



Bar Council Response: Bullying & Harassment Review 2024/25

1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the Bullying & Harassment Review led by Baroness Harriet Harman KC.
2. The Bar Council represents approximately 18,000 barristers in England and Wales. It promotes the Bar's high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality, and diversity across the profession; and the development of business opportunities for barristers at home and abroad.
3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society.
4. The Bar Council welcomes the opportunity to contribute to the Bullying & Harassment Review. The Bar Council has considerable experience on this issue gained through:
 - (i) Supporting members of the profession, law students, and chambers' employees who have experienced or observed bullying and harassment; and
 - (ii) advising and supporting barristers and their employees dealing with allegations of bullying and harassment, as well as those providing support to victims of these behaviours. They include Heads of Chambers, Chambers' Equality & Diversity Officers (EDOs); practice managers and clerks; Inns' employees; other senior members of the profession.
5. Our experience is based on:
 - (i) Research within the profession. This includes quantitative research via [Barristers' Working Lives](#) (our biennial survey of all barristers which includes specific questions on the experience/observation of bullying and harassment¹), as well as qualitative research via focus groups and interviews (for snapshot reports on [women at the Bar](#), [race at the Bar](#), [young barristers](#) and [employed barristers](#)).

¹ This has enabled us to track the numbers of those reporting experience of and observing bullying and harassment since 2011

- (ii) Training. We deliver [Equality & Diversity training](#) as well as bespoke *Tackling Bullying and Harassment* training and *Race Awareness* training. During these sessions participants often disclose incidents of harassment and bullying. We also offer an intervention which provides remedial training for barristers and clerks who have a finding of bullying or harassment (or other inappropriate behaviour) against them following a complaint. This gives insight on a respondent's experience.
- (iii) In addition to bespoke training, our consultancy work with chambers has included supporting them following allegations of bullying, harassment and discrimination. There is a significant appetite for this support.
- (iv) Our [Helplines](#) (including [Talk to Spot](#); our pupillage helpline, the Equality & Diversity helpline; the ethics helpline)
- (v) Running networks e.g. the [EDO Network](#) (regular meetings with those responsible for delivering equality, diversity and inclusion at the Bar)
- (vi) Working with the Bar Standards Board (BSB) as our Regulator.

Reasons for bullying, harassment, and sexual harassment at the Bar

6. In this section, we have considered together the questions (a) In your view, why is bullying, harassment and sexual harassment a persistent problem at the Bar? And (b) Are there particular dynamics or working practices at the Bar which allow for bullying, harassment, and sexual harassment to persist?
7. We know that bullying and harassment, inappropriate and undermining behaviours are often a cause and consequence of power inequalities, and the legal profession is one of many sectors with this challenge. But we are aware the Bar's culture, as well as the external pressures on the profession, can create conditions for inappropriate behaviours as well as increase the likelihood of reporting to be ineffective. We believe this is therefore a systemic issue for the profession.
8. The Bar's culture is influenced by its different structures and ways of working. It should be noted that there are differences, as well as similarities, between different parts of the profession. For example, there are differences between the culture at the self-employed Bar (80% of barristers work at the self-employed Bar) and the employed Bar (20% of barristers work at the employed Bar), where the latter will be influenced by the employment context and employee/employer relationship.
9. There are also differences in culture between practice areas at the self-employed Bar (e.g. between the publicly funded Bar – including, but not limited to, crime and family; and the privately funded Bar – including, but not limited to, commercial and chancery). Differences include levels of resourcing available, working conditions, type of work etc. all of which we believe impact on the behaviour of those in operating within those parts of the system.

10. Differences in culture within the employed Bar may be associated with the fact employed barristers work in very diverse environments ranging from Government Departments to the Crown Prosecution Service to law firms to FTSE companies to NGOs.
11. The following provides some very general context (particularly applicable at the self-employed Bar) which may help explain some of the challenges within the profession. It is based on our direct experience of supporting complaints from barristers and their employees.

Structures:

- **Hierarchies.** The profession is hierarchical with sometimes complex power structures in chambers, within the Inns, specialist Bar associations and circuits, on the bench (and between bench and Bar) and with professional clients (most often solicitors). Power dynamics are complex, and context specific. It is not always obvious where the power is being misused. For example, in some contexts a clerk may be more powerful than a barrister, in others, vice versa; equally, a solicitor may be more powerful than a junior barrister in some circumstances and be less powerful than a senior barrister in others.
- **Small profession.** The size of the profession and limited number of chambers as well as the mobility of barristers (regularly practising in different courts) means people can become 'known' quickly. 'Word of mouth' is one of the significant ways by which a practice is built and the barrister obtains future work. It is inherent in the nature of the profession. This means when something goes wrong 'gossip' (information about an individual) also spreads. This impacts on an individual's reputation, where reputation is critical to professional development. It is worth noting, our experience is that victims/complainants can experience significant reputational damage. For example, we are aware of a barrister facing challenges when trying to join a new set because they made a complaint of harassment in another.
- **Profile of the Bar.** Bullying and harassment is predominantly faced by under-represented groups at the Bar. This is with respect to race and sex in particular. The senior Bar is majority male (although more equal at the junior end, women leave the Bar at a greater rate which means the ratio remains persistently around two men to one woman and is much more marked at the senior end) and women are more likely than men to experience bullying and harassment². Ethnic Minority barristers are more likely to experience bullying and harassment³, they are less

