



Independent Review into Bullying, Harassment, and Sexual Harassment at the Bar

RESPONSE OF THE CRIMINAL BAR ASSOCIATION

September 2024

The Criminal Bar Association

1. The Criminal Bar Association (the 'CBA') represents the views and interests of practising members of the Criminal Bar in England and Wales. The CBA's role is to promote and maintain the highest professional standards in the practise of law; to provide professional education and training and assist with continuing professional development; to assist with consultations undertaken in connection with the criminal law or the legal profession; and promote and represent the professional interests of its members.
2. The CBA is the largest specialist Bar association and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes

a great deal to the professionalism, commitment and ethical standards of our practitioners.

3. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

Preamble

4. The CBA is a diverse body and represents barristers of all call levels. We are deeply committed to the wellbeing of all members of the Criminal Bar. We welcome the commission of the independent review chaired by Rt Hon Harriet Harman KC in response to the research on the extent of bullying, harassment and sexual harassment at the Bar and in particular the efficacy of current reporting mechanisms and identification of potential solutions.
5. The CBA shares the concern that bullying, harassment and sexual harassment remain widespread within our profession. We also believe that these issues must be viewed in the context of other persisting concerns, including attitudes to race and discrimination in all its forms. Many of our working practices are out-of-date. The Bar's response to such problems has been nowhere near as good as many other industries and much of the public sector.
6. The proposed report will be an important step forwards but we recognise it will be a starting point on a longer journey. The CBA will commit itself to work with the Bar Council to secure the change of culture which is so obviously required.
7. The approach we have taken to drafting this response is to emphasise key issues affecting CBA members and to make suggestions for steps which the Bar Council can take to achieve change. Importantly, we believe that the monitoring of the problems of bullying, harassment and sexual harassment should become part of the ongoing work of the Bar Council. For example, the Working Lives study provides quantitative data

which evidences the extent of the problem; we call on the Bar Council to commission detailed, quantitative and qualitative research to provide a proper understanding of what is taking place. All of this should be ongoing work to inform both the decisions as to how to tackle these problems, and also to monitor the effectiveness of the measures as they are rolled out.

8. From the outset, we wish to highlight some of the issues which uniquely impact on the Criminal Bar. The findings of the Working Lives study show that criminal practitioners are far more likely to have experienced bullying or harassment (43% compared to the average of 30% across the profession as a whole). Potential reasons for that disproportionate impact include the following.
 - a. The shortage of criminal barristers has placed increasing strain on individual practitioners. Long hours, increasing work demands, comparatively poor remuneration and low morale have a physical and emotional impact. Where bullying, harassment or discrimination are added on top, it is unsurprising that so many choose either to move to other areas of practice or to leave the Bar altogether. There is a particular problem (a) in attracting newly qualified practitioners to work in criminal law and (b) in retaining practitioners between 5 and 15 years' call. There is a cycle (pattern?) of decline.
 - b. The Crown Court backlog, which is well documented elsewhere, has added to the pressure on everyone working within the Criminal Justice system, including judges, advocates and solicitors. Although it is no excuse, the stressful working environment makes bullying more likely to occur. Put simply, people who are stressed and tired are more likely to lash out. We note that in the Working Lives study, 53% of complaints of bullying and harassment related to judges and 31% involved junior barristers complaining about senior barristers.
 - c. Solicitors working in the criminal justice system (both CPS and defence) are also desperately stretched and often cannot provide the minimum level of support. Barristers are undertaking additional tasks which previously were

considered the role of the solicitor, and also increasingly working alone at Court. This adds to the pressures on individual barristers.

- d. The subject matter of criminal work can be stressful and disturbing. Criminal barristers, and the Judges they appear in front of, are frequently dealing with cases such as homicide, serious sexual offences and terrorism. We are dealing with victims who have suffered trauma. We are dealing with clients who are vulnerable and clients who have significant mental health problems. The stress of such work can lead to reactive and other negative behaviours. Historically, these impacts have been under-recognised.
 - e. The demographics of the profession has changed. There is a greater proportion of senior (and therefore older) practitioners and increasing difficulties in recruiting younger Barristers to full time practice in the criminal courts. This results in a greater resistance to change and in some cases a sense of immunity.
 - f. Criminal practitioners spend nearly all day, every day in court. With the advent of digital working, individual barristers are working remotely. We do not attend chambers to the extent that other areas of the Bar do. A common experience for many criminal barristers is to be instructed in a long trial in another city, meaning that we have to travel and stay away from home for extended periods of time, often staying in hotels for weeks on end. All of this can increase the sense of isolation and reduce our available professional support network.
 - g. The subject matter of criminal work can sometimes influence the way in which barristers behave towards one another. We are dealing with crude or hostile language and the discussion of sexual matters. Witnesses are challenged in a robust manner which would be unfamiliar to other areas of practice. The familiarity with confrontational behaviour can sometimes be reflected in how we deal with each other.
9. Our responses to the specific questions raised in the call for evidence are as follows.

