



Addressing Bullying and Harassment at the Bar

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Introduction

1. In July 2019, the Bar Standards Board (BSB) initiated the *Addressing Bullying and Harassment at the Bar* project. We were aware that some features of the professional environment at the Bar can increase the risk of bullying and harassment¹ and discourage the reporting of those behaviours. Our principal aims

¹ It is worth noting what is meant by 'bullying and harassment' for the purposes of this report.

In the BSB Handbook, 'harassment' has the same meaning as in section 26 of the Equality Act 2010. This definition is relatively broad, covering situations of unwanted conduct related to a relevant protected characteristic and unwanted conduct of a sexual nature or that is related to gender reassignment or sex.

However, when engaging with barristers and others to gather evidence as part of this project, we have not been prescriptive about whether particular instances of conduct fall within the definition of 'harassment'. This was with

were to identify how we can influence this culture in a positive way and to ensure that we have systems in place to handle effectively reports of such behaviours made to us.

2. That the Bar has an issue with bullying and harassment is well evidenced by research undertaken by the BSB and others. In 2016, we published *Women at the Bar*², in which 40% of female barristers reported experiencing harassment during their career; women barristers from racially minoritised groups were more likely to experience it than others. In the Bar Council's *Barristers Working Lives 2017*³ survey, 33% of female barristers, 34% of barristers from racially minoritised group and 37% of barristers with a disability said that they had personally experienced bullying, discrimination or harassment in the last two years. In May 2019, the International Bar Association published *Us Too? Bullying and Harassment in the Legal Profession*⁴, following the largest-ever survey on bullying and sexual harassment in the legal profession. In the UK, 62% of female respondents and 41 per cent of male respondents reported that they had been bullied (compared to 55% and 30% globally). 38% of female and 6% of male respondents reported being sexually harassed (compared to 37% and 7% globally). 74% of cases were not reported.

3. These studies and other research evidence point towards bullying and harassment being not only prevalent at the Bar but also under-reported, whether to the regulator, employers, chambers or others. This is consistent with low numbers of bullying- and harassment-related reports to the BSB.

4. This report outlines work undertaken by the BSB to develop our understanding of these issues and changes we will be making to our approach, in order to increase reports of bullying and harassment to us and others, to ensure that we have effective systems in place to handle those reports, and to encourage the profession to tackle the problem effectively.

Evidence gathering undertaken

5. In October 2020, we published *Bullying, Discrimination and Harassment at the Bar*⁵, a qualitative study undertaken by YouGov on our behalf ('the YouGov

a view to facilitate discussion and to generate evidence about behaviours which barristers and others feel constitute harassment, and which lead individuals to feel harassed, even if that behaviour might not fall within the legal definition. As such, within this report 'harassment' should be understood to encompass a broader set of misbehaviours, including sexual misconduct that may not meet the threshold of sexual harassment in law.

Unlike 'harassment', 'bullying' lacks a definition in law and is not defined or referred to in the BSB Handbook. Though working definitions do exist, again we have not been prescriptive about whether particular instances of conduct fall within the parameters of any such definition when engaging with stakeholders.

² <https://www.barstandardsboard.org.uk/uploads/assets/14d46f77-a7cb-4880-8230f7a763649d2c/womenatthebar-fullreport-final120716.pdf>

³ <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

⁴ <https://www.ibanet.org/bullying-and-sexual-harassment>

⁵ <https://www.barstandardsboard.org.uk/uploads/assets/896b55e0-72b2-4388-be291617735b8a25/e5923260-c53a-4176-8b6bc7d4c22f0fb4/October-2020-BDH-at-the-Bar-full-report.pdf>

research'). The study involved a series of interviews with barristers and non-barristers who reported having experienced or witnessed workplace bullying, discrimination and/or harassment at the Bar. The aim of the YouGov research was to explore potential drivers of these behaviours within the context of the Bar, the impacts that they have on the lives and careers of those affected, and barriers and enablers to reporting, in addition to identifying potentially unmet support needs.

