

# Independent review of bullying and harassment at the Bar

## Call for submissions response form

Submissions can be sent in any format directly to the review team via [BHReview@barcouncil.org.uk](mailto:BHReview@barcouncil.org.uk).

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](mailto: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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If you would like to submit your answers completely anonymously and confidentially, please use [Talk to Spot](#).

Name (optional)

James Roberts KC (chair), Leslie Samuels KC (vice chair) and a sub-committee of the National Committee led by Darren Howe KC with Sam Hillas KC, Jack McCabe, Ayse Vahib.

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

Family Law Bar Association

## 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?

In 2023, the Family Law Bar Association undertook a survey of its membership to establish members' views on a number of topics. Their experience of bullying in the workplace was one of the issues addressed in the survey.

The response rate to the survey was low, with only 417 of a possible 2500 members responding (a 16.7% response rate). However, of those 417 members, 36% felt they had been bullied and 70% considered they had experienced inappropriate and/or disrespectful behaviour.

In our survey, women were 66% more likely to be bullied than men and it was Judges who were most likely to bully and belittle.

Many responders did nothing to report the bullying as they did not believe the potential result would be worth the likely negative consequences of reporting the bullying. One said “there is no effective action to take”, “I have been ignored, ridiculed and victim blamed/shamed when I sought help in the past”. Another said “the judge is a recorder and a KC and I do not want to make trouble for myself”. Others felt that managing bullying was part of the job, with one saying “bullying from an opponent comes with the territory”.

Of those bullied, twice as many felt bullied by a Judge than by a colleague or opponent.

It is our opinion that bullying from opponents and colleagues is tolerated at the Bar more than other work places due to the adversarial nature of much of the work and due to aggressive behaviours being seen as valued, if not essential, characteristics of a successful barrister. This is perhaps best illustrated by the comments published about barristers in legal directories:

The report ‘Language Matters’ – commissioned by the President of the Family Division that was published in October 2022 said the following: “It is impossible to ignore the public accolades and profile given to legal professionals for their ‘victories’ in court, and the lack of profile for those who skilfully succeed in a problem-solving approach. The legal directories’ promotion of the language of aggression and war in family proceedings must be challenged”.

*“A firecracker of a barrister”*

*“she ‘is a robust advocate’ who will fight her client’s corner and gee them up if necessary.”*

*“She is famed for her tenacious style and uncompromising approach.”*

*“You need shin pads and earmuffs to deal with her, but there’s no denying she is effective.”*

These are quotes describing barristers from their instructing solicitors that are published in legal directories, seemingly of the view that battle terminology is appropriate and that aggression is something to be admired in a barrister.

In family law cases, emotions run high and the client wants their barrister to be assertive, so they get their ‘pound of flesh’ from their ex-partner. Aggression is over-valued and seen as a positive attribute, particularly in privately paying high fee work, that most at the Family Bar would like to have in their diaries, so the expectations of the instructing solicitor and client about the style of advocate they wish to instruct must be met to attract this higher paid work. When reading inter-parties correspondence between opposing solicitors in a family case, aggression and threat is very frequently a feature of the writing style and this carries over into the style of advocacy those solicitors expect from counsel they instruct.

The self-employed Bar and the courtroom lack the ‘rules’ that are present in an employed work place. Should an equivalent level colleague or more senior manager engage in disrespectful and bullying behaviours, an employed work place has an established complaints procedure and proven effective remedies by way of legal action in the employment tribunals. The employer has a responsibility to protect its employees from harassment and bullying from

others in the workplace and there can be serious financial consequences for the employer should that responsibility not be met.

At the self-employed Bar, there has always been a 'best not get involved' culture within which barristers 'keep their heads down' if a colleague is being bullied by a Judge in court, as those viewing the bullying do not want to attract such behaviour by the judge towards themselves or it pleases their client to see their opponent being treated harshly by the judge. Within chambers there may have been a 'try to smooth things over' attitude rather than a willingness to take clear and decisive action against a member of chambers who is habitually disrespectful and bullying towards more junior members of chambers.

In our view bullying and harassment has been such a persistent problem because victims have no belief that making a complaint would achieve a positive outcome and may even make things worse. Those perpetrating these behaviours either have little self-awareness so do not recognise how offensive their conduct can be and, as complaints are rarely made, they are not told that their behaviour is unacceptable. If they are aware, as they are not challenged, there is no need to change behaviours that must give them some kind of personal reward for them to occur.