² 41% of female respondents reported experiencing bullying or harassment (in the last two years) compared with 19% of male respondents. <https://www.barcouncil.org.uk/static/5a630b6a-8e91-473f-bfa0cca11b707e42/Bullying-harassment-and-discrimination-at-the-Bar-December-2023.pdf>

³ 43% of barristers from ethnic minority backgrounds reported bullying or harassment compared with 27% of white barristers. <https://www.barcouncil.org.uk/static/5a630b6a-8e91-473f-bfa0cca11b707e42/Bullying-harassment-and-discrimination-at-the-Bar-December-2023.pdf>

likely to report it⁴, and less likely to be believed. The make-up of the Bar impacts on the culture and perceptions of acceptable and unacceptable behaviours. Whilst this impacts Black barristers of both sexes, it impacts and impedes both the retention and progression of Black female barristers, in particular.

- **Referral profession.** The Bar is predominantly a referral profession. Barristers inevitably worry about upsetting the people who can give them work and may influence their ability to join chambers (barrister members of chambers vote on appointments), apply for silk (requiring judicial references) etc. Individuals that can influence careers might include more senior barristers/silks, solicitors, clerks, or chambers' managers.
- **Culture of exceptionalism.** Members of the profession are proud of their position in society and role with respect to upholding the rule of law. This can make it hard for them to recognise there are also issues which the profession needs to address.
- **Chambers' structures.** The self-employed/shared service model of chambers makes it difficult to impose or shift workplace norms and standards of behaviour. It can also easily lead to isolation when perceived 'outsiders' (usually more junior members from under-represented groups who are likely to be less well networked and established in chambers) raise issues or concerns about behaviour. There can be a lack of internal HR expertise in chambers, and although there has been a lot of work done in this area recently by some sets, there remain significant numbers of barristers working out of chambers which provide little in the way of structured organisational support. In addition, the relationship between members and their employees can make complaints difficult to deal with objectively. For example, the way members may view 'their' employee (as someone of lower status/position in the organisation) where the employee may be raising an issue concerning their behaviour; or where an employee (e.g. a clerk) may have been working closely with a member for many years and the success of that member is linked to the employee's compensation (or indeed vice versa for more established clerks – where instructions – and a barrister's income - may be influenced by the clerk⁵).
- **Competitive.** Entry to the profession is very competitive – it is hard to get in and to develop a practice. Students and practitioners can feel reliant on the need for an established member of the profession to support their career – potentially leaving them open to exploitation and harassment. The requirement for sponsorship and mentoring creates a context where bullying and harassment can ferment.
- **Unregulated/unsupervised mini pupillages (work experience).** Students (who can be in a particularly vulnerable position) may secure vital work experience

⁴ TUC research found BME women didn't report because they 'thought their complaint wouldn't be taken seriously (22%), thought that no action would be taken (20%), thought that it could make the situation worse (17%)' <https://www.tuc.org.uk/research-analysis/reports/bme-women-and-work>

⁵ Clerks do have the capacity to suggest to clients a named barrister is unavailable for work and divert instructions on this basis – whilst this is not common practice, it is something barristers may be concerned about.

directly from barristers which can put them at risk, but even when mini pupillages are overseen by chambers, there is limited oversight/safeguarding with respect to their experience. There may be no clear processes for making complaints or raising concerns. We are aware of complaints to universities and chambers by students regarding their experience which have been disregarded/not acted upon.

Nature of Work:

- **Adversarial nature of work.** Barristers are trained to challenge and question evidence. To serve the best interests of their client they are encouraged to find weaknesses in those opposing them. This makes it difficult to challenge inappropriate behaviour and a defensive and legalistic response to raising a concern can be experienced as ‘gaslighting.’ Bullying can be dismissed as ‘robust advocacy.’ It also means perpetrators may believe they can argue their way out of their bad behaviour.
- **Risk leads to risky behaviour.** The highs and lows of practice can be extreme, winning or losing a case can influence perceptions of self and behaviours. For example, winning can lead to a surge in sexual confidence/invincibility, whilst losing can lead to a lack of confidence/vulnerability. We are aware of circumstances where requests for mentorship or support - either offered or asked for - has been mis-interpreted as signalling interest in a sexual relationship.
- **Culture of late nights/alcohol/hotels etc.** Barristers are often required to work away from home, as well as working late into the night often in intimate circumstances (hotel rooms) with colleagues. At the end of cases there are often celebrations where alcohol is consumed. Examples of incidents include where a victim may have felt unable to refuse a sexual approach because they have been ‘manoeuvred’ into feeling they are responsible because they are in a senior member’s hotel room/rooms in chambers late at night⁶.
- **Exposure to vicarious trauma through work.** This is particularly relevant to some practice areas. We would argue the brutalising nature of the work can have an impact on professional behaviours and presentation. For example, regular exposure to serious sexual assault may damage perceptions of acceptable standards of behaviour.
- **System is under pressure.** Underfunding of the profession, particularly but not exclusively, the criminal justice system, excessive workloads, short deadlines; poor facilities etc. means barristers and others – solicitors as well as judges – are often stressed and this can impact on tolerances and behaviours. This in relation to perceptions of bullying, specifically.
- **Increase in litigants in person.** The last decade has seen an increase in individuals who represent themselves in court, particularly in family cases⁷.