6. From January to June 2021, we ran a series of six roundtable meetings with stakeholders grouped as follows: other legal services regulators in the UK, regulators of other professions, Pilot Harassment Support Scheme⁶ participants, Bar regulators in other jurisdictions, Bar special interest networks, and Bar representative bodies. The overarching objectives of the roundtables were: to engage stakeholders in a critical discussion about our reporting arrangements for bullying and harassment⁷; to improve our understanding of stakeholders' work to address bullying and harassment at the Bar; to explore opportunities for collaboration where appropriate; and to canvass stakeholders' views on how the BSB could develop arrangements for considering and addressing reports which would increase confidence about raising such matters with the regulator.

7. In order to better understand barristers' views on the duty to report the serious misconduct of others ('the duty to report') in cases of bullying and harassment, we asked the Bar Council to include the following three questions in the *Barristers' Working Lives 2021*⁸ survey:

- a) Have you ever reported or disclosed an incident of harassment or bullying at the Bar?
- b) Have you ever disclosed an incident of harassment at the Bar to another barrister, either to seek a resolution of the problem or to ask for guidance?
- c) To what extent was your decision not to disclose an incident of harassment to another barrister influenced by the duty to report serious misconduct in the BSB Handbook?

8. We evaluated our Pilot Harassment Support Scheme Waivers ('the Pilot'), which was launched in October 2018 in response to concerns that the duty to report may mean those affected are unwilling to seek support from other barristers who would then be obliged to report the misconduct to the BSB. These concerns were voiced by many stakeholders, including the Bar Council and the Inns of Court ('the Inns').

9. The Pilot aimed to test schemes which allow the Bar to provide support to those who may have experienced bullying or harassment, without engaging the duty to

This study and other evidence-gathering activities undertaken under the ambit of this project, refer to discrimination in addition to bullying and harassment. In these instances, the activity has generated evidence which has applications beyond this project. The BSB is currently running a programme of work relating to equality, diversity and inclusion and is designing an Equality and Access to Justice Strategy 2022-2024.

⁶ A description of the Pilot Harassment Support Schemes is provided at paragraph 9

⁷ See rC66 of the BSB Handbook: <https://www.barstandardsboard.org.uk/the-bsb-handbook.html>

⁸ <https://www.barcouncil.org.uk/resource/barristers-working-lives-report-2021.html>

report, to help us to determine whether a change to the duty to report would be helpful or necessary. The Pilot enabled barristers to be granted a waiver from the duty to report, if they are part of a support scheme recognised by us and appropriately trained to provide support to those who may have experienced bullying or harassment. The full requirements are set out in the Pilot Harassment Support Schemes Waivers Guidance.⁹

10. The Regulatory Return 2020 ('the regulatory return'), a questionnaire issued to around 350 chambers, BSB entities and sole practitioners in September 2020, included two questions with direct relevance to the project:

- a) How are you working towards embedding a culture which does not tolerate discrimination, harassment and bullying?
- b) Describe your process for handling reports of bullying, discrimination and harassment.

11. Responses to these questions were reviewed to gain a better understanding of the extent to which chambers can guard against instances of bullying and harassment, and to deal with such instances appropriately where they do occur. The responses were also examined next to relevant findings from the YouGov research in order to identify common themes and potential issues.

12. We also analysed reports of harassment made to the BSB between 2015 and 2021, in order to identify potential improvements in how such cases are recorded and handled in future.

Key evidence gathered and implications for our approach

The culture of the Bar

13. The YouGov research suggests that bullying and harassment by, and of, barristers stems in large part from some of the more entrenched characteristics of the Bar. Key among these is the Bar's predominantly adversarial, competitive environment, in which 'the ability to dominate over other people in order to win an argument is crucial' (p11), a dynamic which interviewees reported spilling over into aggression and bullying both inside and outside the courtroom. Interviewees describe how in this context bullying is cyclical, a 'learned behaviour pattern' (p12) where those who were bullied as junior barristers often go on to bully others as their careers progress, perceiving such behaviour to be normal.