Every workplace will encounter those who bully and harass others, including sexually harassing behaviours. Sexual predators can be present in any work environment. Relationships between colleagues at the Bar are more complex to navigate than an employed work environment due to all 'being their own boss'. Before someone can be challenged about their behaviours, those with responsibility within chambers to respond to a complaint want to be on very safe ground, we suggest often over-safe, before acting on a complaint, for fear of creating difficulty within chambers if they do not have cast-iron evidence to act upon. One word against another is often not seen as enough, and complaints only taken forward if made formally by the victim of the bullying. [REDACTED]

[REDACTED]

Members at the Bar are often working alone and regularly doing so at unsocial hours. This provides opportunity for predators to harass and bullies to act unseen.

The hierarchy at the Bar is also a consideration. Pupils want to be taken on as tenants and this can discourage them from making complaints. 'Junior' juniors want to progress in chambers and not 'rock-the-boat'. The more senior members of chambers can dominate life within chambers and this imbalance of power could be taken advantage of as the more senior see themselves as being in control. Knowledge of a failure to act on a past complaint against a senior member of chambers discourages further complaints as the complainant fears the making of a complaint will harm their own careers rather than protect them or others from suffering further bullying or harassment.

An appeal Judgment from January 2022 relating to a decision to suspend a practising barrister due to professional misconduct against a mini-pupil stated as follows: *as to the failure to complain at the time, the Tribunal pointed to the disparity of power, status and age between the two of them. In addition to the inherent unacceptability of such behaviour, it was even more unacceptable because such a person may feel intimidated from protesting at the time or from making a complaint even though there is no actual or implied threat coming from the respondent or the person accused of the consequences of complaining. Such a person may also fear that if they do complain, it will impede or damage their career prospects. This was very much uppermost in the complainant's mind in her decision, concurred in at the time by her family members, not to make any kind of complaint about it – [2022] EWHC 52 (Admin).*

In our view acting on complaints is seen as too difficult by those in positions of responsibility within chambers and the absence of clear BSB and Bar Council policies and definitions holds some responsibility for this situation.

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

Yes. See answer to (a) above

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

Yes and No. The Bar Council's website is now much better and has a dedicated tab for bullying and harassment in its 'support for barristers' section. However, this is a fairly recent development and certainly was not the case just a couple of years ago. The Bar Council's EDSM Harassment and Bullying Working Group made recommendations to the Bar Council to update its bullying and harassment policies on 28 April 2022. The Harman Review should consider the recommendations made by this working group in its 24 page report. This report followed on from bullying at the Bar having been highlighted in research undertaken by the Bar Council and the issue being addressed in a number of articles in Counsel magazine (see 'Standing up to Bullies' July 2021 edition, 'Bullied from the Bench' March 2022 edition, 'Recognising and Managing Oppressive Behaviour In-court and Out: A Practical Guide' Parts 1 and 2 published in the April and May 2022 editions, 'Bullied in Court? What Chambers can do About it? June 2022 edition – all these articles should be read by the Harman Review as they provide real insight into the causes of and difficulties created by harassment and bullying at the Bar). In September 2022 the FLBA published its own Respectful Working policy (copy attached). That policy included the establishment of Respectful Working Mentors, who would support and advise those who fall victim to these behaviours. It is a resource that has been little used.

One of the significant problems, in our view, is that the BSB did not act on the recommendations of the Harassment and Bully Working Group recommendations and make specific reference to bullying alongside existing reference to harassment in the [Handbook](#) (Code of Conduct) and associated guidance. When undertaking a search of the current version of the Handbook (that came into force on 21 May 2024), there are no matches for the word bullying.

Harassment is defined in the Handbook as having the same meaning as in the Equality Act (requiring those consulting the handbook to then search other resources to find the definition).

Bullying is not mentioned. The rules state that: “*harassment* will not be tolerated or condoned and that *managers*, employees, members of *chambers*, *pupils* and others temporarily in your *chambers* or *BSB entity* such as mini-pupils have a right to complain if it occurs” and requires each entity to have a procedure for dealing with complaints of harassment. Harassment is considered as a potential breach of CD3 – the duty to act with honesty and integrity or CD5 – the duty not to act in a way that will diminish public trust and confidence in the profession. Gc25 lists ‘seriously offensive or discreditable conduct towards third parties’ and ‘unlawful victimisation or harassment’ as likely to be treated as a breach of CD3 or CD5. However, bullying is often very unlikely to fall within the definition of unlawful discrimination, victimisation or harassment included in rc12. Indeed, not all forms of harassment falls within this discrimination as rc12 prescribes “you must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age religion or belief, or pregnancy or maternity”.

We see little justification for the definitions of bullying, harassment and sexual harassment adopted by the Bar Council not being expressly incorporated and clearly set out in the Handbook / Code of Conduct. Those definitions are:

**Bullying** - “...offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate, or injure the recipient”.

**Harassment** (as defined in section 20 of the Equality Act 2010) as being “...unwanted conduct, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.”