⁶ This also impacts on willingness to report as victims do not believe they will be believed given the circumstances (their location/time of night/alcohol imbibed).

⁷ The Law Society, ‘Perfect storm brewing in the Family Courts’ 2024 - [Perfect storm brewing in family courts as rising numbers represent themselves | The Law Society](#)

Litigants in person themselves face barriers throughout the legal process, which was not designed with lay people in mind, and the challenge of representing yourself can be overwhelming. However, barristers have also reported that litigants in person will sometimes engage in bullying and abusive behaviour towards them, including reports of racist behaviour, questioning counsel's integrity and even threatening to publish information about counsel online.

- **Learned behaviours.** Junior members of the profession who experience poor behaviours in their early career sometimes repeat abusive patterns when they are in positions of power.

Barriers to reporting/tackling reports of bullying & harassment:

- **Difficult profession to resolve issues informally.** Due to the nature of their work, informal complaints processes can be tricky for self-employed barristers to work with. Complaints are often channelled directly to a more familiar formal (and adversarial) process, where a barrister may feel better able to apply their law/advocacy skills. Those who are at the receiving end of complaints can call upon barrister allies to assist. This can make it difficult to 'nip things in the bud' informally.
- **Tribunal Findings have a chilling effect.** There may be a perception that mitigation features too strongly in decision making (rather than the impact of the behaviour on the complainant) - see Bar Council comments in [Law Gazette June 2021](#)). Also, it can sometimes seem that too much weight may be given to articulate respondents vs less articulate and vulnerable complainants which may well have a chilling effect on complaints. Overall, there are too few examples of BTAS taking a strong exemplary approach, that might be likely to act as a deterrent to others.
- **Chambers' constitutions can prevent action.** Constitutions can stand in the way of action where there has been a finding against a member. This may include no sanction provision beyond e.g. asking someone to leave. This can sometimes result in no action where the only action available is considered disproportionate. Other examples of barriers presented by constitutions may include a requirement for an all chambers vote to remove a member - requiring consensus and full disclosure.
- **Financial implications for a chambers.** Where the person reported is a senior member, they often have greater influence internally within chambers. If a chambers investigates and sanctions that individual they may leave (or threaten to leave). Further, friends and supporters of the subject of an investigation or subjected to sanction may also choose to exit chambers in solidarity. This can significantly impact on chambers' stability and income. As victims tend to be junior and contribute less financially, they are in a much less powerful position. This can provide a real disincentive for chambers to act effectively.

- **Confidentiality of processes.** The required confidentiality of complaints processes (designed to protect the anonymity of complainants and allow natural justice for a respondent pending the outcome of a process) impacts on the confidence of victims in making complaints, makes it difficult to identify repeat offenders, and makes chambers risk averse in handling a complaint which may lead to reputational damage – a chambers may be unable to explain reasons they have taken certain actions both to their wider membership and more publicly.
- **Concern about disproportionality of consequences.** The perceived catastrophic career consequences (loss of reputation) for the perpetrator prevents reports, particularly where an incident may be perceived as ‘minor.’
- **Saying nothing is easier.** For victims and witnesses, as well as those who merely suspect untoward behaviour. We are aware of circumstances where a complainant was made to feel responsible for the difficulties that she subsequently experienced following a decision to make a complaint about a colleague in chambers. These difficulties included both in respect of her relationship with other members of chambers more generally, and when she was required to be in the same room as the respondent at chambers’ functions.
- **Challenge of tackling behaviours of lay clients.** Barristers will on occasion also face bullying and abusive behaviour from lay clients which leaves counsel in a particularly difficult position. Barristers have an ability to withdraw from cases under RC26.8 if there is a substantial reason to do so, which may be engaged if the behaviour of their client is particularly egregious. However, barristers also have a regulatory obligation to act in the best interests of their client and similarly may feel a financial pressure to continue with a case.
- **Lack of Bystander Intervention.** Not intervening for fear of retaliation or to prevent an awkward situation is commonplace. This lack of intervention contributes to the conducive context for inappropriate behaviours.
- **Evidence Requirements.** There seems to be an unspoken requirement for unambiguous evidence before action can be taken. Barristers appear disinclined to make a report if they do not have incontrovertible ‘proof’ regarding the facts of an incident. This means concerns are not raised, even where someone’s inappropriate behaviour may be common knowledge. For example, we are aware of incidents where young women have been warned to avoid certain members of the profession.
- **Bullying is different to harassment.** People know (but do not necessarily follow) the rules in relation to harassment, but they find bullying hard to identify, often the behaviour is minimised and presented as robust advocacy. The adversarial nature of the work and the workplace allows people to wriggle out of accepting something as bullying.
- **Duties to Client and Court.** The duty to the client/court/justice can sometimes prevent people from taking a stand. Barristers are required to put the interests of their client and duty to the court above their own interests. This means they may

be reluctant to complain/remove themselves from situation where they are experiencing inappropriate behaviours.