14. The research paints a clear picture of a culture of bullying at the Bar, where such behaviours are tolerated (or at least perceived to be so). In this context, barristers can often fear that reporting instances of bullying and harassment, whether to the BSB or to chambers, would have a negative impact on their career, reputation and income. This is exacerbated by the self-employed status of most barristers.

Reporting to the BSB

⁹ <https://www.barstandardsboard.org.uk/uploads/assets/dbbdd80a-4686-4a1a-922a3c3fc8a11f19/Pilot-Harassment-Support-Schemes-Waivers.pdf>

15. The disinclination to report to the regulator is compounded by their perceptions of the BSB as 'authoritarian' and 'too much of a stick and less of carrot' (p48). Barrister participants at our roundtable discussions tended to agree that a report to the BSB was viewed as a 'combative' way forward, particularly for the 'low level' incidents the YouGov research indicates are most common. In light of this, the duty to report is seen by many as overly formal and prescriptive, and ultimately as a barrier to reporting.

16. On the other hand, *Barristers Working Lives 2021* asked barristers who chose not to disclose an incident of harassment to another barrister to what extent their decision was influenced by the duty to report: 81% said it had no influence and only 5% said it was a major influence.

17. Furthermore, there are those who feel that the duty to report can be an enabler to reporting. This is demonstrated by some interviewee responses in the YouGov research, in addition to feedback from barristers who have made a report to us. In some cases, the duty to report may help by providing those who have experienced bullying or harassment with a regulatory justification for making a report. Without this, the focus will be on individuals to make a personal decision whether to report. Some barristers have informed us that they would not have reported an incident to us had they not been obliged to do so. We have also received feedback that the duty to report helps the profession and the public to see that the BSB takes these issues seriously.

18. Given the mixed evidence gathered in relation to the duty to report, we do not believe it appropriate to remove the duty or create a formal exemption for those subject to harassment within the rules. Equally, we do not believe that those subject to bullying and harassment should have that experience compounded by fear of regulatory action, should they feel unable to report it. This view was supported by many participants at our roundtable discussions.

19. As a matter of policy we do not currently take regulatory action against those who have been subject to harassment but have not reported it. We have publicised this approach in the guidance on the serious misconduct reporting requirement. However, to ensure this is clear to anyone who has experienced harassment and is looking for information, **we have agreed to amend relevant guidance in the BSB Handbook to make clearer that we will not take action against individuals who experience bullying or harassment but who do not report it to us.**

20. Both the YouGov research and feedback from barrister participants at roundtable discussions suggest that many barristers are unclear exactly when instances of bullying and harassment should be reported to the BSB under the duty to report. While the guidance accompanying the rule gives harassment as an example of serious misconduct, bullying is not mentioned. Therefore, **we have agreed to update the guidance for rC66 of the BSB Handbook to give bullying as an example of potentially serious misconduct. We will also update the information available on our website to provide examples of what both bullying and harassment commonly look like at the Bar and to clarify when such behaviour constitutes serious misconduct, which should be reported to the BSB.**

21. From discussions with barrister participants at roundtable meetings, we have also learned that there is a lack of awareness of how the BSB handles reports, including anonymous or confidential reports, one misconception being that reporters will be compelled to be party to our investigation processes, even if they do not wish to be so. In reality, reporters are always in control of what information they share with us and are never obliged to become more involved with their case after their initial report. **We will therefore update the information available on our website to clarify our options when handling such reports, ranging from retention of case information for future trends analysis to potential supervisory or enforcement action if appropriate.** We anticipate that this guidance will give more confidence to those considering making a report to us.

