independent review of bullying and harassment at the Bar

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Name (optional)

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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?

The Bar is hugely hierarchical, it is very competitive so new and even established entrants rely a lot on networking/reputation/can be exploited and it is not sympathetic to perceived weakness so victims will remain silent.

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

Marketing/favours: there is a culture (more prevalent in some areas of practice and Chambers than others I'm sure) where encouraging professional clients to choose chambers can include a degree of doing favours – which often fall on more junior members of chambers to do undesirable work to get other more desirable and lucrative work or

consistent work into Chambers. This can be a trigger for bullying. 'Hospitality' can also open the door to sexual harassment, an eg I've witnessed was a practice manager taking only young female barristers to a drinks event with a commercial client where only older male representatives from the client attended, which led to an uncomfortable dynamic. In this context if there was then sexual harassment it would be difficult to speak out. Similarly when a professional client behaves sexually inappropriately it is difficult to respond with the curtness you would in your private life, because you are representing your chambers and not just yourself. This is made more likely with hospitality events that involve alcohol.

The idea of being 'led' in a case or needing to learn on foot as an apprentice creates an enormous power imbalance. Pupils in second six can face abusive behaviour as a 'learning curve' ('we went through it, it's character building' etc when it is not acceptable to feel unsafe in a modern working environment). Within pupillage the infrastructure and scrutiny varies, but afterwards there is little. You can feel when working with a more senior barrister that they can ruin or limit your career if you don't do what they want you to or if you complain. They then feel freer to act with impunity. Barristers may have limited experience or skill in team-working so can sometimes be very unpleasant to colleagues. I suspect clerks must experience this regularly too – I've had clerks say how nice I always am when I am only normally polite and civil, so I wonder how rude some people must be. Clerks can also be very low paid for the fast-based work they do, but at least in their case there is a management structure so some oversight of eg inappropriate behaviour.

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

No. The insular nature of the profession would also make it very difficult to report something like that, since you never know when you might meet someone again or have to work with them again. In general you would need much better cultural and peer support networks. I found these to be present when I made a complaint about racist behaviour from a judge, but I would not feel so confident they would be present about a complaint against another barrister.

- 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](#)

I feel like it would be difficult to define bullying as a core duty. It may be possible and sexual harassment could be. It is certainly disappointing when any sense of financial misconduct currently seems to be taken so much more seriously for a barrister than sexual abuse. For bullying – one issue is that a certain degree of robust defence of one's client can be a part of our work. It shouldn't be prohibited bullying for example to point out in litigation that a decision is extremely, seriously poor, even if the original decision-maker might find that experience humiliating. I personally feel like more back-end support needs to be put in place to professionalise the Bar and reduce the scope for bullying to be endemic and acceptable, rather than having an increased punitive option for the eg 1 in 100 cases that are reported

and where a report is then upheld. Most bullies will know that will not realistically happen to them.

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?

Obviously a single incident of abuse has the potential to have life-changing and traumatic impacts on people. However what is probably more common is the career limiting consequences of cumulative bullying. Bullies exploit perceived weaknesses and so it is common for bullying to be linked to other protected characteristics like race, sex and disability, where the cumulative impact of bullying can have a serious impact on a person's welfare and on their career progression (due both to lack of self confidence as a result and due to lack of opportunities). I know of a junior barrister who delayed coming to the Bar due to bullying from a barrister and of professional clients where bullying from barristers has contributed to burnout. From my own perspective it has made me reluctant to work closely with other barrister unless I am confident they are completely reliable and sound – ie it has reduced confidence in my own profession/colleagues – which I'm sure has had an impact on my career.

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

It is unacceptable for anyone to face abuse at work and lay clients depend on barristers at some of the most vulnerable points of their lives. Lawyers can already be overly associated with their clients, but an impunity around sexual exploitation and aggression feeds into the concept that barristers are a sordid and grasping group of people and the law is not to be trusted. As above, I suspect clerks face significant verbal abuse at times (although I have not directly witnessed this), and I know professional clients can do – I've had solicitors/paralegals describe being left in tears because of how they were spoken to.

3. Reporting mechanisms, resources, and sanctions

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

Reputational, the feeling it would be pointless (overly bureaucratic/you wouldn't be believed/no consequences that would help you anyway). I suspect people are more likely to ask around from trusted people and share information with them, rather than make a formal report. I suspect a formal report is a lot more likely where a client or member of staff is the victim, whereas barristers themselves are expected to have a thick skin and no one owes that same duty of care to them.

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

It would be helpful to have mandatory training on diversity, non-discrimination, bullying and harassment at work. This would develop more of a shared vocabulary and there is high quality – even just video online training – available. Chambers could also be encouraged to share information on bullying/harassment cases and outcomes periodically and to have an induction with new starters/a periodic refresher on the Chambers and wider process on this

issue. In terms of repercussions, I suppose lessons from whistle-blowing, but really I can't see how it's possible to prevent repercussions in more subtle/career-limiting ways.

- 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?