1. Reasons for bullying, harassment, and sexual harassment

a. In your view, why is bullying, harassment and sexual harassment a persistent problem at the Bar?

(i) Ingrained Culture

There is an ingrained culture at the Bar and on the bench. Bullying behaviour has historically been tolerated as if it is a legitimate working practice. Too often, inappropriate conduct has wrongly been seen as justified by 'higher' objectives, whether it is the barrister trying to win the case for their client or the judge trying to complete a crowded list of cases.

Such behaviours have become so ubiquitous in our profession, and for so long, that many do not even recognise it. Tellingly, the problems are often most noticed by those who have joined the Bar from other sectors, or who have then left either to work elsewhere or for extended parental leave.

Aggressive behaviour, undermining comments about the professionalism or competence of other advocates and other conduct designed to pressurise other barristers is often wrongly seen as within the acceptable norms of the profession.

The profession prizes its high standards of working and intellectual rigour. Often this leads both barristers and judges to present their views as indisputably right and to be intolerant of challenge, disagreement or differing perspectives. This can lead to the belief that it is acceptable to cut others down during submissions, sometimes to the point of seeking to humiliate.

Sexual harassment comes from a small minority of perpetrators. In many instances where complaints are made, those individuals have had a 'reputation' for many years. This reflects a culture of tolerance, a fear of the consequences or reporting and a fear even of calling out inappropriate behaviour.

(ii) Racial bias

The CBA believes that the problems of bullying, harassment and sexual harassment should be viewed within the context of the widespread and persisting

	<p>problems of racial bias within the criminal justice system, as noted by the Lammy Review [2017]¹.</p> <p>Again, the interrelationship is made clear by the findings from the Working Lives study. This showed that 43% of barristers from ethnic minority backgrounds reported bullying or harassment compared with 27% of white barristers. More than half (52%) of female barristers from ethnic minority backgrounds reported experiencing bullying or harassment, compared with 39% of white female barristers.</p> <p>The culture change which is required involves addressing the problems of both overt and unconscious racial bias, and of the lack of diversity in the profession, as part-and-parcel of measures relating to bullying and harassment.</p> <p>(iii) Misogyny and other discriminatory attitudes</p> <p>The same can be said for misogyny and discriminatory attitudes. Negative assumptions still persist about the role of women (particularly working mothers and those with other caring responsibilities) at the Criminal Bar. This includes making demands which are incompatible with caring responsibilities, and attitudes as to what types of cases women should be doing.</p> <p>There are also discriminatory attitudes to many other factors, including those from non-traditional backgrounds, due to a strong prevailing view as to what a barrister should be and what they should look like. This can lead to isolation and othering and make it harder for people to speak up.</p> <p>(iv) Adversarial nature of our work</p> <p>The work of the Criminal Bar is highly adversarial, especially in the trial environment. It therefore attracts persons who enjoy arguing, being right and winning: what is sometimes described as ‘Alpha’ personalities. We all need to be conscious of the consequences of this in our inter-personal relationships.</p>
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¹ <https://assets.publishing.service.gov.uk/media/5a82009040f0b62305b91f49/lammy-review-final-report.pdf>

(v) Lack of relevant training, both in relation to B&H and ED&I

Ongoing training in relation to equality, diversity and inclusion is not compulsory at the Bar (save for pupil supervisors and those involved in recruitment). Those who need it the most are the least likely to undertake it or to learn from it. Such training and initiatives are often described in negative and dismissive terms in robing rooms and there is a prevailing culture of maintaining the status quo.

There is also a lack of specific training in relation to bullying and harassment issues: how to address them and how to be an effective ally. The working demands of the Criminal Bar mean that such training has to be done outside ordinary working hours, in evening or at weekends.

The CBA recommends that ongoing training on issues of bullying, harassment and sexual harassment, and training and equality, diversity and inclusion, should be mandatory for all practising Barristers.

(vi) Lack of HR professionals

Most criminal barristers are self-employed practitioners working within chambers. Unlike other professions and industry sectors, most do not have the immediate support of HR professionals. There is therefore an absence of direct advice and guidance for managers of chambers. There is also a lack of support mechanisms for junior practitioners.

(vii) Lack of knowledge and understanding of reporting mechanisms; poor reputation

Beyond the option of reporting serious misconduct to the BSB, we believe most barristers have only limited knowledge and understanding of reporting mechanisms, whether 'Talk to Spot' or chambers' processes. Most members of the Bar would have no idea how to make a formal JCIO complaint and will be unaware of the three-month time limit.

