

**SUBMISSION TO THE INDEPENDENT REVIEW
INTO BULLYING, HARASSMENT AND
SEXUAL HARASSMENT AT THE BAR**

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?

- (i) The adversarial nature of much of the Bar's work encourages some to engage in behaviour that they may think advances their client's case, or is acceptably 'combative' or 'robust' where in fact the behaviour is no more than bullying.
- (ii) In a predominantly self-employed profession, where much work is conducted away from chambers, there is insufficient oversight of barristers' behaviour.
- (iii) Individuals who are the victims of such behaviour have insufficient support, routes to complain are unclear and lack transparency and outcomes for those who do complain are broadly unknown because the result of informal routes to resolution have no publicity.

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

- (i) There has been a tolerance of poor behaviour for so long at the Bar that it is difficult to address bullying behaviour.
- (ii) Working independently, in small teams, without oversight, in stressful situations is a fertile breeding ground for bullying/belittling behaviour.
- (iii) While many sets of chambers have good governance systems and policies in place those can only be enforced where a specific complaint is received.
- (iv) There appears to me to be a lack of ongoing training about (for instance) power dynamics in a team, conflict resolution in a team, the proper language in conduct with an opponent.

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

No.

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?

Yes but in any event I do not see that the inclusion within Core Duties is likely to solve the problem. Harassment and sexual harassment are both a breach of the EA2010 and criminal offences. If that is not sufficient to signpost the direction of travel of an individual's behaviour then adding a core duty is unlikely to achieve much.

What needs to happen, in my view, is that there are clear routes open for victims to complain – either to sets of chambers or to an independent body to ensure that the behaviour stops – and immediate robust action on each upheld complaint.

The BSB regulates incidents of serious misconduct, there is a real need for an open and formal mechanism to prevent bullying behaviour that falls short of 'serious misconduct'.

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 creation of a hostile work environment (by an opponent, co-counsel or a judge) is deplorable and in some instances will lead to the barrister making errors that they would not make were it not for that environment. The effect, on performance, on confidence and on judgment can be very substantial. That may have a consequential effect for the proper presentation of the client's case.

Many barristers who have been the subject of behaviour that amounts to no more than bullying by a judge have considered whether to continue in the profession.

The remainder of impacts will depend on the nature of the behaviour – whether it is misogynistic, driven by conscious or unconscious racial bias, an abuse of a dominant position and so on – but the overall effect does nothing to assist in the recruitment and retention of women, of non-white barristers, of those with other protected characteristics.

b. Is there a wider impact upon barristers' staff, clients, or the justice system more broadly?

Yes. A system that has a problem with or a reputation for bullying/harassment is one that will struggle to recruit and retain its barristers. Junior members of the Bar who are the subject of poor behaviour may go on to replicate that poor behaviour, both inside and outside of chambers – which affects staff and can affect professional clients.

3. Reporting mechanisms, resources, and sanctions

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

- (i) The sense that nothing will change.
- (ii) The lack of information about what will happen if a report is made. While 'Talk to Spot' is an excellent tool very few members of the Bar seem to know what will happen if a report is made.
- (iii) A lack of public sanction for (in particular) any proved instances of Judicial bullying.
- (iv) Many instances of bullying/harassment occur during adversarial proceedings; when those proceedings are over the behaviour is over. I suspect that many barristers just want to get on with their new case and do not want to look back to a time when they were a victim of other's behaviour. Accordingly the perpetrator's conduct goes unchallenged.
- (v) An actual or perceived power imbalance between victim and perpetrator.
- (vi) The length of time taken by the BSB to investigate and adjudicate on cases of serious misconduct.
- (vii) Lack of confidence in the JCIO process.

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

- (i) A swift resolution of the complaint.
- (ii) Real action on cultural change including a requirement for every barrister to engage in ongoing training.
- (iii) Formal support and allyship for the complainant as they progress their complaint.

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 is known and it is understood. I doubt that it is implemented in practice to the extent that it should be, particularly in cases which may be on the margins between serious misconduct and misconduct.

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) Formal support for complainants is insufficient and while networks of informal support (within sets of chambers, within friendship groups of colleagues) are strong and have always existed, the low levels of reporting of bullying/harassment and the extent to which poor behaviour is in some individuals ingrained, suggests that informal support is not sufficient to drive change.
- (ii) Support for the welfare of the subject of a complaint ought not to compromise the fairness of the process of resolution of the complaint – which can prove difficult where the complaint is made within a set of chambers. Chambers ought to be encouraged to provide appropriate and confidential support by those independent of any process.
- (iii) As to confidentiality and transparency of process, the BSB current procedures strike a proper balance. It is impossible, without sight of each set of chambers' individual policies, to say the same of sets of chambers. As far as behaviour falling short of 'serious misconduct' is concerned there are few instances of formal public action being taken by chambers – which needs to change.

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?

- (i) A self-employed barrister ought not to be prevented from practising and earning a living where an unresolved complaint has been made. An exclusion from the premises to prevent unwanted contact with the complainant would be proportionate and consistent with the presumption of innocence and fairness of process. Members of the Bar in self-employed practice cannot be suspended on full pay. The position at the employed bar may be different.

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?

- (i) Much could be done at a regulatory level to improve the speed at which complaints are investigated and resolved.
- (ii) Much could be done by sets of chambers to ensure that there is robust action to combat bullying.

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) The sanctions available for serious misconduct (as published here¹) are appropriate and are sufficient (where imposed) to act as a deterrent. The difficulty is in encouraging reports to be made and (where the complaint is dealt with at a level short of the Regulator) ensuring that there are sufficiently robust sanctions in place.

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?

- (i) If robust and public action is taken by the JCIO in respect of bullying judicial behaviour, that will be as good a preventative step as any.
- (ii) Support mechanisms (within chambers, at Circuit level, within specialist Bar Associations and at Bar Council level) ought to be well publicised and then be the subject of ongoing training.
- (iii) Developing a process where the member of the Bar or Judge is made to consider their specific conduct and reflect on its impact would assist, particularly where that process involves legal professionals whose feedback is independent of the litigation. Advanced advocacy training to advocates allows those advocates to watch themselves on a video review. No such independent feedback is ever received in practice (either by barristers or by the judiciary) – and where behaviour can be corrected by pointing out the effect of language in that way, my view is that it should be.

¹ <https://www.tbts.org.uk/wp-content/uploads/2021/12/BTAS-Sanctions-Guidance-Jan-2022-Version-6-Final.pdf>

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

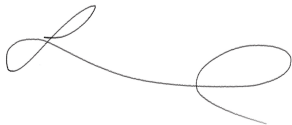
(i) Mandatory training to chambers about management of investigations and formal resolution of complaints.

(ii) A reduction in the length of time spent by the BSB in investigation.

(iii) A panel of senior and junior professionals established to support complainants and recipients of complaints.

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

(i) There needs to be an understanding, across the Judiciary and Bar, that working practices, behaviour and language need to change. While there are plenty of examples of good working practices across the groups identified above those practices are not shared formally or given the publicity they need. Continuing professional education for all groups tends to focus on an understanding of the law and improvement in advocacy skills, working with others (and similar Human Resources issues) are not given the prominence they need.



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