



## Bar Council Guides: Advice to the Bar about bullying by judges

Bullying of barristers is always unacceptable.

When bullying by judges occurs it presents additional challenges. Those who are a target of bullying may feel unable, or particularly reluctant, to do anything about it, even though the impact may be particularly acute. At the same time, judges have an important independent constitutional status and are removable from office only for good reason.

The Bar Council recognises that the right approach to dealing with judicial bullying presents difficulties and complications that do not apply in other contexts.

It is not suggested that every judge is guilty of bullying, far from it. The Bar Council believes only a very small number of judges are bullies. It is recognised that judges have to work under significant pressures and they are no more immune from the effects of stress than the rest of us. Nonetheless, however small the number of occasions when judicial bullying occurs, it is always unacceptable. Whatever the circumstances, there is no excuse for bullying, or for tolerating it. It has no place in the rule of law, in the legal profession or in our courts. It must be addressed if it happens.

The Bar Council provides detailed guidance and support for those who are the target or subject of bullying (as well as harassment and discrimination) in two ways:

- Online at the Bar's Wellbeing at the Bar website <https://www.wellbeingatthebar.org.uk/problems/bullying-barristers/>; and
- By email or over the telephone, through the Bar Council's Equality & Diversity (E&D) helpline (contact details at <https://www.barcouncil.org.uk/supporting-the-bar/equality-and-diversity/equality-and-diversity-helpline/> or call 0207 611 1426).

The online materials **should be the first port of call**. Barristers can find the specific guidance by expanding the "**How to deal with judicial bullying**" and "**Judicial Complaints and Investigations Office**" boxes on the page reached from the Wellbeing at the Bar link set out above.

The Bar Council is also looking to adopt a system that uses technology to help overcome barristers' understandable reluctance to report bullying, or to take action about it. This is being developed at the moment and will be publicised shortly, once it is in place.

This letter identifies in more detail the options already available for reporting and dealing with judicial bullying. By publicising and giving these options the firm backing of those

who lead our profession, it is hoped that the profession as a whole will encourage barristers to take action, whether they are the victim of bullying or witness it, and support them in the process.

The Bar Council wishes to encourage a culture of awareness and openness about bullying, and the serious impact that it can have on those who are bullied. With this issue now in the open, it is hoped that barristers at all levels will realise that they are not alone in their experiences and should not have to 'tough it out' against bullying. We need to be able to discuss this without fear of being seen as weak or incompetent. Bullying can and does happen to the strongest and best of us. We must continue to talk about it, and to be proactive in raising our concerns with colleagues.

Chambers and other organisations are encouraged to include advice on bullying by judges in the mentoring and support that they offer to more junior members, and not to be too shy about making confidential inquiries of other barristers and chambers if a local judge appears to be behaving out of line.

### **What do we mean by bullying?**

Barristers are ordinarily well able to, and do, take a sensible and responsible view of what judicial conduct is and is not proper, but sometimes there are misconceptions about bullying. To be clear -

*Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power such as can make a person feel vulnerable, upset, humiliated, undermined or threatened. It does not need to be intentional.*

While all incidents must be judged in context, bullying involves behaviour such as –

- personal abuse,
- contemptuousness,
- relentless criticism,
- demeaning behaviour,
- sarcasm,
- unreasonable demands,
- intemperate language,
- comments designed to embarrass or humiliate.

It may also include questioning counsel's competence or professionalism, or asking counsel to justify him/herself, in circumstances that are unfair.

A simple expression of judicial irritation or frustration is not bullying; nor is a fair and measured criticism of the conduct or work of counsel, or of someone else that is directed towards counsel. In themselves, judicial firmness, judicial corrections or criticism of improper or inappropriate behaviour in the courtroom (or elsewhere), and legitimate judicial criticism of genuine failings (whether by counsel or anyone else), do not constitute bullying. Yet any of these *may* take place in a context or manner that crosses the line.

### **Fear of the consequences**

There is widespread fear at the Bar that any complaint – even an anonymous one – will somehow lead to consequences for the complainant and/or the target of the bullying.

We understand this fear, but would ask you to bear in mind the following:

- If we do not take action, it will be very difficult for us to stamp out bullying, and others will continue to suffer.
- While there may be cases in which an individual barrister has been singled out by an individual judge, our combined experience of the reports that reach us suggests that you are unlikely to be alone, or the only person to have experienced bullying by a particular judge. It may take just one individual to step forward for others to be encouraged to do so.
- In most cases, it should be possible for action to be taken on a strictly confidential basis, which avoids the possibility of identification.
- If you make a genuine and well-founded complaint, and do so in a responsible way, then you will have our full backing, as leaders, in doing so. Where our support is needed, you will have that support. The Bar Council's E&D helpline (see above) is also there to advise and support anyone going through this, including those who decide to make some form of complaint.
- It has been made clear to us by the Senior Presiding Judge, Lady Justice Macur, that it is not acceptable for any barrister to suffer adverse consequences as a result of making a genuine and well-founded complaint, in a responsible way. She is committed to ensuring that this does not happen.