The role of chambers

22. Important though obligations to report to BSB remain, the cultural roots of bullying and harassment can only really be addressed by cultural change in barristers' workplaces. That in particular means in chambers. Though still reluctant to do so, evidence from the results of *Barristers Working Lives 2021* and the YouGov research suggests that barristers are more likely to report to their chambers or employers than they are to the BSB, particularly for what they consider to be 'low level' cases. The BSB's published supporting information (guidance) on our Equality Rules currently recommends a designated adviser (who might be the Equality and Diversity Officer) to whom those who have experienced harassment in chambers can go. In order to be effective, this will likely need to be someone senior who can be relied on to ensure that a barrister who has experienced bullying or harassment is properly supported and that their concerns are fully and fairly investigated. In order to ensure effective senior ownership of reports of bullying and harassment made to chambers, **we will review the expectations of chambers and how we can strengthen the role of the Equality & Diversity Officer** as part of our current review of our Equality Rules.

23. Responses to the regulatory return largely suggest that most chambers have Equality & Diversity policies in place, including an anti-harassment policy, and undertake activities such as training to ensure that these policies are put into practice. Similarly, the responses suggest most chambers and entities have both formal and informal processes which exist under their anti-harassment policies, and some have initiatives including 'buddy' networks, diversity networks and wellbeing support.

24. However, the YouGov research showed that there is huge variation between chambers in how well equality and anti-discrimination policies and rules are implemented, even if most chambers do have such policies and rules on paper. Both the research and discussions with barrister participants at our series of roundtables emphasised the importance of the buy-in of senior leaders in chambers to ensure that the Equality Rules are implemented effectively.

25. In light of the fact that barristers are more willing to report bullying and harassment to their chambers than to the BSB, we recognise there is a need for further guidance to chambers on how to put in place robust systems to handle

allegations of bullying and harassment, whilst recognising when matters of serious misconduct should be reported to the BSB. Our aim is to encourage the reporting of these behaviours by ensuring multiple reporting routes are available to barristers. Where the Bar Standards Board is satisfied that such robust systems exist under senior oversight, we shall be willing to see chambers undertake initial investigations provided always that a report continues to be made to us as the regulator. **We shall set out our thinking on this in further guidance for chambers.**

Harassment Support Scheme Waivers

26. A key finding from our evaluation of the Pilot was that the number of reports made to scheme participants was well below anticipated figures, despite the scheme being promoted and extended twice. It should be noted that for most of the last two years most barristers have been working from home, and even when in court there have been fewer social interactions where they have been able to mix. However, there was little engagement with the Pilot even prior to the start of the Covid-19 pandemic.

27. Nonetheless, the YouGov research and barrister participants in roundtable meetings highlighted the value of informal, supportive reporting routes, such as those provided for by the waiver schemes, being available to barristers even if they are not much used at present. For this reason, we **have decided that the waiver scheme will become a permanent part of our arrangements and we will continue to accept applications from those wanting to set up support schemes.**

Perceptions of the BSB

28. While there is no quick solution to address the perceptions of the BSB as remote and authoritarian described by the YouGov research, participants at roundtable discussions frequently suggested that additional outreach to the profession would be a good opportunity to show the 'friendly face' of the regulator.

29. We have therefore agreed **to undertake a programme of outreach work to better communicate our approach towards bullying and harassment, including how we handle reports.**

30. The YouGov research also highlighted a lack of awareness among barristers as to the differences between the roles and responsibilities of the BSB and those of the Bar Council, and where to go to access formal support after having experienced or witnessed bullying or harassment. That this confusion exists is corroborated by evidence from roundtable participants and anecdotal evidence from barristers with whom BSB staff have spoken as part of their day-to-day work. A seemingly common misconception is that a report made to the Bar Council's Talk to Spot tool constitutes a report to the regulator and, in the instance of serious misconduct, fulfilment of the duty to report. **We will therefore work with the Bar Council to ensure that our respective public information in relation to bullying and harassment is coordinated.**