There is also a fear of repercussions for using such mechanisms, whether for one's own career or for one's client. The pressures of a long case can lead to bullying and harassment, but a barrister will not wish to disrupt the trial or risk adverse consequences for

	<p>their client by raising the point mid-trial, particularly if the perpetrator is the trial judge.</p> <p>Reporting mechanisms have a poor reputation. They are also slow and ineffective and historically the penalties have been derisory. For example, no judge has been suspended let alone permanently removed for bullying someone in court. This is inconsistent with the acknowledged widespread occurrence of judicial bullying.</p> <p>Barristers are often not effectively disciplined. Historically, the level of sanction imposed by BTAS for proven cases of harassment and sexual harassment has been, in our view, unduly lenient. This sent the unwelcome message that the careers of senior practitioners were being prioritised over the wellbeing and/or safety of junior and in particular female members of the Bar.</p> <p>We welcome the fact that the 2022 Sanctions Guidance² has strengthened the suggested sanctions for such misconduct, including a starting point of 12 months suspension for lower end cases. The effectiveness of this reform should be monitored and the change in sanctions should be more widely known.</p>
<p>b. Are there particular dynamics or working practices at the Bar which allow for bullying, harassment and sexual harassment to persist?</p>	<p>(i) Power imbalances and the importance of patronage</p> <p>Power imbalances affect junior barristers throughout their working lives. This begins when they are first exposed to the profession as mini-pupils, hoping to make applications for pupillage. It continues when they are required to undertake a 12-month pupillage, at the end of which they will be applying for tenancy and requiring the support of their senior colleagues. It is very difficult and intimidating for a pupil to make a complaint in those circumstances, not least due to the perception that senior members of chambers would rally around an established practitioner.</p> <p>Power imbalances continue for junior tenants. The allocation of work to junior barristers is directly affected by their relationships with clerks, senior</p>

² <https://www.tbta.org.uk/wp-content/uploads/2021/12/BTAS-Sanctions-Guidance-Jan-2022-Version-6-Final.pdf>

barristers and silks, particularly within their own chambers. Criminal Barristers (I would use lower case for plural nouns but we have used upper case for 'Barristers' above – should be consistent) are also heavily reliant on returns. Junior barristers may be pressurised to do work to promote 'the interests of chambers' (i.e. the interests of senior practitioners). For example, in some sets pupils and very junior tenants are sent to the magistrates' court to undertake work at discounted rates and/or a considerable distance away in order to maintain chambers' relationship with a particular solicitor.

Junior barristers are also dependent on references from judges, senior barristers and silks for their career progression. Many look to begin a judicial career by making applications for part-time judicial posts at about 10-15 years call, requiring positive references. Likewise references are also required to apply for silk. KC appointments are particularly sensitive to this as applicants cannot choose their judicial referees: they now have to list all significant cases.

Increasingly, references are also required to progress in other respects at the Bar, for example to progress through the CPS grading system and its specialist panels, and for appointment to the AG's panels, specialist regulatory panels (HSE/EA) and the like.

These factors create substantial power imbalances which pressurise junior barristers into tolerating inappropriate behaviour. The message is: do not rock the boat, because it may harm your career progression. This discourages junior barristers from reporting bullying and harassment against themselves and makes them more reticent in intervening when seeing others bullying/harassing someone.

Going against a social norm and complaining against a judge or opponent is generally regarded as unwise. This therefore discourages not only the person being bullied making a complaint but also any potential allies from choosing to be witnesses/supporting a complaint.

(ii) Outdated perceptions of what makes a 'good barrister'

The Bar has always prized qualities such as robustness, strength and assertiveness. There is less

	<p>recognition of qualities such as listening skills, empathy and kindness. The result is that the Bar disproportionately attracts and retains those who might be predisposed to harass and bully others and then go on to justify their behaviour. Those who complain about bullying and harassment, whether as victims themselves or calling it out when observed, are wrongly seen as weak or problematic. Culture change is required.</p> <p>(iii) Stressful working conditions</p> <p>This has already been discussed above. An insecure individual, working under stress, will often become the bully: displacing their own faults and inadequacies and blaming others for them. Separately, there is the pressure to do one's duty to the court and to the client and just 'get the job done.' The Bar wrongly values those who fit in not those who stand out and call others out or 'make a fuss'.</p> <p>(iv) Lack of professional management and HR support</p> <p>This has already been discussed above. Barristers generally do not have line managers and do not have HR departments to resolve disputes. Unacceptable behaviour is not so readily and immediately challenged, and poor behaviour can become entrenched.</p> <p>We are not suggesting that the self-employed Bar should be replaced by an employed/corporate structure, but it is necessary to recognise the consequences of operating within the chambers' structure and put alternative mechanisms in place.</p> <p>(v) Isolated working</p> <p>Harassment, and in particular sexual harassment, can be precipitated by the increasing isolation of barristers working away from home and chambers for long periods.</p>
<p>c. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment known, clear,</p>	<p>No, because standards are insufficiently well known. The policies and publications on the Bar Council's website <i>are</i> generally clear, comprehensive and well written. They are to be commended. However, practitioners have to be pro-active to find them and</p>

