

Kindness at the Bar

Feedback on focus groups in 2024

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Foreword

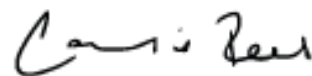
It is our pleasure to write the foreword for this report on Kindness at the Bar, which presents in-depth insights and reflections from barristers, Higher Court Advocates, and members of the judiciary. It offers unique perspectives -- and key mechanisms for positive change -- regarding the wellbeing of those working at the Bar.

It is entirely right that we pay particular attention to bullying, harassment, and discrimination, and continue to develop effective strategies to identify and respond robustly to such inappropriate and unacceptable behaviour. But this report has a starting point in the strengths that are so often evident in the work of those at the Bar and in the judiciary: in the widespread kindness and mutual support that characterise our professions.

Adding to last year's Wellbeing at the Bar survey data, which showed some improvements in wellbeing between 2021 and 2023, this report presents the voices of a variety of professionals at different career stages, from Juniors to senior judges. Their words not only highlight the human connection and empathy that lie at the core of our work, but also expose the barriers to spreading the experience of kindness.

This unique collaboration between academic psychologists and experienced barristers also offers hope -- hope that arises from the tried and tested effects of simple but powerful steps that we can take to model kindness, to be explicit in our expectations of behaviour from each other, and purposefully to create spaces for ensuring that our support for each other is always prioritised.

As the report concludes, the cultivation of kindness is not about promoting softness or weakness, but is quite the opposite. It lies at the very heart of our professional success. It remains for us, and particularly for those of us in positions of influence and leadership, to heed the words of our colleagues in this report, and translate these mechanisms into practice in order to safeguard the wellbeing of all who work at the Bar.



Background and aims

This report follows on from initial exploratory work that was undertaken in 2022 to learn about the relevance of ‘Kindness at the Bar’. That work had been commissioned by the Bar Council’s Working Group on Wellbeing at the Bar (WATB), following preliminary input from Professor Banerjee, then Head of the School of Psychology at the University of Sussex, at an event in 2021 hosted and supported by the South Eastern Circuit, the Criminal Bar Association, and Middle Temple. The work conducted in 2022 involved two workshops, involving barristers from different parts of the Bar, that generated insights into the nature of kindness, the influence of the workplace context, and a variety of factors explaining individual differences in levels of kindness.

In 2024, the South Eastern Circuit and Red Lion Chambers commissioned Professor Robin Banerjee to lead a follow-up piece of research designed to deepen and extend our understanding of: a) the nature and impacts of kindness at the Bar on self and others; b) the factors that act as barriers to higher levels of kindness; and c) the mechanisms felt to be helpful for enabling or actively promoting greater kindness at the Bar.

In contrast to the previous project, smaller and more targeted focus groups were selected to gather the perspectives, experiences, and insights from different groups of professionals at the Bar, including barristers at different career stages as well as higher court advocates (HCAs) and judges. In comparison with the exploratory workshops in the previous work, these focus groups provided more opportunity for participants from the same professional role at a similar career stage to come together to share their thoughts in response to the focus group questions.

It should be noted that this work builds upon a body of existing literature concerning related topics, such as ‘Diversity at the Bar’ (2020), ‘Bullying, Discrimination, and Harassment at the Bar’ (2020), ‘Covid-19 Survey of Pupils’ (2021), ‘Barristers’ Working Lives’ (2021), ‘Trends in Retention and Demographics at the Bar’ (2021), and ‘Life at the Young Bar’ (2022). Those reports provided a number of insights into inclusion and wellbeing at the Bar, but the present programme was designed to extend and deepen these by shining a light on the role played by kindness in particular.

Focus groups

Five focus groups were organised by Valerie Charbit and held online in Spring 2024 to gather more insights into kindness at the Bar, with a particular orientation to gathering insights that could inform the development of effective approaches to promoting kindness.

The composition of the focus groups was as follows:

- 6 Silks – 2 male and 4 female
- 6 Senior Juniors (Over 15 years’ Call) – 3 male and 3 female
- 6 Juniors (Under 15 years’ Call) – 3 male and 3 female
- 3 Higher Court Advocates – 1 male and 2 female
- 8 Judges – 1 male and 7 female.