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

12. Here we will consider harassment and bullying separately.

Harassment

13. Law and Regulation.

- (i) Law. The provisions in the [Equality Act 2010](#) (Section 26) and [Protection from Harassment Act 1997](#) are clear. Harassment is clearly defined.
- (ii) Regulation. The profession is also governed by the [Bar Standards Board handbook](#). The handbook mirrors provisions in the Equality Act 2010.

14. Barristers are governed by ten core duties. We believe that three of the ten duties are engaged by harassment, two indirectly and one directly.

- CD3 You must act with honesty, and with integrity.
- CD5 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession.
- **CD8 You must not discriminate unlawfully against any person.**

15. There is currently a specific regulation for discrimination (rC12)

*rC12: 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 and maternity.*

16. Serious Misconduct. The Handbook has reporting obligations on barristers with respect to reporting serious misconduct by themselves and others. Harassment is clearly signposted as an example of serious misconduct.

rC66: Subject to your duty to keep the affairs of each Standards Board client confidential and subject also to Rules rC67 and rC68, you must report to the Bar Standards Board if you have reasonable grounds to believe that there has been serious misconduct by a barristers or a registered European lawyer, a BSB entity, manager or an authorised (non-BSB) individual who is working as a manager or an employee of a BSB entity.

rC67: You must never make, or threaten to make, a report under Rule rC66 without a genuine and reasonably held belief that Rule rC66 applies.

rC68: You are not under a duty to report serious misconduct by others if:

- .1 you become aware of the facts giving rise to the belief that there has serious misconduct from matters that are in the public domain and the circumstances are such that you reasonably consider it likely that the facts will have come to the attention of the Bar Standards Board; or*
- .2 you are aware that the person that committed the serious misconduct has already reported the serious misconduct to the Bar Standards Board; or*
- .3 the information or documents which led to you becoming aware of that other person's serious misconduct are subject to legal professional privilege; or*
- .4 you become aware of such serious misconduct as a result of your work on a Bar Council Advice line.*

rC69: You must not victimise anyone for making in good faith a report under rC66

And guidance,

gC96 Serious misconduct includes, without being limited to:

- .2 assault or **harassment** (CD3 and/or CD5 and/or CD8);*

17. The requirement for an anti-harassment policy for chambers is explicit in the Equality Rules (rC110. 1.j)

rC110: You must take reasonable steps in relation to your chambers or BSB entity

- .1 there is in force a written statement of policy on equality and diversity; and*
- .2 there is in force a written plan implementing that policy;*
- .3 the following requirements are complied with:*

Harassment

- .j chambers or BSB entity has a written anti-harassment policy which, as a minimum:*
 - .i states 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.*
 - .ii sets out how the policy will be communicated;*
 - .iii sets out the procedure for dealing with complaints harassment*

18. [Guidance](#) is available from the BSB in relation to a harassment policy.
19. There is also [guidance in tackling harassment as well as a template policy](#) available from the Bar Council. There is also a guide [on inappropriate behaviours](#).
20. The Bar Council offers regular training on [Equality & Diversity](#) and [Tackling Bullying & Harassment](#) to the profession. Training is delivered as a generic course at bar council both online and in-person, as well as bespoke for chambers at their request. There are costs associated with attending or commissioning training which may be

perceived as a barrier to some chambers. Both training courses refer to the law, regulations and discuss common scenarios.

21. Both Bar Council training and guidance reference the new positive duty to prevent harassment.
22. The BSB is now [consulting on revisions](#) to rules covering harassment and discrimination, specifically CD8 and removing rC12 (arguing this duplicates legal requirements and is therefore not required). The Bar Council is currently considering proposals but has concerns about any changes which make obligations with respect to harassment and discrimination less clear.

Bullying

23. Law and regulations in relation to bullying are less clear. The Bar Standards Board makes no explicit reference to the term bullying in its Handbook.
24. The Bar Council provides a [definition \(ACAS\) and guidance on its Wellbeing at the Bar website](#) and on its [main website](#) provides guidance to the profession on steps to take in relation to judicial bullying behaviours.
25. **Judges.** Significant numbers of barristers complain that they experience bullying behaviour from members of the Judiciary. The Judicial website has published codes e.g. [Guide to Judicial Conduct](#) and has a [Statement of Expected Behaviour](#) in relation to professional and other court users. The [Judicial Conduct Investigations Office](#) (JCIO) process is responsible for handling complaints against judges. Anecdotally, we are told that barristers have not found either formal or informal complaints processes with respect to dealing with complaints of inappropriate judicial behaviour satisfactory or effective.
26. **Professional Clients (Solicitors).** Professional clients are governed by [codes of behaviour \(Principles\)](#) set down by their regulator the [Solicitors' Regulation Authority](#) (SRA). Solicitors are expected to behave in a way that 'encourages equality, diversity, and inclusion (Principle 6). Complaints about solicitors can be made to the SRA.
27. **Employed Barristers, Clerks and Chambers' employees.** Standards of behaviour will be outlined in any employers' employment policies in line with employment laws and protections. The extent to which these are readily available to employees (and training provided on compliance) will vary from organisation to organisation.
28. **Inter-relationship between law, codes and employers/chambers and regulators.** It is not always clear to complainants and those enforcing policies and regulations (i)