<p>accessible, and sufficiently robust?</p>	<p>few ever do. Perpetrators are the last people likely to look them up.</p> <p>The CBA calls for the introduction of mandatory ongoing education and training on issues relating to bullying, harassment and sexual harassment.</p>
<p>d. Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment sufficiently mainstreamed within Barristers' professional obligations? Should they, for example, be included within the Core Duties set out in the BSB Code of Conduct?³</p>	<p>The BSB currently only investigates cases of 'serious misconduct', which encompasses cases of sexual harassment and more serious cases of bullying and harassment. We recognise that it would be an impossible burden for the BSB/BTAS to have to deal with lower-level cases of bullying and harassment.</p> <p>Despite the seriousness of the issue, the CBA do not suggest that responsibility for bullying and harassment cases below the 'serious misconduct' threshold should be policed by the BSB. We think that the remedy is different. Such cases should be resolved at chambers' level and the role of the BSB should be to ensure that chambers are complying with their duty to resolve such complaints. Also, the appointment by the Bar Council of an independent ombudsman to oversee the handling of complaints within chambers would be a useful mechanism to promote greater fairness, consistency and effectiveness of such procedures.</p> <p>The CBA recommends that the Bar Council should work to achieve the following:</p> <p>(a) Chambers should be required to offer independent mechanisms to resolve complaints, including the use of external adjudicators;</p> <p>(b) The Bar Council should consider appointing an independent Ombudsman to oversee the handling of complaints by chambers</p>
<p>2. Impact of bullying, harassment, and sexual harassment</p>	
<p>a. What is the impact of bullying, harassment and sexual harassment on those who are subject to such misconduct?</p>	<p>Bullying, harassment and sexual harassment is hugely consequential for the individual, for the profession and for other participants within the criminal justice system. Those impacts are so widely varying that in providing this response the CBA's position is that it is impossible to provide a fully comprehensive account.</p>

³ [BSB Code of Conduct](#)

We have chosen not to refer to individual case examples as it would be impossible to ensure that they are fully representative. We note that the Review will be accessing such comprehensive information by other mechanisms. Also, one of the recommendations we make is that the Bar Council should commission and sponsor ongoing quantitative and qualitative research to understand the impacts more fully and to monitor the progress of reforms.

(i) Impact on Individuals

The impact on individuals can be devastating. There are many examples where individual barristers have left practice at the Criminal Bar, and indeed practice at the Bar completely, as a result of bullying and harassment, including following instances of inappropriate behaviour by the judiciary. However, not everyone has that choice. Many barristers face financial pressures, with mortgages to pay and families to support. Many feel that they have to carry on within the profession, despite the misery of such adverse experiences.

The consequence is long term effects on their mental health and wellbeing. It affects individuals' self-esteem, confidence, concentration, sleep and general mental health.

(ii) Impact on recruitment, retention and advancement

The adverse consequences for the profession are not just in relation to retention. Recruitment is also affected. We are aware of specific instances where pupils and mini-pupils subjected to inappropriate behaviour have decided to no longer pursue a vocation at the Criminal Bar. More generally, there is reputational harm which deters potential recruits who may have the perception that the Criminal Bar is a difficult working environment.

For many, bullying and harassment can affect earning ability. Bullying within a chamber's environment, sometimes from clerks as well as other barristers, may be manifested by adverse decisions and recommendations on the allocation of work. Individuals who are subjected to bullying and harassment may not receive equal treatment within chambers.