The focus group discussions were wide-ranging, but broadly addressed the following topics:

- General conceptualisations and specific examples of kindness experienced at the Bar
- Specific impacts of such kindness, both on oneself and on others
- Factors that are thought to enable higher levels of kindness
- Factors that are thought to pose obstacles or barriers to being kind
- Organisational structures, policies, and practices that are felt to be relevant to kindness
- Specific strategies that could help to promote kindness at the Bar

It was emphasised that the discussion would be free and open, with the meeting recorded for analysis. Assurance was provided that any reporting of people's contributions would be completely anonymous.

Approach to thematic analysis

The preliminary coding and thematic analysis of transcripts from the focus groups was undertaken by a trained and experienced social researcher, Dr Claire Durrant, with further consolidation and development of themes and subthemes in discussion with Professor Banerjee.

The thematic analysis followed key steps in line with best practice, including work by the analysts to familiarise themselves with the transcripts, preliminary coding of the overarching issues emerging from the transcripts, and an iterative process to arrive at the final set of themes and subthemes from the analysis. These are presented below, accompanied by brief commentary and illustrative extracts from the transcripts.

Themes and subthemes

Four themes are presented below, with a number of subthemes drawn out of the data to add greater granularity to the perspectives shared by the participants. The key ideas emerging across the different focus groups are described for each theme and subtheme, with illustrative extracts from the focus group transcripts. For each of the latter, the professional role of the participant, the participant number, and the gender of the participant are recorded in parentheses.

Conceptualising kindness at the Bar

A common thread in the conceptualisation of kindness was an emphasis on **seeing the person and making a connection**. Commonly, focus group participants talked of kind interactions in terms of a sense of humanity, seeing the person first and recognising that we are all humans with real lives, rather than treating people, particularly Juniors, as 'inputs' (Silk, 1, F) who complete tasks on behalf of people more senior to them:

'But I just think it's, you know, it's that human level that we were talking about at the very beginning. You know, if we can just see people as other human beings... We're all trying to just do a job that's hard enough already, we don't need to make it harder by being hostile in any way' (HCA, 3, F)

'You know, remembering that they're humans as well when we're saying things like "let's sit until late or please give me these submissions by 9 o'clock tomorrow." Those kinds of practical things' (Judge, 2, F)

Related to the idea of humanity was dignity and respect, and an understanding that these basic principles must stand even when there are disagreements, or the situation is adversarial:

'There's going to be areas where we disagree professionally because of our instructions. But actually we both deserve the basic respect as colleagues and as human beings' (Silk, 6, F)

A Silk gave an example of an opponent showing respect for him, where they put the interests of their clients first but tried to minimise the impact on their opponent:

'If the night before a case they want to rely on a new authority and it's a long one, they'll send the authority to you, but they won't just dump it on your e-mail box; they'll tell you which paragraphs of the authority they want to rely on' (Silk, 4, M)

Of course, a key manifestation of seeing the person in this way was the establishment of a human connection in the interactions, which could simple be acknowledging someone, smiling, having a conversation, or saying thank you if somebody opens the door for you:

'I think it's just taking the time out to actually really talk and listen to people, because I think if you can just connect - it can be even a really like superficial level. If you walk into the robing room and you smile at someone and they smile back and then you say hello and they're like, "well, what case are you doing today?", then it sort of snowballs from there really' (HCA, 3, F)

This was sharply contrasted with scenarios where participants described a strong sense of being ignored. In fact, unfortunately, some participants felt that incidents of kindness stood out precisely because they could recall fewer acts of kindness within the profession. This was explicitly noted by some of the junior barristers, who reported feeling saddened by this:

'I've been in a room and some people don't even say good morning... or you'll go in a room and three or four people know each other... And I'll just sit there and the three people who know each other, they carry on just talking like I'm not there' (HCA, 1, M)

'... because more often than not I come across situations that aren't particularly kind, so when they're positive, they really stand out. Which is a bit sad really when you say that out loud' (Junior, 1, F)

'Doesn't it say something quite negative about our profession? That was such a nice thing for someone to have done. You know that should be a nice thing, but it shouldn't be that level of going above and beyond' (Junior, 5, M)

The focus on human connections was complemented by a striking emphasis on **empathy and perspective-taking** as the hallmark of kindness. Notably, participants highlighted the importance of colleagues – regardless of career stage – being kind to each other by showing an awareness of when

someone may be in distress and offering support. In doing this, they stressed the significance of actively listening and giving people time:

'To me the essential feature of kindness is empathy – is beginning to step outside your own perception and try and look at things from somebody else's perspective' (Silk, 2, M)