who is responsible for a handling a complaint; (ii) if processes e.g. within Chambers and the BSB can run concurrently (without compromising the other); and (iii) the relationship between different processes and sanctions. This risks confusion and a complaint ‘falling through the gap’ – increasing the chances that an incident will not be dealt with properly.

29. We consider either (i) barristers’ awareness of the law, regulations and reporting requirements is low; and/or (ii) members of the Bar do not routinely comply with the regulations or do not find them fit for purpose given the low number of actual reports made to chambers/the regulator/JCIO/SRA in comparison to informal reports received via surveys, training discussions and records submitted to Talk to Spot.
30. We note there is no mandatory training requirement for barristers on either bullying or harassment. This is something is something that should be considered.

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?⁸

31. We do not believe barristers sufficiently understand bullying and harassment as a form of discrimination and one of their Core Duties (CD8) which must be complied with.
32. We do believe barristers sufficiently accept harassment is a breach of professional conduct rules.
33. We believe recent BTAS findings may also cloud the Bar's understanding of acceptable/unacceptable behaviours. The Tribunal appears reluctant to impose regulatory sanctions in the absence of a criminal conviction. Further there is an apparently high threshold placed on complaints of this nature. This will have a chilling effect on those considering a report.
34. We accept that providing examples of behaviour that is or is not harassment or bullying can be difficult as these behaviours can be context specific. We also accept that differentiating between what might be perceived as 'low level' harassment and 'serious' harassment is problematic in and of itself. However, we believe the blanket definition of all harassing behaviour as 'serious misconduct' in the BSB Handbook may have a chilling effect on reports of incidents of a lower order (e.g. an inappropriate/misplaced comment in a chambers social setting). This may lead to such behaviours being ignored. Behaviours that are not addressed may then escalate and become more serious. Lower order behaviours do need to be addressed, but a less formal rigid process to deal with it might be more appropriate. We do however accept this view is potentially controversial.

⁸ [BSB Code of Conduct](#)

What is the impact of bullying, harassment, and sexual harassment on those subject to such misconduct?

35. Those who use our helplines and Talk to Spot report the impact of bullying behaviours as:

- Leading to a loss of confidence
- Being embarrassed
- Feeling belittled
- Feeling humiliated
- Feeling helpless
- Feeling useless
- Being ashamed
- Being upset and anxious about returning to court
- Feeling overwhelmed
- Feeling tearful
- Feeling shaken
- Being confused and shocked
- Feeling insecure
- Feeling angry for not asserting themselves

Quotes include:

‘...Hot, sweaty, shaking, humiliated, tearful and upset.’

‘...I felt like I was failing my client and that I didn't deserve to be a barrister and that I will never be clever enough.’

36. Those that are subject to harassing behaviour have reported consequences including ill-health and suicidal feelings and overwhelming fear of the respondent (as likely to come after them and destroy them/their career) and a lack of confidence in the system, including a view that the system (process for making a complaint) is corrupt and designed to protect a perpetrator.

37. The impact of harassing behaviours on victims' careers includes:

- Students decide not to come to the Bar⁹
- Barristers (particularly those) from under-represented groups leave the profession¹⁰

⁹ Anecdotal reports to the helplines and Talk to Spot, including from students intent on becoming barristers being put off after experiencing harassment

¹⁰ Anecdotal reports to BC helplines and Talk to Spot. See also Fawcett Society research into the impact of harassment

<https://www.fawcettsociety.org.uk/Handlers/Download.ashx?IDMF=8eabc7f1-07c0-4d7e-9206-de431524301e>

- Barristers feel forced to leave their chambers (potentially moving to a less prestigious set/losing access to work)
- Employees leave their employer (Chambers)
- Careers are damaged due to a victim losing confidence.¹¹
- Those subjected to this behaviour tell others - and this damages the reputation of the profession. They will also say complaining is not worthwhile making it more difficult for regulator/others to tackle poor behaviour.

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

38. Yes. Those counsel subjected to bullying behaviour in the courts tell us that clients then question the fairness of the proceedings (this then becomes an access to justice issue).
39. Talented people (both barristers and their employees) leave the profession. Some talented people may not join the profession in the first place.
40. There is a huge cost to chambers in managing the fall-out of an incident – both in terms of time spent, expense, and morale.

Reporting mechanisms, resources, and sanctions

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

41. Barriers to reporting are covered in Para 11.

What mechanisms could be put in place to mitigate any repercussions against a complainant following them making a report of bullying, harassment, or sexual harassment?