**Sexual harassment** - “unwanted conduct of a sexual nature which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. It also includes situations in which an individual is treated less favourably because they have rejected sexual conduct or submitted to it.” (Section 26 of the Equality Act 2010)

It may be that the intention is to leave definitions absent so the scope of potential breaches of the code is not limited by these definitions but these definitions can be included on the basis of behaviours likely to amount to a breach of the code as is currently provided for other behaviours in gc25. The BSB formally adopting the Bar Council definitions and being clear that acting in this way is likely to be a breach of the Handbook / Code is in our view essential for members of the Bar to know what is prohibited behaviour so they can have confidence when making a complaint. In our clear view, the categories as set out in gc25 are inadequate and promote confusion and ambiguity rather than certainty and confidence.

- 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](#)

See answer to (c) above.

## **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?

Examples of the impact on those subjected to it are given in 'Recognising and Managing Oppressive Behaviour In-court and Out: A Practical Guide' Part 1 published in the April 2022. The case study in that article was constructed from real-life reports made to us about how the harassment and bullying affected those at the receiving end. Being harassed and bullied undermines your confidence. You wonder why it is happening to you. You ask yourself if you did anything to encourage it. You question your professional abilities. You are fearful of the consequences if reporting the behaviour, whether or not you are believed, as you know an investigation into this type of complaint is very often a fudge aimed at avoiding any serious consequences to the perpetrator while trying to show the victim that something has actually been done. You consider leaving chambers and may even consider leaving the Bar.

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

Those within chambers who are bullies and those who can be 'handsy' and harassing of members can and do display the same behaviours towards members of staff. A failure to act against a perpetrator who displays such behaviours to members then gives the opportunity for the same to happen to staff. That said, staff have very clear protections under employment law and can be protected financially by tribunal awards from the consequences of harassment and bullying where it leads to them withdrawing from the workplace. Financial protection for barristers from the consequences of withdrawing from their workplace are far less well defined and reported examples of successful actions brought by barristers against perpetrators and chambers who failed to act are, as set out below in terms of reported decisions of the disciplinary tribunal, rare. The tribunal may award costs but what of compensation for the victims of the behaviour. Consideration needs to be given to how the victims of bullying and harassment can be compensated within the disciplinary process itself rather than by a separate legal action.

Sexual harassment by barristers of solicitors or, perhaps more regularly, junior members of staff from solicitors' firms also happens. Again, if action is not taken against perpetrators when this behaviour first occurs, other potential victims are then put at risk.

The same applies when a known bully is appointed to the bench. It can come as no surprise when a judge acts in a bullying manner when sitting in court if that same individual was known to be a bully when at the Bar. Failure to act by chambers and the failure by victims to pursue complaints has consequences for those thereafter exposed to the perpetrators. Therefore, we see support for those who want to make complaints as crucial.

## **3. Reporting mechanisms, resources, and sanctions**

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

We have addressed the many barriers in the answers we have given above. The failure by the BSB to be clear about the type of behaviours that amount to a breach of the code is a clear deterrent. The desire not to do harm to your own career by making a complaint is perhaps the greatest barrier. The perception that decision-makers in chambers will want to smooth things

over rather than accept the complaint and impose a sanction or, when necessary, expel the perpetrator is in our experience a legitimate fear.

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

We take the view that confidentiality would be near impossible achieve, to police and to enforce. The Bar is very gossipy place. Word gets around. Unless there is a clear ruling that is then published and publicised, the complainant fears becoming known as someone who makes trouble for others. The formal disciplinary process of the BSB can take months if not years to conclude. Chambers' own internal disciplinary processes should be much much quicker, but to expel a member of chambers a full chambers vote is generally required. The victim can be given no confidentiality, another barrier to reporting.

As we set out below, the requirements of the duty to report in rc66 must be removed. Victims require some control over how their complaint is handled and should be able to choose someone known, and trusted, by them who they can approach for advice and support.

Whilst a chambers 'fudge' of its responsibilities to protect from harassment and bullying are to be discouraged, the duty to report under rc66 entirely excludes the option of informal action – a firm word in the ear of the perpetrator aimed at ensuring the behaviour stops and stops quickly. This may be what the victim would like as it is a possible solution for them without being seen to create the fuss of a formal complaint. Even if formal action is required, Rc66 encourages people to look away, to not notice what is happening in chambers as they do not want to have to get involved. If they claim ignorance, they cannot be sanctioned themselves for failure to comply with their duty under rc66.