'If you hear something has happened to someone, just contacting and saying, "Are you OK? Do you want to talk about that sort of thing?" So, following up on issues that have happened to colleagues and making them feel supported' (Judge, 5, F)

We also found other representations of kindness that involved highly experienced colleagues being sensitive to the vulnerabilities of less experienced opponents, often drawing upon their own experiences:

'As I now start to kind of lead teams, the one thing that my junior colleagues expressed again and again and again is people making them feel small, people highlighting their mistakes to them in a really unconstructive way. And making them feel like...they're not good enough, like they shouldn't be at the Bar, like they shouldn't be doing a case of this complexity. And so, when Juniors step up to that next level of complexity, being thoughtful about their position and thoughtful about their vulnerability in that transition and encouraging them with positivity and constructive feedback, even if we're against them in a case' (Silk, 6, F)

'Many years ago, I was a very young member of the Bar in the robing room and a slightly grumpy circuit judge had taken a swipe at me over something... I found myself back in the robing room with him, looking very anxious probably... and I haven't particularly gone out to ask anybody for help. And very shortly, ...one very senior member of the Bar said, "Oh, you look a bit worried, you've got the law books out"... And I told him and within minutes there were four of them going, ... "Oh, he's a grumpy so and so, don't worry", and that buoyed me up, cheered me along, helped me find the answer ... the end result of which is that many years later in that robing room, I found myself doing the same thing on numerous occasions, actually with very young members of the Bar, and in fact quite a few solicitor advocates who had not had a great deal of assistance.... And I did that because I remember the relief. I remember the benefit, the learning experience' (Judge, 8, F)

'I've had in front of me people who are very new...So sometimes it's the first time they're on their feet, and they might make errors and suggest the wrong things. And I think it's really important to be very careful not to call them out and make them look like idiots, which it sometimes could be tempting to do if you're trying to rush through ... So, you sort of try to steer them in the right direction without making it look like they've made really ridiculous mistakes and that they ought to know better' (Judge, 4, F)

Participants provided numerous other examples of colleagues showing empathy by responding with kindness to a person's difficulty, regardless of the size of the problem being faced, or simply respecting the work-life balance that a colleague is trying to strike:

'A colleague of ours was very upset recently because of a personal matter and was feeling sort of overwhelmed in the morning and she had a number of cases in a list. So, everyone on the

corridor just came and said "I'll do your case." And so all her cases got taken away and she could go home and deal with the problem that was upsetting her' (Judge, 6, F)

'The court usher... like a couple of months ago I forgot my tie, so obviously I wasn't dressed properly for court. He went out of his way to find me one. He went and asked a couple of colleagues and found me a tie and that was really kind. So, he didn't have to do that' (HCA, 1, M)

'The kindness that has been shown to me when I had children... [My leader] rang me up and said, "What's your children's bedtime?... Tell me what time doesn't suit you for me to make phone calls to you. We'll work with that." And I was so impressed and so appreciative of somebody recognising that I might have some boundaries now and expressing to me that he had some too. So that was a huge act of kindness' (Silk, 6, F)

'A very good leader will appreciate that sometimes even you as the leader have to pick up the slack when it might be expected the junior might – so they have a personal problem or they have a workflow issue and you step into a difficult situation to shoulder that. I've seen that with some of my leaders in the past and that always struck me as being quite a generous and kind thing to do' (Silk, 4, M)

It is important to note that a distinctive aspect of kindness at the Bar is the opportunity to respond with empathy and kindness towards clients and their families. An Senior Junior described how she had empathised with the mother of a defendant in court and supported her at the same time as managing the case. After the verdict was in the mother said to her tearfully *'you picked us up when we came here in bits last week'* (Senior Junior, 5, F) and told the barrister that nobody else had looked after her during the two-week trial. The same Senior Junior recounted how she gave the family time at the beginning and end of the court day to talk to them and allow them time to ask questions:

'It was being there early enough to sit down with them, explain what was going to happen that day, or what I expected to happen that day. Just allowing 5 or 10 minutes to say, "Is there anything that you want to ask me this morning?" ... Just being reassuring and also at times when evidence got quite heavy going, being willing to say "It's OK. Let's just ask the judge for some time." And just, you know, having tissues in my bag and just being willing to take the time to just sit sometimes, just sit with them, at a time when things were just getting a bit too much' (Senior Junior, 5, F)