	<p>The CBA is deeply committed to the wellbeing of all of our members. Nothing is more important to the future health of the Criminal Bar than the wellbeing and career development of our juniors. They are the engine room of what we do.</p> <p>We are very proud that progress has been made in relation to diversity and inclusion within the profession, but the persistence of bullying and harassment undermines that work. It impedes recruitment, retention and advancement of the very best at the Criminal Bar.</p> <p>(iii) Intersectionality and disproportionate impact upon Black and Asian women</p> <p>We are deeply concerned that current research illustrates that the impact of bullying and harassment has a profound impact upon black and Asian women at the Bar, who are four times more likely to be subjected to bullying and harassment than white males within the industry. The experiences and nature of intersectional harassment and bullying needs to be carefully addressed and researched in a qualitative and quantitative fashion by the Review so that it can be remedied.</p> <p>(iv) Impact upon ethnic minorities</p> <p>We note that 18% of black barristers and 17% of Asian barristers have left practice in publicly funded criminal law full time since COVID⁴. This is contrast to 10% of white barristers. In depth research needs to be conducted on the impact of bullying and harassment upon racially minoritised sections of the Criminal Bar. Racist micro-aggressions and racist gaslighting has no place in a modern society, let alone the Criminal Justice System. We would welcome a structured programme of cultural change, in addition to advancement of an efficient model of disciplinary action. The efficacy of any complaints and disciplinary system that is available to those who experience bullying and harassment has a direct causal link to the</p>
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⁴ <https://www.Barcouncil.org.uk/static/278149e5-0d7c-44ac-a92115a79cce2af1/Bar-Council-data-analysis-criminal-Bar-April-2022.pdf> The number of Barristers declaring their practice was full time publicly funded criminal work was down more than 10 per cent in 2020-21 from 2019-20 (from 2,670 to 2,400). The number of black/black British Barristers practising full time in criminal work was down by 18 per cent; the number of Asian/Asian British Barristers was down by 17 per cent.

	<p>level and length of time any impact is experienced by individuals.</p> <p>The CBA calls upon the Bar Council to commission and sponsor ongoing quantitative and qualitative research so that the impact of bullying and harassment is fully and comprehensively understood.</p> <p>This research should in particular consider the disproportionate impacts of bullying and harassment on minority sections of the Bar.</p>
<p>b. Is there a wider impact upon Barristers' staff, clients (professional and law), or the justice system more broadly?</p>	<p>There is a significant and direct impact on the Criminal Justice System if the very best and brightest are no longer recruited or retained at the Criminal Bar, as a consequence of the bullying and harassment they have faced.</p> <p>Clear steps need to be taken to stamp out efficiently instances of bullying and harassment. Without this being in place, more and more individuals will leave the Criminal Bar.</p> <p>It is critical to ensure a fair and equal opportunity on the basis of merit alone in relation to professional development, which includes appointments to the judiciary and to silk. The impact of bullying and harassment is that the profession does not train nor retain the very brightest and best advocates for the future, which directly impacts in future generations the make-up of the judiciary.</p> <p>The impact of bullying and harassment within a workplace increases distrust and restricts overall financial advancement and viability of a chambers. At present, there is limited mechanism in place to protect individual barristers from harassment and bullying faced from individuals within the clerking profession.</p>
<p>3. Reporting mechanisms, resources, and sanctions</p>	
<p>a. What are the barriers to reporting incidents of bullying,</p>	<p>(i) Factors common across society</p> <p>There are factors which are common to all cases of bullying, harassment and sexual harassment across</p>

<p>harassment and sexual harassment?</p>	<p>society, including: complainant's misplaced sense of embarrassment; lack of self-confidence; lack of adequate support mechanisms; concern that reporting a complaint involves disproportionate emotional strain and time.</p> <p>(ii) The culture of the legal profession</p> <p>Many deterrent features have already been discussed above in the answers at Section 1, as causes of bullying, harassment and sexual harassment. These include the following.</p> <ul style="list-style-type: none"> • The ingrained culture of the profession, which includes a 'don't rock the boat' ethos. • The power imbalances and the system of patronage. This includes the perceived ability of judges and senior practitioners to harm someone's reputation, and the perceived difficulty in complaining about a silk, senior barrister or clerk within a set of chambers. • The conflict caused by the barrister's duty to the Court and/or to their client. Where bullying or harassment occurs in the course of a trial, there is significant pressure to 'suck it up and soldier on' in order to bring the case to a conclusion. • Pressure and stress of work. Barristers do not have sufficient time or energy on top of their existing workload to pursue complaints. <p>Barristers do not always recognise bullying and harassment, even when they are the victims of it.</p> <p>The CBA recommends the following:</p> <p>(a) The Bar Council should take steps to implement a structured programme of cultural change at the Bar, including a compulsory education programme and the use of professional consultants.</p> <p>(b) The Bar Council should commission ongoing quantitative and qualitative research into the impacts of bullying, harassment and sexual harassment on the profession. The objective of the research is to inform the programme of change discussed above and monitor its effectiveness.</p>
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(iii) Vulnerable status of potential complainants

Those groups who are most likely to suffer discrimination, bullying, harassment and/or sexual harassment are also those who most likely to feel that their place in the profession is precarious.