We also believe that the fear of adverse consequences is often misplaced and can become exaggerated in our own minds. We hope that if you follow this advice, you may be reassured about your fears, although we recognise that many may still be nervous about making a complaint.

### **What to do**

The right approach to any particular incident of bullying will depend on the nature of the incident.

#### **1) Action at the time**

Whatever action may be taken later, we would urge barristers to address bullying whenever it happens, if this is possible. This applies whether you are the target or simply witness it.

A timely response, if it can be given, may be more effective both in addressing the incident itself and in helping the judge to understand the impact (and, at times, how the judge's behaviour is coming across more generally).

There may be times when the dynamics of a hearing make this difficult, but we should not be standing by, or seen to be standing by, when bullying happens. We may also have a duty to address it, as an aspect of either our duty to the court in the administration of justice (Core Duty 1), and/or our duty to act in the best interests of each client (Core Duty 2). This may

include being firm (but polite), defending yourself, and correcting the position in front of your client, if the judge permits.

Care may be needed, though, to avoid overreaction in the heat of the moment. If there is the opportunity to do so –

- Consider the incident carefully away from that moment, so as to give yourself the perspective that time and a bit of space affords; and
- Ask someone else, who has witnessed the behaviour, for an objective view of what went on.

You cannot control the judge's behaviour, but it is important to ensure that your own standards of performance are not affected by what has happened and are maintained as far as you are able.

If you are a senior practitioner, or in a leadership position, and are in court at the time of the bullying then please consider taking issue with it at the time, especially if the target is a more junior practitioner. Your intervention may help to reduce the impact on the target and show them that the senior members of the profession are prepared to stand up and be counted in support of our more junior members.

Always be mindful though of the effect it might have upon the victim of the bullying and their client and be alive to a potential loss of confidence in the barrister by the client or of an unseemly court room scene developing. If you have bullying reported to you at court shortly after it has occurred, then it may be more appropriate to enquire of the more junior practitioner if they would appreciate intervention.

## **2) Make a note**

Make a contemporaneous note of what took place. A good way to do this is by email to yourself which will date and time the note. If you decide to take further action, you will be asked about facts: everything that took place, when, where, who witnessed it and how you felt as a result. In some cases, you may wish to consider obtaining a transcript of the hearing.

## **3) Seek advice and a 'sense check' from others whom you trust**

Whether or not you were able to address the incident at the time, do discuss what you have experienced with those you trust. Seek their advice, a more objective perspective, and perhaps a 'sense check'.

If you are still unsure or find it difficult to discuss this with those you know, then please also consider contacting the Bar Council's E&D helpline for advice and guidance (contact details available through the link on page 1 above).

Try to assess objectively what has happened. If after this you feel sure you have been bullied, consider what your next step might be.

#### 4) Consider a formal complaint about serious incidents and persistent behaviour

Serious incidents of bullying and persistent bullying are likely to justify a formal complaint about the judge. The Judicial Conduct and Investigations Office (JCIO) deal with formal complaints about judicial behaviour. It is important to acquaint yourself with the JCIO's approach to complaints which is available at:

<https://judicialconduct.judiciary.gov.uk/making-a-complaint/>

before you make your decision, including the time limit on reporting a complaint which is 3 months from the date of the incident. You can also see previous adjudications by the JCIO at this website.

#### 5) In the absence of a formal complaint, do not do nothing

There are several informal ways of tackling a bullying issue. Please think seriously about them.

In simple terms, informal routes involve approaching – confidentially – someone in a position of leadership in the profession, whether their leadership role is formal or informal. They should be able to help you to identify your options and decide what action might be taken, whether by you, by them, or by someone else. For example, you might consider the following:

- Approaching someone in a leadership or senior position in chambers (it does not have to be your Head of Chambers) or in whatever organisation in which you work, or another senior practitioner whom you trust. They may be able to take action themselves, along the lines outlined below, or to approach someone else on your behalf.
- Approach the Bar Council's E&D Helpline (for which you can find the contact details through the link on page 1 above). This is a strictly confidential service that is there to help you. The person you speak to will not disclose anything that you say to anyone outside the small circle of those providing this service, without your prior consent. Nor will they take any action in response to what you tell them, unless you wish them to do so.
- Raise it with someone else outside chambers in a leadership or other senior position, such as:
  - a. The Leader of your Circuit, particularly in the case of a judge sitting in crime or family.
  - b. The Leader of your Specialist Bar Association, particularly in the case of a judge sitting in the relevant area of practice.
  - c. The Chair or Vice Chair of the Bar, or Chair of the Bar Council's Equality and Diversity Committee.