42. We accept it is a significant challenge to set up a system which is fair to those who are accused of inappropriate behaviour or misconduct while giving complainants the support they need to make reports.
43. The Bar Council believes the following would assist in complaints handling:

¹¹ Anecdotal reports to BC helplines and Talk to Spot. See also Deloitte economic costs of sexual harassment <https://www.deloitte.com/content/dam/assets-zone1/au/en/docs/services/economics/deloitte-au-economic-costs-sexual-harassment-workplace-240320.pdf>

- a) Effective and timely response to complaints
- b) Better/more effective informal mechanisms to reduce the risk of complainants feeling the response is disproportionate to the complaint
- c) More control for complainants
- d) A more victim-centric approach to reports – supported by effective psychological support
- e) Representation for victims through the system
- f) Ensuring the correct (lower) standard of evidence is applied in regulatory tribunals
- g) Exploring ways to address the problem of secrecy which prevents jigsaw corroboration in serious abuse cases (we accept this is difficult)
- h) On call and qualified investigators who can do proper investigations within chambers (to be available to chambers)
- i) An effective supervision model (victims currently carry the full responsibility of holding senior abusers to account and this does not work)¹².
- j) Consideration of how we tackle serious misconduct in the absence of a report.

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).¹³ Is this duty to report known, understood, and implemented in practice?

- 44. Not always. See our response in para 29. We are aware of many cases, where senior members of the profession have been aware of inappropriate behaviours (to the extent they have warned more vulnerable students and barristers to be cautious with certain individuals), yet they have felt unable to report. Barristers may rely on the excuse they think someone else has made a report (rC68.1).
- 45. We also observe a lack of trust and confidence in the Regulator, a lack of understanding of the process as well as too many horror stories of experience of the process circulating in the profession, and this all hinders reporting. It can also undermine the work done by the Bar Council to promote the duty to report.

¹² For example, a model where the BSB can respond to informal/anonymous complaints/reports with proactive investigations or interventions to establish if there is an issue which may require action. E.g. if they hear someone has been behaving badly in chambers, they could approach the chambers and ask if there has been other reports about the person, advise on informal action or take regulatory action. This approach enables the regulator to initiate action on serious misconduct without the need for an individual complainant to carry the process

¹³ rC66 of the BSB Code of Conduct

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?

46. Some support is available, but it is patchy. Much more assistance is needed to support complainants, especially those who are in vulnerable positions or have experienced trauma, who are most likely to be subjected to harassment and bullying.

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?

47. Yes. Complainants should not be in position where they face intimidation by the respondent. Some chambers have this in their own harassment policies, but they are not used enough. We are aware of an incident where a barrister mounted a campaign of intimidation against a complainant who then withdrew the complaint. Chambers were unable to take the matter forward in the absence of a complaint. The BSB has recently introduced rules which give the Disciplinary Tribunal the power to impose interim restrictions on barristers in cases where a finding of misconduct has been made but the decision on sanction has been deferred to a later date. Mirroring that approach in chambers might be sensible.

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?

48. **Regulators.** Due to regulatory independence of the BSB we do not have access to specific information about the prosecution of cases. We are only aware of feedback from both complainants and respondents. Neither find the process operates to their satisfaction.

We commonly hear the following complaints:

- a) Poor communication. Extended periods of little or no contact.
- b) A failure to adhere to published timetables. A victim cannot be expected to expose themselves to the stress of deeply personal and risky process for an extended period (in some cases – years). This is also unfair on a respondent who may be seeking to clear their name. Extended periods increase the chance of witnesses withdrawing and cases collapsing. This is not in the interest of complainants, respondents, or the Bar as a whole - if we are seeking a regime that helps stop these behaviours in the profession.

- c) Errors in execution of the process, failure to follow the published process, as well as administrative errors with significant adverse consequences (e.g. failing to warn complainants when they are disclosing information to respondents)
- d) Failure to explain to a complainant why a case is not being taken forward.
- e) Difficulty in providing as much support to complainants as they may need - particularly in cases of sexual harassment. This may be considered necessary to ensure fair process, but it leaves vulnerable victims of sexual harassment feeling the system is working against them.

49. Sexual harassment and bullying are amongst the most serious reports made to the Regulator and should be prioritised accordingly. We do not consider that such reports get the appropriate priority. We would like to see a different approach to the investigation of sexual harassment and bullying (rather than the addition of a few special measures – e.g. giving evidence by video/behind a curtain - for vulnerable complainants). We would like to see more consideration of the experience of young lawyers when they are cross examined by a senior Silk representing the respondent. Vulnerable complainants are vital witnesses to any investigation or prosecution by the regulator, but they are unrepresented, unsupported which too often leads to them withdrawing and the case collapsing. To address this, we would like to see the adoption and implementation of best practice including victim's codes and representation for complainants.
50. **Judicial Bullying.** We do not believe the JCIO formal reporting process is adequate. It does not consider complaints that are more than 3 months old (counsel are often reluctant to make a complaint until the conclusion of a case which in many cases exceeds the 3-month window and/or barristers are often so traumatised by their experience they are not willing to complain until later) and we have not heard a justification for this 3-month limit. Further it does not facilitate multiple complaints which would demonstrate a pattern of behaviour (commonly judges who are the subject of a complaint will say it is one-off/the fault of a particular counsel). While it is encouraging to see that in the last couple of years publicity is being given to the findings of the JCIO which ought to improve confidence in the system, we also consider that the tiered sanctions short of dismissal (formal advice, formal warning and reprimand) are not widely understood nor are they different in substantive content. As with BTAS for barristers, there are too few examples of the JCIO taking a strong exemplary approach, that might be likely to act as a deterrent to others. We do not know of an example of the highest sanction ever having been applied.