We have discussed some of the statistics in the Working Lives report already. In part, these results are specifically because many in the groups disproportionately affected by bullying and harassment are also in groups who face comparative financial insecurity: this includes disabled barristers, female barristers and barristers from BAME backgrounds. More generally, barristers from such groups and from non-traditional backgrounds are more likely to have the perception that their place at the Bar is insecure. This reduces their confidence in their ability to complain about inappropriate behaviour.

(iv) Lack of confidence in the effectiveness in the Bar's complaints procedures.

There is a widespread lack of confidence the making a complaint will bring a positive result.

The BSB's procedures, applicable to cases of serious misconduct, are cumbersome. The process is perceived as fair but it is far too slow. Cases typically take between one and two years to reach a conclusion. These delays deter reporting even of serious complaints.

Less serious cases of bullying and harassment fall to be dealt with at chambers level. There is a lack of confidence in those processes due to a number of factors, including: perception of bias towards senior members; lack of independent adjudication; delay.

Where the bullying or harassment is committed by a barrister from another set of chambers, the complaint has to be directed to those chambers. A 'third party' complaint of that nature is then investigated and adjudicated upon by barristers from the alleged perpetrator's chambers. There is an obvious conflict of

interest, and a perception by the potential complainant that the handling of their complaint may be biased towards the alleged perpetrator.

The CBA recommends the following.

- (a) The Bar Council should work with the BSB to explore ways of reducing the length of time cases of serious misconduct involving bullying, harassment and sexual harassment take to reach adjudication.**
- (b) All chambers should be required by the BSB to offer independent mechanisms to resolve complaints, including where appropriate the use of external adjudicators.**
- (c) The Bar Council should consider appointing an independent Ombudsman to oversee the handling of complaints by chambers.**

(v) Lack of confidence in the effectiveness of the JCIO complaints procedures.

The confidence of the profession in the ability of the JCIO to address judicial bullying and harassment is regrettably very low.

The factors identified in (ii) above are significant barriers to complaints. However, this is compounded by the refusal of the JCIO to consider complaints of chronic inappropriate behaviour.

Practitioners often experience repeated instances of aggressive or undermining comments from individual judges, often taking place over many years. This may be the experience of an individual barrister, or often several barristers appearing before that judge over a period of time. Often it is the cumulative effect of such conduct which is damaging. Viewed in isolation, individual incidents may be dismissed as less serious, or specific to something which occurred in that particular case.

However, the JCIO currently imposes a time limit of **3 months** for the consideration of a complaint. We are aware from past complaints that this rule has been used to exclude evidence of an extended course of conduct and/or 'similar fact' evidence of repeated inappropriate judicial misconduct. This is wholly inconsistent with the JCIO's duty to investigate cases

	<p>of harassment, which by definition require consideration of a course of conduct.</p> <p>A further difficulty is that the hostile nature of a judge’s comment is rarely apparent from a review of a transcript or even an audio recording of a hearing. Considerable weight ought to attach to first-hand accounts of such conduct.</p> <p>The CBA recommends that:</p> <ul style="list-style-type: none"> (a) the Bar Council calls for the relaxation by the JCIO of the 3 month time limit for complaints; (b) the Bar Council calls for the recognition by the JCIO of the need to admit evidence of course of conduct and/or ‘similar fact’ evidence.
<p>b. What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment?</p>	<p>Formal protection for complainants already exists in the BSB Code of Conduct. That can only ever address blatant acts of unfair treatment towards complainants. A further concern is that the BSB process is too slow to provide effective redress in any but the most serious cases.</p> <p>The negative consequences of reporting which potential complainants fear are ones which are nearly always going to find difficult to prove (such as influence on writing of references, lack of recommendations for work).</p> <p>The CBA recommends the following measures:</p> <ul style="list-style-type: none"> • The Bar Council should consider appointing an independent panel of barristers to act as mentors and/or advocates for complainants, and to support complainants both during and after engagement with a complaints process. • Improvements to BSB and chambers complaints mechanisms, as discussed above. • Action on cultural change and education, as discussed above.

