

# 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](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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Name (optional)



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

## Bar Counsel, Race Panel

This response is based on data obtained by the Race Working Group (now the Race Panel) and other statistical data obtained and reported by the Bar Council both formal and informal. The focus in this response is from the perspective and experiences of black practitioners and individuals from underrepresented groups.

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

In November 2021, the Race Working Group published the landmark report, [Race at the Bar: A Snapshot Report](#). The updated report, 3 years on is due to be published later this year.

The 2021 report provided a data summary of the ethnic profile of the profession with respect to access, retention and progression in the profession. It also considered the culture at the Bar.

Culture is intangible and hard to measure but quantitative data was obtained and looked at, providing a snapshot on “Bar Culture”, around reports of bullying, discrimination and harassment and wellbeing data, not only looking at the data as a whole but breaking it down by the ethnic background of respondents. The updating evidence contained within the Bullying, Harassment and Discrimination (BHD) at the Bar Report 2023 confirmed what we already know, BHD is a growing problem at the Bar.

In the recent survey, 44% of respondents said they had experienced or observed such behaviour whilst working either in person or online. This is an increase from 38% in 2021 and 31% in 2017.

Barristers of colour are affected more by these behaviours than their white colleagues, and women barristers of colour are particularly affected:

- i) Race was one of the three main characteristics linked to BHD by those who had experienced it.
- ii) 43% of barristers from ethnic minority backgrounds reported bullying or harassment compared with 27% of white barristers.
- iii) More than half (52%) of female barristers from ethnic minority backgrounds reported experiencing bullying or harassment, compared with 39% of white female barristers. 31% of male barristers from ethnic minority backgrounds, and 17% of white male barristers.
- iv) The group most affected by personally experiencing BHD were black women, with 76% of black women affected, four times the proportion of white men (19%).
- v) Barristers who could be identified as “different” by any other protected characteristic categorisation including disability, LGBTQ status, non-Christian religious beliefs, attendance at a state school or caring responsibility also reported an increased incidence of experiencing bullying, harassment, or discrimination at work

There are a number of factors to take into consideration as to why bullying harassment and sexual harassment are all a persistent problem at the Bar; these include but are not limited to the following.

- i) The hierarchical nature of our profession from senior judiciary to pupils (the whole spectrum in between). Whilst attitudes, to some, may be shifting, there is still the significance of one's level of call even, sometimes despite age and life experience, and the letters before and/or after one's name (KC, DJ, CJ, LJ).
- ii) The hierarchical nature of our profession adds to the already established power imbalances and dynamics within the profession (level of seniority, gender, ethnicity all protected characterises and social mobility).
- iii) The power imbalances faced by the bar from both the judiciary and clerks, in particular senior clerks in those chambers where their power is unchecked by formal management reporting structures, add to the problem due their and influence and/or perceived influence.
- iv) The competitive nature of the Bar allows for further power imbalances, those perceived as less powerful or influential are attacked by those who perceive themselves as being more powerful and/or influential.
- v) The adversarial and combative nature of our work allows a tolerance for aggressive and bullying behaviours to enter the workplace.
- vi) A continuing culture that "it's the way it is", "I earned my stripes", "you do not complain, you get on with it", can provide an excuse for bullying and/or harassing behaviours at the Bar to continue.
- vii) The bar is not a traditional working environment. There are variations as to the availability of additional support and resources within the traditional chambers setting, for example in those barristers' chambers where there is no formal Human Resources expertise. Unlike an employed environment chambers are often reliant upon the goodwill of its members and senior staff and clerks to join management committees, draft policies. Also, not all sets have funds to buy in services, to train and/or investigate serious matters.
- viii) Differences between the employed and self-employed Bar. Within traditional working environments there are still problems; however, there are clear expected workplace standards and systems in place and a greater collective responsibility. Within Chambers, whilst there may be a collegiate feel and the identifying with one's set, there is still an individualistic attitude - it is not my problem. The question is who is responsible for protecting those who have been subjected to BHD.
- ix) At the Bar individuals can find ourselves working at anti-social hours either alone or with another if working on a case together. The anti-social working hours provide opportunity for such behaviours to occur and acts to be unseen, adding to the one word against another situation, which impacts on whether an individual complains or not and for persistent offenders to continue or get away with actions.
- x) The regulation of the profession and the length of time to investigate matters provides little deterrence and adds to the feeling that nothing will change.

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

The answer is yes and no.

Articles have been written in professional publications such as Counsel Magazine, to make people aware of experiences and how to manage such incidents and support available.

The Bar Council has provided a number of guides and toolkits to assist and support professionals. There is a dedicated section on the website<sup>1</sup> for bullying and harassment, which is a more recent feature. It sets out the definitions for bullying, harassment and sexual harassment.

The BSB Code of Conduct is less user friendly. It is not easy to navigate, nor does it provide clarity. The Bar tends to revert to the Code of Conduct when there is an ethical issue. It would not be the first port of call for a victim who finds themselves in such a situation.

It is unfortunate that there is no mention of bullying within the Code of Conduct unlike the clearer definitions provided by the Bar Council. The lack of joined up thinking allows for wriggle room and creates confusion and ambiguity. The lack of clarity and current definitions within the Code of Conduct lead to the unfortunate result that not all behaviours, on strict reading, will be treated as a breach of the Code.