No and I don't think a 'duty to do in colleagues' duty is likely to be very effective. It can however be helpful in bullying cases to have a senior and separate person be a joint or lead complainant alongside the victim.

- 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?

I recently supported a complainant in a bullying cases (a professional client), who was told it was 'their word against the barrister's word' (despite there being a number of witness statements from supporting colleagues) and so after a year of exhausting and distressing correspondence, the complaint was being dropped by the regulator. Initially they were not given reasons (as if it was confidential from the victim – and the victim was told not to speak about the case), but the reasons were explained a little bit more when there was a push made. The respondent seemed able to intimidate the complainant using procedure – eg insisting they'd need to be cross-examined for several hours. It seemed extremely poor as a process and left the victim (who wasn't even the person who had first made the complaint) more distressed that they otherwise would have been. It really doesn't feel like a regulatory response will be effective if it follows the current procedure. It would have been better to have an initial assessment from an independent lawyer, some recommendations for next steps, and to see if the respondent wished to make an apology at that point – something quick and proportionate to what was alleged (which was unpleasant behaviour, but only a one-off aggressive and inappropriate conversation). I wouldn't personally choose to make a complaint within the current regulatory system unless it seemed unavoidable, because there would be no benefit to the victim. Instead I'd seek to resolve matters through wider channels – eg raising a concern through Chambers/speaking to colleagues/letting it go etc.

- 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?

Are there not already? A temporary suspension of a practicing certificate pending investigation would seem sensible in a case where, if proven, the allegation could result in a ban on practice. I'm sure Chambers' constitutions would allow a Member to be removed if necessary?

- 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?

As above, absolutely not re the BSB. The only incident I've had information about (which ended this year) seemed terribly ineffective, re-traumatising and useless. It was extremely slow and ended up seeming to sympathise overwhelmingly with the Respondent (as above). The Respondent had form for the behaviour that someone finally complained of, so it

seemed a shame that the process was so very poor. It would be worth this review specifically asking for feedback from complainant of bullying cases looked at by the BSB.

- 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?

I don't know the answer to this, but I would emphasise that such a tiny minority of cases would reach that point, that this can't be the primary means to tackle this problem.

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?

>Mandatory training on diversity, non-discrimination, harassment and bullying in the work place. This would create a basic starting standard for knowledge of reporting processes, identification of warning signs and unacceptable behaviours (some people genuinely may need to be told this) and a shared vocabulary about it.

>A recommended induction process to Chambers for staff and barristers explaining the Chambers policies on non-discrimination, harassment and bullying. It is important to link harassment and bullying to protected characteristics because of the intersecting kinds of bullying that people with protected characteristics may face.

>A recommended support plan for complainants which combines non-retribution measures (as with whistle blowing type procedures) with measures to reduce re-traumatisation (things like limiting who knows about the complaint without the person's consent, timeliness and keeping the complainant fully updated). A buddy scheme might be useful for offering 1:1 support for complainants in Chambers – chambers already have eg diversity leads and may be able to build something like this into existing infrastructures – but again complaints will be low and I think getting this issue spoken about at small or larger group chambers professional training and engagement events will be the best way to change working culture

>In some areas of law the very aggressive/toxic and dehumanising language of judges to barristers is dying out, but it is occasionally still an issue. Judges are role models/set the tone and bullying from judges should not be acceptable. The Equal Treatment Bench Book is already a very lengthy and sophisticated document, but training on bullying and harassment could be linked to that for Judges and would help them to identify where to draw a line on conduct in the courtroom – know one coming to work or to court should face dehumanising and aggressive conduct.

>Consider a significant change to the way the BSB investigates these complaints, eg a rapid investigation and initial recommendations from an independent lawyer or investigator. Some bullying complaints may then be resolved quickly with an apology and some kind of written warning. More serious complaints of eg sexual abuse may need to be triaged differently or to go on to a further stage, but the slowness, opaqueness and unwillingness to proceed when the evidence is only a complainant's contested witness evidence currently makes the process unfit for purpose.

- 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?

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- 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?

The one thing I've tried to emphasise above is that the number of people who make a formal complaint will always be low and many of those may never be substantiated. There needs to be clearer support outside of a complaints process to stop these issues arising before they start. From pupillage application stage onwards there needs to be very clear boundaries explained about professional conduct, attention given to riskier situations and relationships (hospitality/networking events with alcohol, wide disparities of power and influence in relative unsupervised professional relationships, a reluctance to be at the heart of a scandal or to appear weak) and a push to develop and use a shared knowledge base and vocabulary on this issue. I had a very serious and softly spoken colleague once who, after being verbally bullied by a judge, asked to speak to her in private after the hearing and explained to her that no one should face bullying at work, and she apologised. However few of us have the confidence to deal with an issue like that so directly. It would be good if we could get to a point where we did have the vocabulary, collegiate support and confidence to deal with lower level aggressions in the work place like that. Obviously this is very different when it is a more serious issue of sexual abuse/exploitation, but there is a culture of impunity/silence that probably connects the two issues.

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](#).