The judiciary's [Statement of Expected Behaviour](#) is useful as it codifies how judges should behave and provides a framework against which a judge's behaviour can be challenged, including giving a complainant the language to describe their experience. For the statement of expected behaviour to have effect, the JCIO and wider judiciary

must act when behaviour falls below the standard set. It is apparent from the continued reports to Talk to Spot that counsel still experience some judges' behaviour as failing to meet the standards set.

51. **Chambers.** Chambers can find it difficult to progress investigations, they have limited expertise and can be unsure as to how best to proceed. Personal relationships within chambers sometimes make it difficult to conduct a fair process. This is particularly the case where there may be a 'family' style culture in a small set – making it harder for a complainant to raise an issue. Investigations in chambers have in the past ended up as divisive and, when conducted by a member of chambers, can leave that member subjected to inappropriate treatment themselves. Sometimes a process will be influenced by powerful factions and financial threats may be made (senior members leaving) if a complaint is pursued/a member sanctioned. We note that all of these challenges can be experienced in lots of different types of workplaces, and are not unique to chambers. In addition, the voting system in chambers (on recruitment, for lateral appointments, for positions of influence) also discourages individual complaints. Finally, those executing the process are not necessarily experts in people management as self-employed barristers and can often be too legalistic and risk averse. Chambers managers trying to professionalise chambers can find themselves as targets for senior members who may argue against change.

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?

52. Sanctions¹⁴ have been strengthened following recent consultation. It is too soon to say if they act as a sufficient deterrent.
53. Some outcomes from BTAS appear perverse, and where judgments are published there is not enough information to form a view or understand the full context of decisions. Overall, it would be useful if greater reasoning were published. It appears that mitigation can be given undue prominence (especially in harassment claims where the impact on the respondent's reputation is cited as 'punishment enough') – this has a chilling effect on complainants' willingness to come forward.
54. The lack of victim impact statements makes it hard to see how victims get their voice heard in the process – it appears to be accused-centric. We feel this could be easily remedied and would have a positive impact on those making complaints.

¹⁴ BTAS Sanctions Guidance (2022) <https://www.tbts.org.uk/policies-guidance-and-publications/guidance/btas-sanctions-guidance-consultation-2021/>

Potential reforms to tackle bullying, harassment, and sexual harassment

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, at the Bar more widely to assist in preventing such misconduct?

55. Action is being taken across the Bar to tackle these behaviours. The judiciary, Inns, circuits, SBAs, chambers, representative groups, and others have published research, put in place charters and expectations of behaviour, provided training and events, and put in place support systems.
56. There are additional actions or activities which we believe would support prevention:
- a) **At court.** Given the number of reports sent to Talk to Spot relating to the behaviour of judges and its impact on counsel, as well as the working lives survey returns, there is a pressing need for significant change.
- It would be useful if there was a mechanism to call in judicial HR or the JCIO to observe where there have been multiple informal reports about the same judge. This would facilitate proactive supervision and reduce reliance on individual complainants coming forward along with formal mechanisms.
 - Increased curiosity and research into judicial behaviours and bullying would enable the judiciary to identify good and bad practice, and where judges fail to meet the standard set in the statement of expected behaviour. The Talk to Spot tool could support in the identification of problem areas/behaviours to enable this research. It needs to be followed up with high-level judicial support for change.
 - More effective (visible) enforcement of the code of conduct and statement of expectations would send a powerful message to the judiciary that poor behaviour, bullying and harassment will not be tolerated.
 - Increased awareness by judges of the behaviours of litigants in person or lay clients and their impact on barristers, including being prepared to intervene or offer support when something isn't right.
- **JCIO.** The JCIO process is not fit for purpose for these types of complaints. A number of changes could be made to the JCIOs reporting and investigation processes which would increase effectiveness and send a strong message to the Bar that the JCIO, and by extension the judiciary, is committed to tackling these behaviours. These include:
- The JCIO process should be adapted, and a bespoke pathway created for barristers to raise concerns about judges. This would acknowledge the uniquely challenging position barristers find themselves in when they need to raise a concern about a judge who they are currently or will likely be appearing before in the future.
 - The removal of the JCIO's three-month limit on reporting judicial bullying and misbehaviour would enable more reports where counsel need to wait for the conclusion of a case, or a period of reflection/recovery is needed before deciding to take formal action.