<p>c. The Bar Standards Board (BSB) rules place a duty on Barristers to report to the BSB in circumstances where there are reasonable grounds to believe there has been serious misconduct (with an exception set out in guidance for victims).⁵ Is this duty to report known, understood and implemented in practice?</p>	<p>The duty is widely known but not implemented in practice. The CBA’s view is that this is due to the cultural factors discussed above.</p> <p>The key factors which inhibit reporting by the victims of bullying, harassment and sexual harassment, namely:</p> <ul style="list-style-type: none"> • the culture of tolerance; • the lack of confidence in reporting mechanisms; and • the fear of negative consequences <p>apply equally to ‘third parties’ notwithstanding the duty to report.</p> <p>A common experience of junior barristers who seek advice from other barristers on whether to take action concerning allegations of misconduct is that they receive sympathy for their predicament but that they are advised that reporting is going to cause them more trouble than it is worth.</p> <p>There appear to have been few (if any) cases brought by the BSB for breach of rule rC66. None of the practitioners consulted by the CBA for the purposes of preparing this response were aware of any such case.</p> <p>The CBA recommends that the Bar Council takes the following steps:</p> <p>(a) Encouraging the BSB to take a more proactive approach to the enforcement of rule rC66.</p> <p>(b) Action on cultural change and education, as discussed above.</p>
<p>d. Is there sufficient support in place both for complainants and persons accused of bullying, harassment, or sexual harassment? Do the existing mechanisms appropriately balance the need for confidentiality and transparency?</p>	<p>(i) Support for complainants</p> <p>No. The support for complainants is insufficient.</p> <p>Junior barristers do not always have informal support networks. Many feel isolated, particularly as the culture of working from home is now far more widespread. Support from friends or family, even where available, is not always sufficient because those outside the profession may not have adequate understanding of the issues. Support may be available from within chambers where a complaint relates to an</p>

⁵ rC66 of the BSB Code of Conduct

external subject, such as a judge or a member of another set of chambers. However, in such a networked profession even then there may be concerns that senior members of chambers have established relationships with those other individuals.

The CBA recommends that the Bar Council should consider appointing an independent panel of Barristers to act as mentors and/or advocates for complainants, and to support complainants both during and after engagement with a complaints process.

(ii) Support for those facing complaints

As to support for persons accused of bullying, harassment and sexual harassment, the CBA welcomes the Review's recognition of the importance of this issue. This is for two reasons:

- (a) The measures which may be taken by the Bar Council, BSB and/or individual chambers cannot compromise the primacy of ensuring that disciplinary processes are fair, transparent and just. The importance of addressing this issue cannot ever compromise the requirement to do justice in each individual case.
- (b) Welfare concerns are also important. Facing allegations of misconduct of any kind is extremely stressful and the potential vulnerabilities of the person whose conduct is complained of cannot be overlooked. The Carl Sergeant case⁶ is a salutary example of how the initiation of a complaint can have devastating consequences on the mental health of the recipient, whether or not the complaint is justified.

The CBA recommends that the Bar Council should take action to ensure that chambers are aware of the potential vulnerability of the recipient of a complaint and their duty to ensure that appropriate support is provided.

⁶ This was the case of a minister in the Welsh Government who died by suicide after being suspended following an allegation of sexual harassment. See: <https://www.bbc.co.uk/news/uk-wales-48951304>.

	<p>(iii) Do existing mechanisms appropriately balance the need for confidentiality and transparency?</p> <p>As to the second question, in respect of complaints of serious misconduct the CBA believes that the BSB’s existing procedures do provide a fair and proper balance between the interests of confidentiality and transparency.</p> <p>Complainants are protected throughout the process. Respondents are protected up to the stage where the Independent Decision Making Body decides to refer a case to a disciplinary tribunal, or makes a determination by consent. The CBA believes that the ordinary principles of open justice should continue to apply to hearings before BTAS. We do not believe that it would be appropriate to have anonymity for Respondents.</p> <p>The CBA’s concerns relate to the investigation of complaints of lower-level instances of bullying and harassment. Even when complaints are raised, formal action is rarely taken within chambers. Frequently informal mechanisms of resolution are sought. There is a very little external oversight of complaints handlings within chambers. We would support the creation of an independent Ombudsman to provide that oversight.</p> <p>The CBA recommends that:</p> <ul style="list-style-type: none"> (a) Chambers should be required to offer independent mechanisms to resolve complaints, including where appropriate the use of external adjudicators; (b) The Bar Council should consider appointing an independent Ombudsman to oversee the handling of complaints by chambers.
<p>e. Should there be interim measures which permit a person accused of bullying, harassment, or sexual harassment to be subject to a</p>	<p>The CBA’s view is that it would not be appropriate for chambers to attempt to exclude a self-employed barrister from practice as an interim measure.</p> <p>In an employment arrangement, it is possible for an employer to suspend an employee on full pay</p>