'It is about having the sort of leader in the environment acting kindly as well, but also just remembering... for litigants in front of us, the environment is often a foreign place and it's very stressful for them to be there in the first place' (Judge, 5, F)

A critical dimension of kindness at the Bar related to the **collegiality of professionals towards each other**. A junior barrister described how an opponent defended him to a judge who was trying to bring a hearing forward to a date that, for personal reasons, was inconvenient:

'My opponent immediately jumped in and went, you know, this is completely unnecessary. We don't need to push it forward – it was by a week – it wasn't going to make any real difference. And the judge immediately apologised, and it was dealt with fine. But it was that my opponent

actually noted that in his diary and then sent me an e-mail about it, must have been like four or five months later saying, "I hope that this week goes really smoothly for you." And that was so moving' (Junior, 5, M)

'I think certainly at the criminal Bar there is a powerful sense of collegiality between barristers so that even if you're on opposite sides in a case, almost all the time you can have dialogue with your opponents, and you can achieve mutual support, particularly if it's, let's say, a very stressful case. There's obviously the cut and thrust in the courtroom, but outside the courtroom there is a great deal of solidarity and collegiality.' (Silk, 2, M)

'If your opponent is kind, you're sort of in it slightly together. Yes, you've got opposing positions, but it makes a big difference. And for me it's the people who have the emotional intelligence to tell the difference between the fact that I disagree with your position, but I still care how your grandma is because the last time I saw you, you said she wasn't well. And you can hold those two things simultaneously, because we're all complex humans' (Junior, 5, M)

In one focus group, leadership was described in terms of abandoning *'this ego model of being a barrister to a much more collaborative teamwork, encouraging people to play to their strengths and creating a team spirit, rewarding and encouraging'* (Silk, 1, F). Another focus group picked up on this possibility emerging even between opponents in a case:

'I was the prosecution Junior on a murder... I'd cross-examine the getaway driver first and then it was coming round to doing the next defendant, and his barrister, who's a Silk, pulled me to one side and said: "Slow down. You belong here. You know, you have every right to ask these questions as the rest of us. Own it". And it was his own client I was about to cross-examine. And the next day and a half I was a different advocate, and it massively improved my performance, having somebody take a couple of seconds out to encourage me' (Senior Junior, 2, M)

Relational impacts of kindness

There was widespread agreement that the various examples of kindness described above had positive impacts in terms of relationships between people, both at the level of specific individuals and at the level of the overall functioning of the courtroom. As well as noting the effects in terms of helping people feel better themselves, a number of focus group participants picked up on the very practical benefits arising from kindness, with performance outcomes directly enhanced as a result of the more positive relationships.

'They will have learned that we can be kind to them and therefore they will hopefully be kind to others. It made me feel better to have done it because I felt like I had taken the opportunity not to squash them, which has sometimes been tempting to do to be honest. But to have dealt with them nicely, ... it made me feel better as a result' (Judge, 4, F)

'I had an opponent ... who was immediately very bullish with me, saying "what's your fellow going to plead to?" and was just quite cross and angry. And so I said, ... "why don't we sit down? Let me get you a coffee. And let's just sit down and have a chat about it." And then I came back with a croissant. The power of the almond croissant! I just came back with a

croissant and a coffee and just said, ... "Let's just have a chat." And it just disarmed him a little bit. And then over the case, he started telling me about things that were going on for him personally and which clearly had been feeding into what I was presented with at the very outset... But over the course of that week, you know, and after the magic croissant, it just brought his temperature down quite a lot, I found' (Senior Junior, 5, F)

The wide range of very practical advantages that arise from the positive relationships nurtured by kindness were seen at all career stages as crucial for us to recognise:

'When we go to court, the first person you interact with is the clerk or the usher... they help you out with lots of things. For example, getting a room for an interview or making your time spent correctly between two courts. ... And it does develop a good relationship, not just because it's the kindness that they're showing, but for the long-standing relationship with the court staff. And it gives an impression that you feel safe, at home, confident and supportive. That's very important in what we do every day' (Junior, 4, F)

'If we're nice to a clerk and friendly towards the members of staff that help run our courts they're going to do things for us. So, I ask one of my members of staff to look something up in the middle of a busy day, they will drop it and do it to help me because I'm always kind and helpful to them. And I think the same is true in our interactions with members of the Bar. I think if you are unkind to members of the Bar they're not going to help you out when you might want them to help you out in court.' (Judge, 6, F)