Pupils and junior barristers

31. The YouGov research, in addition to research undertaken prior to this project, indicates that certain groups of barristers are more likely to experience bullying or harassment than others. One such group are pupils and junior barristers, who are particularly vulnerable to such behaviours as a result of the power imbalance between themselves and their more senior colleagues. Pupils and junior tenant interviewees spoke of not reporting these incidents because of the fear of detriment to the completion of their pupillage or their career progression after pupillage. This fear was exploited by perpetrators when bullying or harassing their more junior colleagues. This resonated strongly with participants at the meeting with pupils and junior barristers, for whom the vocational component of Bar training was seen as a good opportunity to equip students with the skills to identify and respond effectively to instances of bullying and harassment that may present themselves during their pupillage and early years of practice. A qualifying session on the subject, as part of the mandatory training for entering the Bar, was seen as a particularly effective method to address the issue due to the reach that it would have among the Bar student population. **We will work with the Inns in order to better understand the extent to which the topic is covered in the sessions already being run, to ask them to develop new sessions where the topic is not sufficiently covered, and to provide our insights into suitable content, structure and format.**

32. Discussions during our roundtable meeting with other regulators of legal services in the UK highlighted how a joined-up approach between the legal regulators might help to tackle bullying and harassment culture across the sector, particularly in instances where the different regulated professions interact with each other, for example solicitors instructing barristers. We have since met with the SRA and CILEx on two further occasions in order to explore opportunities for collaborative work, namely: homogenising the way in which cases are recorded between the regulators' systems so that we can identify trends across the sector; and using shared language in external guidance where appropriate, to develop a sector-wide understanding of which behaviours constitute bullying and harassment. The legal regulators have issued a joint statement on tackling counter-inclusive misconduct through disciplinary processes and **we will continue to work with other legal regulators to identify good practice and agree shared goals, and in reducing non-inclusive behaviour across the sector.**

Internal approach

33. As part of the project, we have also made a number of improvements to our internal approach for dealing with reports of this kind, including the delivery of staff training on both vulnerable witness needs and handling allegations of sexual harassment and misconduct. We are also in the process of finalising newly developed, detailed guidance for staff dealing with bullying- and harassment-related cases. **We have identified further improvements to be implemented moving forward.** These include: improving the way in which bullying and harassment cases are recorded, to facilitate better trend identification and analysis; and developing a policy for how we manage anonymous and confidential reports.

34. We have also met LawCare and Victim Support to gain a better understanding of the work of these organisations and the support they provide, and in turn for these organisations to better understand the BSB's processes. This will improve signposting and referrals between the BSB and the support organisations so that individuals involved in our processes have easy access to any external support they need, and so that individuals who contact support organisations are informed how they can report a matter to the BSB and what a report entails. **We are also exploring how we might facilitate the provision of additional, dedicated support for those involved in our processes**

Concluding comments

35. It is clear that that bullying and harassment remains a significant issue at the Bar. By clarifying to the profession and others which behaviours we expect to be reported to us, what reporting routes are available, and how we deal with such reports, we hope to increase the number of reports being made to us, helping to resolve the recognised problem of underreporting. This in turn will allow us to demonstrate via our regulatory processes that such behaviours are not tolerated.

36. Ultimately, however, available evidence points towards the issue being one of Bar culture. The BSB's Equality Strategy has set an objective to promote a culture of inclusion at the Bar and in legal services more generally. This includes some of the themes identified in this report. Within this context, the role of the regulator is one of many; good work is being done by a range of stakeholders to tackle this problem, but a collaborative and co-ordinated approach between the BSB, the Bar Council, the profession, and other stakeholders across the Bar and the legal sector more widely, will be most fruitful in effecting lasting, meaningful change. From 4 October 2022, the BSB is engaging with the profession in a series of roundtables to discuss the role of chambers in promoting standards, equality and access. The discussions will aim to build on existing good practice by facilitating a discussion about how, working together, the regulator and the Bar can consolidate good practice in a way which is helpful to chambers and also provide practical support to adopt good practice, including in relation to bullying and harassment.