<p>precautionary exclusion from Chambers, their employer, or from practice during the adjudication of a complaint?</p>	<p>pending the determination of a disciplinary complaint. It is a measure which preserves the balance between protecting the interests of staff, clients and others and protecting the interests of the Respondent to the complaint, consistent with the presumption of innocence. That approach may well be appropriate to employed members of the Bar.</p> <p>That is not an option for self-employed practitioners working within a set of chambers. Any measure which purported to prevent them from working would mean that they are deprived of remuneration, potentially for an extended period of time. Further, the client relationship is a relationship with the individual barrister, not the set of chambers. Whilst a complaint is being investigated or adjudicated, cases still have to be heard. Chambers cannot interfere with the client relationship by requiring the client to transfer their instructions to another barrister.</p> <p>There are two solutions to this:</p> <ul style="list-style-type: none"> (a) Where appropriate, a member of chambers can be directed to work from home (i.e. not coming into chambers, except where strictly necessary and by prior arrangement). This can avoid them coming into conflict with a complainant, witnesses or others. It strikes a fair balance. (b) Complaints which fall short of serious misconduct should be adjudicated upon without delay. They are unlikely to require lengthy investigation. In ordinary circumstances, it should be possible to complete any such process within 2 to 4 weeks. <p>The CBA recommends that the Bar Council provide clear and robust guidance and/or training to chambers on the speedy conduct of investigations and the use of appropriate interim measures.</p>
<p>f. Are investigations into complaints (by the BSB, Chambers or any other relevant body) concerning bullying, harassment or sexual harassment sufficiently</p>	<p>See the detailed answers above. The short answer to this question is no.</p>

<p>independent, prompt, robust, and fair?</p>	
<p>g. Following an upheld complaint of bullying, harassment or sexual harassment, are the sanctions imposed appropriate and fair? Is enforcement action sufficiently robust to act as a deterrent?</p>	<p>The CBA’s view is that the sanctions set out in the BTAS Sanctions Guide 2022 for bullying, harassment and sexual harassment amounting serious misconduct are appropriate. The CBA welcome the increase in sanctions in recognition of the serious impact of such misconduct both on individuals and on the profession as a whole.</p>
<p>4. Potential reforms to tackle bullying, harassment, and sexual harassment</p>	
<p>a. Are there any preventative steps which can be taken to tackle bullying, harassment, and sexual harassment? In particular, what could be done in the court room, in Chambers, and at the Bar more widely, to assist in preventing such misconduct?</p>	<p>As detailed above, the CBA believes that a fundamental change of culture is required. This is not limited to educating and deterring potential perpetrators of bullying, harassment and sexual harassment. It also includes the following.</p> <ul style="list-style-type: none"> • Encouraging others to speak out, whether in court, the robing room or chambers, against inappropriate behaviour by others. • Promoting the principles of allyship. <p>The CBA calls for the introduction of mandatory ongoing education and training on issues relating to bullying, harassment and sexual harassment.</p>
<p>b. What improvements could be made to existing reporting mechanisms and support services?</p>	<p>The CBA makes the following proposals:</p> <p>1. <u>Investigations at chambers level</u></p> <p>1(a) Chambers should be required to offer independent mechanisms to resolve complaints, including the use of external adjudicators where appropriate.</p> <p>1(b) The Bar Council should consider appointing an independent Ombudsman to oversee the handling of complaints by chambers.</p> <p>1(c) The Bar Council should provide clear and robust guidance and/or training to chambers</p>

on the speedy conduct of investigations and the use of appropriate interim measures

- 1(d) The Bar Council should take action to ensure that chambers are aware of the potential vulnerability of the recipient of a complaint and their duty to ensure that appropriate support is provided.

2. Investigations by the BSB

- 2(a) The Bar Council should work with the BSB to explore ways of reducing the length of time cases of serious misconduct involving bullying, harassment and sexual harassment take to reach adjudication.
- 2(b) The Bar Council should encourage the BSB to take a more proactive approach to the enforcement of rule rC66.

3. Investigations by the JCIO

- 3(a) The Bar Council should call for the relaxation by the JCIO of the 3 month time limit for complaints.
- 3(b) The Bar Council should call for the recognition by the JCIO of the need to admit evidence of course of conduct and/or 'similar fact' evidence.

4. At all stages

- 4(a) The Bar Council should consider appointing an independent panel of barristers to act as mentors and/or advocates for complainants, and to support complainants both during and after engagement with a complaints process.
- 4(b) Ongoing education and training on issues relating to bullying, harassment and sexual harassment should be made mandatory.

<p>c. In what ways could the judiciary, clerks, chambers professionals, and others work together with the Bar to bring about change?</p>	<p>Please see our recommendations above concerning education and culture change, and the recommendation for ongoing research.</p> <p>Culture change is a difficult process beyond the ordinary working experience of the Bar. We believe that the Bar Council will require expert professional advice on how to implement such fundamental change.</p>
<p>d. Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?</p>	<p>No comments on this issue.</p>
<p>5. Is there are anything else that you would like to share with the Review?</p>	<p>None.</p>