

GRAY'S INN RESPONSE TO THE HARMAN REVIEW QUESTIONS

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 legal profession is a very hierarchical profession and historically male dominated. It also traditionally relied on patronage for success. Each career progression stage - applying for pupillage, applying for tenancy, progression to Silk/Judiciary and even appointment as an Inn Benchers - requires approval and appraisal by others more senior within the profession. Notwithstanding the huge steps forward taken in relation to appointments and the need for transparency, appraisal and assessment is still required. Accordingly, individuals at the Bar remain vulnerable to approval from others.

Further, junior barristers are often reliant on more senior barristers for junior work and recommendation for progression. That inevitably risks creating an environment where bullying etc can take place.

Most Barristers, although certainly not all, are "driven" people to succeed and so are reluctant to complain about or call out bad behaviour in others, both because they do not wish to be perceived as "complainers" and because they fear the effect that might have on their own progression. The Bar has long been considered a collegiate profession and complaining runs contrary to that.

With a self-employed structure, behavioural norms associated with firms/business in the private sector or across the public sector are not in play. There is rarely an "HR" structure to turn to.

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

Competition for pupillage: both the need to obtain pupillage to practice and fear of rejection. This has been increased by the expansion of the numbers accepted for the Bar course without a corresponding increase in the number of pupilages available.

The unstructured way to gain access to the profession. The Inn is vulnerable to this given that its purpose is predominantly educational with a secondary and important social function. It is one environment where students, all levels of the Bar and Judiciary can mix. There are always, therefore, people looking for an opportunity for advancement at every level and the need for the more senior to be conscious of that. That can be an uncomfortable mix if no proper boundaries are in place.

As stated above, the Bar requires the good will and patronage of others.

There is inevitably a power imbalance.

There remains an older cohort of Barristers who consider the way they had to contend with life at the junior bar should prevail and because of their seniority do not consider they should conform to modern norms – the existence of a cohort of "untouchables."

General lack of awareness of ED&I and social norms seen through Gen Z perspective.

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

Obviously, the Inn is in a rather different position than sets of Chambers.

From the Inn's perspective, policies and processes are in place and staff exist to resource it but it is largely untested. It is believed that the policies are clear and robust but they still require individuals to come forward and complain or report others behaving inappropriately.

The introduction of the Code of Conduct – written in early 2023- has been a major enhancement to support cultural change within the profession at the Inn.

- 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 Inn would not wish to comment. They are contained within the Inn's Code of Conduct.

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 misconduct?**

In recent history, the Inn has experienced a suicide attempt.

The less extreme consequences are the loss of people to the Inn, individuals leaving the profession, loss of confidence, and a risk of loss of faith in the Inn as an institution.

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

Arguably, yes. The Inn's staff are part of the legal profession and are therefore effected by the poor behaviour of a small minority.

Further, the whole ethos of the Inn requires all levels of the profession to be able to mix with confidence that they will be treated appropriately and with respect. This impacts the perception of the whole justice system.

3. Reporting mechanisms, resources and sanctions.

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

Already set out above, The system of pupillage and tenancy plus future advancement – fear of retribution and career implications.

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

There is no easy answer beyond widely publicising and repeating the importance of the Code of Conduct and the seriousness with which the Inn takes it.

We already have anonymous Talk to Spot.

Whistle blower capability?

Education of more senior members of the profession to protect those more vulnerable and to take seriously any complaints.

Faith in the ability of the BSB to investigate? The time taken to investigate and the low probability of achieving a positive outcome (either in a timely manner or at all) are both a hindrance to complaint. These should be resolved.

- 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?

The Inn cannot answer this question.

- 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?

Confidentiality – yes. The Inn believes that is well balanced within its policies.

Transparency – no. We do not publicise incidents and results of procedures for those that breach our code of conduct and have historically considered that a difficult issue.

- 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.

From the Inn's perspective, no, based on the principle of innocent until proven guilty. Really needs a case by case consideration. If a high profile case or police involved, the individual is likely to self-police in terms of attendance at the Inn (training and social events).

Further, the Inn can and does suggest, in some cases, non-attendance until a matter is concluded and would not, for example, select as a trainer for interaction with students someone about whom there was an outstanding complaint.

Nothing formal is in place, it is a case by case basis.

- 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?

We believe that the Inn's procedures do this and in any event strive to learn from every case.

- 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?

We believe this to be the case. The issue is that only comparatively few matters, arguably, are reported.

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? Leadership, education and training.

Increased sanctions. We will consider for example formal suspension of attendance at the Inn for training and events.

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

The Inn can only comment from limited knowledge, but speed of enquiry and advice.

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

Leadership, by example.

Ease and availability of specific training.

Greater availability and use of HR resources.

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

It is not believed that there is a comparable profession of self-employed, well paid, laced with tradition and in transition from male dominance to male/female balance.

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

This review appears to be looking at Barristers only. The Inn is a membership organisation with, as set out above, students, judges, barristers (employed and self-employed) and retired barristers and judges in our membership. These challenges are not restricted to the Bar.

On a positive note, our Code of Conduct is working. In a recent example, unacceptable behaviour has been addressed and sanctions taken against a barrister as a result of this Code. Before the Code, this individual would not have been reported and would almost certainly have continued inappropriately. Had the complainant made a formal complaint (which they did not want to do) the case would have most certainly gone to BTAS.