In our view, rc66 is unhelpful. Reporting should not be mandatory but nor should reporting by a concerned third party be discouraged. Mechanisms for the protection of those not protecting themselves should be available but the factors we address above that discourage victims from making their own complaints do not evaporate if a complaint is made by a third party. If the complaint can be proved solely on the evidence of that third party, that is one thing but rc66 also acts to draw unwilling victims into the disciplinary process. Its wording places a victim who does not report bullying and harassment in breach of its terms.

- 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?

In our view it is known and it is unhelpful. It can act to prevent, rather than encourage, the protection of victims and it also takes control out of the hands of those harmed by harassment and bullying. At best, it reduces significantly the pool of trusted colleagues they can turn to for advice and support. At worst, it excludes all trusted colleagues from providing advice and support without those same supporters then having to report the subject matter of the complaint to the BSB.

- 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?

This question does not identify what supports it is suggested is available. It is only those on the EDSM committee of the Bar Council who are able to provide support unless the victim has chosen to make a formal complaint, so our clear answer is that there is not sufficient support in place.

The FLBA's own respectful working mentors have been little used and a reason for this is likely to be that we had to inform the membership that anyone coming forward seeking advice about another member of the Bar would have to be referred onto a member of the EDSM committee, a step that significantly undermines the purpose of the mentor scheme, a scheme that is able to provide much more in terms of support and advice to victims of bullying by judges.

We have addressed our concerns about confidentiality above. Any victim seeking compensation from a perpetrator currently has to pursue a civil claim which provides no confidentiality. A compensation award within the Bar disciplinary process may provide an important remedy, and therefore an incentive to report.

- 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, if the complaint is admitted. If the complaint is denied, the person excluded should be able to continue in practice/employment until the facts of the complaint are determined. However, physical exclusion from the workplace that does not prejudice practice/employment would be a positive step. What of cases in which both alleged perpetrator and alleged victim are involved? Requiring an alleged perpetrator to withdraw from some work, or chambers clerks removing work from them, could have serious consequences so there would have to be adequate evidence available for this measure to be taken. A threshold test would, in our view, need to be devised for such action to be taken.

- 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?

This is a question best answered by those who have been through the process of making a formal complaint. The anecdotal evidence we have about one incident of complaint handling in a chambers is that, in the situations we've been told about, it was ineffective even though two members of chambers took extended periods of time off work due to how they were treated by a senior member but they did not want to make a formal complaint for fear of reprisals. The chambers knew why the juniors had taken time away but in the absence of a formal complaint by the victims, nothing was done. The perpetrator was too senior and too difficult to manage for those managing chambers to act on the complaint without a 'cast iron' case to put.

- 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?

There are reported examples of barristers being disbarred for sexual harassment. It is good to see that the reporting of bullying and harassment to the BSB has increased. In the year to 31 March 2023, the BSB received 30 reports of bullying and harassment, an increase from 17 in the previous year and of these, 16 concerned sexual harassment, up from six in 2021/22.



It is not easy to find the results of disciplinary actions against barristers. The BSB website should have a clear tab for this information, although it can be found if the correct search terms are entered into Google.

Having searched the list of published decisions from 1 Jan 2023 to 20 September 2024, only 5 decisions published appear to relate to harassment or bullying complaints and 2 of those concerned criminal convictions of conduct towards others when not at work. So, it appears that only 3 of the 30 cases of reported bullying and harassment resulted in a published decision. It is therefore impossible to comment on the adequacy of the sanctions imposed as too little information is published.

#### **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?

The Handbook / Code should be amended to make specific provision about bullying – see out answers above.

rc66 needs to be removed to ensure victims can receive the support they want from whomever they choose.

Pupils should receive compulsory training about what types of behaviours amount to bullying and harassment, so those unacceptable behaviours can be more easily identified so barristers avoid using those behaviours and the victims can more readily identify prohibited behaviours.

Established practitioners should be expected, as part of their CPD requirement, to engage in anti-bullying/harassment education.

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

See above.

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

The culture that expressly values aggressive behaviours should be challenged and not worshiped in directories as is the case now.

As we have suggested, some anti-bullying and harassment training should be compulsory for every barrister to undertake every year and when this conduct does arise, Chambers need to act much more decisively and protect the victims not the perpetrators, however uncomfortable it will be for chambers to take action against senior members.

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

The self-employed nature of the Bar, the reliance on the favour of others to obtain a tenancy and then a similar reliance on that favour to advance through the ranks is somewhat unique. This need to rely on others for references and work referrals creates the opportunity for exploitation by more senior members. This same reliance on those favours creates a justifiable fear of harmful reprisals should a complaint be made. It is difficult to identify another profession with comparable characteristics.

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

No

Please answer as many of the questions as you are able and submit your answers via email to [BHReview@barcouncil.org.uk](mailto: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](#).