It is imperative that there is clarity and uniformity, so barristers know what is prohibited and deemed not acceptable. It is hoped that this would provide individuals greater confidence to make a complaint and others to report such matters.

## **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?
  - i) It can undermine their confidence.
  - ii) It can create a loss of interest in the job.
  - iii) It may prevent them from participating in professional activities where the perpetrator may be and make them feel isolated.
  - iv) It can create a lack of trust with those you work with, in particular if incidents have been witnessed by third parties and/or not handled as expected.
  - v) It may cause them to want to leave or move Chambers and all the upheaval, stress and potential anxiety that comes with this.
  - vi) It may cause them to want to leave the Bar.
  - vii) It can lead to illness, time off work.
  - viii) Fearful that reporting such matters will impact their career progression.

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<sup>1</sup> <https://www.barcouncil.org.uk/support-for-barristers/bullying-and-harassment.html>

- b. Is there a wider impact upon barristers' staff, clients (professional and law), or the justice system more broadly?
  - i) The impact on diversity at the bar, given the statistics such as black females experiencing a higher level of bullying and harassment and other statistics pertaining to underrepresented groups.
  - ii) The knowledge of such experiences can act as a deterrent and discourage individuals from joining profession.
  - iii) Financial implications should individuals leave due to such cultures and/or behaviours or if expelled from chambers due to their behaviours, it is a loss of income to Chambers.
  - iv) The cost to Chambers and members of any payouts or awards that are made to a victim as a result of such behaviours.
  - v) For lay clients, witnessing bullying behaviours from the judiciary and/or opponents may leave them questioning or thinking that decisions were made based on behaviours observed.
  - vi) Failure to take action against perpetrators at the outset, places other individuals at risk of harm or to be subjected to the same behaviours.

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

- a. What are the barriers to reporting incidents of bullying, harassment and sexual harassment?
  - i) Lack of confidentiality.
  - ii) The loss of control once others become involved.
  - iii) They will not be believed and seen or labelled as a troublemaker.
  - iv) The stress of any complaints process; will it become adversarial; any challenge from the perpetrator and discrediting of the victim's character and credibility.
  - v) Others and the wider bar finding out.
  - vi) The belief that matters will not be dealt with appropriately; that no action will be taken.
  - vii) Experience within Chambers of how previous complaints have been dealt with in similar situations.
  - viii) The negative impact it will have on their career progression – the mark against one's name and professional relationships.
  - ix) Lack of support, feeling isolated in the process.
  - x) Sadly, but consideration of the perpetrator and their circumstances.
- b. What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment?

The main point would be around confidentiality and anonymity were complainants to proceed with their complaint. However, practically, this would be impossible to achieve or monitor. Whilst there are over 16,500 barristers it is still a closed community in which people gossip and word travels, even across Circuits. Complainants do not wish to get labelled.

Quicker processes both via the BSB and/or Chambers may result in more individuals pursuing a complaint as they would have confidence of a swift resolution, if this is what they wanted this. However, this has to be balanced with fairness and due process.

This leads to the next point of control. The BSB duty on barristers to report to the BSB in circumstances where there are reasonable grounds to believe there has been serious misconduct removes the choice from the complainant. Individuals may wish to have a more informal resolution to matter and not be dragged through a disciplinary process. Furthermore, whilst concerned third parties should not be discouraged from reporting such

serious misconduct, the mandatory element also encourages people to ignore matters or keep their head down.

- 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 unclear how widely known this rule is and/or is actually acted upon by third parties. One of the difficulties is the lack of clarity as to what amounts to "serious misconduct"; the duty perhaps being acting upon in the most serious of cases and/or when it is more clear-cut. There is also the element of subjectivity. Whilst there will be consensus on some incidents, in other situations what some view as serious misconduct to others it may not meet that high threshold.

This rule also reduces the protection and support for a victim as it deters the victim from speaking with colleagues they trust and from seeking advice and support out of fear and a duty to report the matter. Again, disempowering the victim and removing the control of how they would wish the complaint to be handled.

- 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?

In short, no or perhaps very limited. The reality is support will have to be limited until a formal complaint is made.

- 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?

If a complaint is admitted, yes.

If a complaint is denied, this poses difficulties until the facts have been determined. Given the nature of our work and changes in working practices, the opportunities for the parties to meet are not as great as if they are in a traditional office environment. There could be better diary management to ensure the two parties are not against one another and avoid contact.

- 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?

See comments above.

- 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 has been difficult to find out the outcomes of disciplinary actions against barristers in such matters. Internet searches can result in some information being found. However, such details should be more easily accessible on the BSB website or Bar Council Website. Given the lack of information and transparency, we are unable to comment fully on whether the sanctions are sufficient, effective, act as a deterrent and/or are to the satisfaction of the victims/complainants if the complaint has been upheld.

#### **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?
  - b. What improvements could be made to existing reporting mechanisms and support services?
  - c. In what ways could the judiciary, clerks, chambers professionals, and others work together with the Bar to bring about change?
  - d. Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?
- i) [Clarity in respect of the definitions.](#)
  - ii) [Revision of the mandatory duty to report and ways to empower the victims and give them more choice in how their complaint is dealt with.](#)
  - iii) [Specific training for those at the bar at all levels to engage in anti-bullying and harassment training. This should be at a level, that is not too demanding but at a frequency necessary to ensure everyone has a greater understanding of what is required of them and collective responsibility to change the culture.](#)

#### **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.](#)