- Facilitating the joining up of multiple reports about the same judge would enable the JCIO to identify patterns of behaviour and locations of prevalence.
- The JCIO should put in place an online reporting pathway (on the model of Talk to Spot) to facilitate confidential and anonymous reporting.
- Review of the sanctions available to the JCIO and greater publicity as to their content.

b) In the robing room. Many of the dynamics which provide the context for bullying and harassment play out in courts and the robing rooms. Challenging bullying and undermining behaviour, especially when targeted at less experienced or less well supported barristers is essential. This includes:

- The Bar should agree a statement of expected behaviours, mirroring that of the judiciary. This would create a framework against which behaviour which falls below the standard but doesn't meet the high bar for regulatory action, can be addressed.
- Creating a culture of bystander intervention when bullying behaviours are witnessed. Contemporaries are often on the ground and in the perfect position to call out these behaviours. These actions would send a strong message to those who behave in an unacceptable way (that their behaviour isn't acceptable) and victims (that they will be looked after)

c) In chambers. Many barristers who have been bullied or harassed turn to their chambers to support them and tackle the problem. But too often this is not effective. We would like to see:

- Increased guidance and support given to heads of chambers and professional staff to handle complaints and conduct effective investigations. This may include access to external investigators who understand the Bar and the set-up of chambers.
- Access to appropriate and Bar-specific psychological support for complainants which could be accessed through chambers.
- Enhanced requirement for and support of Equality and Diversity Officers to act in chambers
- The introduction of codes of conduct/statements of expected behaviour which lead to culture change within chambers.

d) At the wider Bar. There are pervasive cultures at the Bar which reinforce or create the context for these behaviours to continue and not be addressed. These include:

- Despite the multiple reports, there remains a reluctance to accept there is a problem with these behaviours at the Bar. The first step to changing the culture and tackling the problem is for the Bar to accept there is a problem and to agree to act.
- Safeguarding. The Bar should take a safeguarding approach which proactively looks for poor behaviour and facilitates rapid intervention without waiting for individuals to report. This could include encouraging

and supporting bystander intervention and training to foster effective allyship. This would demonstrate the new duty to prevent sexual harassment¹⁵ is being taken seriously,

- Tackling the structures which protect powerful bullies and harassers – change can't happen without this. This also requires more support for junior and under-represented barristers when they raise concerns.
- Addressing the amount of alcohol consumed, and its impact on decision making, risk factors for harassment and sexual harassment along with the impact of alcohol on wellbeing more broadly. There needs to be a move away from alcohol being ever-present and the most likely way to celebrate success or bring people together.

Reducing inequality and improving access for under-represented groups is known to have a positive impact on bullying and harassment in the workplace¹⁶, and the Bar has significant work to do in this area.

¹⁵ <https://www.equalityhumanrights.com/guidance/sexual-harassment-and-harassment-work-technical-guidance>

¹⁶ See Fawcett research <https://www.fawcettsociety.org.uk/tackling-sexual-harassment-in-the-workplace>

Appendix 1

Talk to Spot

Talk to Spot is an online tool to support anyone working at the Bar to confidentially and (if they want) anonymously raise concerns about inappropriate behaviour and take action, whether they have experienced or witnessed the behaviour.

Discrimination, Bullying and Harassment – where Talk to Spot fits in

Many incidents of bullying, harassment or discrimination at the Bar go unchallenged and unreported. This is completely understandable – speaking up can be scary, risky and isolating.

Talk to Spot is a way for people who have experienced these behaviours to raise the alarm and get support to take the next step. And because it is an online, confidential tool, it gives everyone working in and around the Bar a secure and constructive way of tackling unacceptable behaviours.

Making a record on Talk to Spot is not the same as making a formal report. It is a way of raising a concern and getting support to decide on what to do next.

How does it work?

Talk to Spot is a completely secure web platform which helps someone make a record of an incident.

Once they open the website, the platform will ask them a series of questions about exactly what happened, who did it, who saw it, where and when it happened. It is simple to use, reporters can share as much or as little information as they want – they don't even have to give their name if they would like to remain anonymous.

Once they are put all the information in, they will be given a date stamped record of the incident.

No one else will see it at this stage, and the reporter decides what to do next.

If they want, they can submit the record to the Bar Council team who will then reply via the web platform offering one-to-one support. This may include telling them how to make a formal report to the appropriate regulator or offering to send the record on their behalf. There is also a range of other support the team at the Bar Council provides.

When someone submits a record to the Equality and Diversity team at the Bar Council, it can be done completely anonymously, and support can be provided without any names being shared.

No records are shared with a regulator or anyone else without the permission of the person who made the record.

Building a picture of harassment and discrimination at the Bar

Reports on Talk to Spot have enabled the Bar Council to build a picture of what is happening around the Bar and to intervene when we see patterns of inappropriate behaviour.

The isolation experienced by people who have been bullied, harassed and discriminated against is one of the barriers to challenging perpetrators and dealing properly with toxic cultures. When the Bar Council receives multiple anonymous reports about the same individual, Spot has made it possible for us to go back to reporters and let them know others have had the same experience. This information has empowered individuals to take their complaint further in some cases and has at the very least let them know they are not alone.

[More information about Talk to Spot](#)