'It's not just altruistic: if you're kind to people, people are kind to you back' (Judge, 5, F)

Barriers to spreading kindness

Unfortunately, all focus groups found it very easy to identify a range of obstacles to expressing and/or promoting kindness. Notwithstanding the many examples given of collegiality earlier, there was no doubt that kindness could be inhibited by the **adversarial climate** that pervades the professional context:

'You're going expecting to have some confrontation with your opposition about what the case is and how it's to work. And I think because of that sometimes the mindset of people is not automatically to be kind and to be sort of on a friendly basis' (HCA, 3, F)

In accordance with this, some participants discussed how in the past there has been a culture of younger barristers having to become *'bloodied, like you had to be kind of broken in so that you'd be a really good advocate and you'd be able to think on your feet'* (Judge, 6, F). They suggested that there are still some people on the bench and at the Bar who were brought up in this culture and who may expect to treat young barristers today in the same way, in what, by today's standards, could be regarded as unkind and bullying. There was a sense that it is not enough to assume that these kinds of views will die out with that generation, but that the issues should be addressed now:

'So, I'm sitting with my colleagues having lunch and they're all perfectly lovely people. I don't know what they're like in court. Maybe they're still doing that to young barristers now. And I think that this is all part of the wider culture change that the judiciary now have to tackle, that

those kind of ideas and practices are kind of almost dying out with the generation that thought they were a good idea. But there are still little pockets of it and that's what we need to address through a kind of wider culture change' (Judge, 6, F)

'I think that the culture isn't just going to change overnight at the Bar. Particularly more senior members, they can be sort of, you know, stuck in their ways. And you know, "This is how we did it in the good old days" and things like that. It's fantastic to work in a profession that's got loads of traditions. I'm sure it's one of the things that we all love about it, but in some ways we're so stuck in the dark ages and you just think, come on, let's you know, let's move this along. That's not how things should be done anymore' (Junior, 1, F)

However, it was also abundantly clear that the culture and ethos varied from one workplace to another. Juniors talked about how they have noticed that certain patterns of behaviour are more prevalent in particular chambers. There was the suggestion that chambers select people who will fit in with their ethos and that young barristers are very much modelled on their predecessors, learning how to behave through training and shadowing their seniors:

'I think it must go to, you know, their training and what they were taught in pupillage. Having now had a former pupil from one set of chambers come across to my chambers and had a bit more of a frank conversation about the type of training that they get, she's sort of confirmed, yes, we were told to be, you know, aggressive in our approach. And it's one of the training tactics that we had' (Junior, 1, F)

'Chambers do often self-select for traits, I think, that they like to see in their pupils. And then when they're training their pupils, you know, you are again, almost uniquely for a modern profession, shadowing your pupil's supervisor for at least six months. You get a different one maybe in the second six, but you are following the example of the person that you're paired up with' (Junior, 3, M)

In this context, many focus group participants described **competing pressures** that acted against the motivation to be kind. Many highlighted the status of being self-employed, and having to compete for work in a world where professional reputation is based on winning cases. One Silk described the situation as a conflict of interest, where people do not call out unkindness, or they do not stand up for someone in a public setting, because they are concerned about the outcome of the case. Moreover, unkind behaviour to achieve success in a case was sometimes thought to be expected and actively encouraged by instructing solicitors:

'I think the biggest problem for not just the Bar but the legal profession in our country and the way that we operate justice is that you will almost always have some sort of conflict of interest. So, if you are instructed, you are instructed to win. You're instructed to win the best possible outcome for your client.... And how you go about getting that, I think many members of the Bar, but also in the judiciary, have very different views on what is and isn't the right way to go about that' (Silk, 5, F)

'There's zero tolerance I find, particularly from the city law firms of, you know, that they're being paid huge amounts of money ... the clients that have these expectations... they're driving the law firms, the law firms drive the Bar. But there's a huge imbalance of power when

you're a sole practitioner. Equally, I do a lot of government work and you have the same pressures there because government is under so much pressure' (Silk, 1, F)

'So, in my area of work, commercial work, one of the big barriers to people behaving properly to each other is client pressure... And there's also in recent years, a worsening of the situation as an American approach to practice has slowly seeped into the English approach to doing things, particularly personal attacks on the other side's legal team, rather than keeping it to the legal issues, which is a very American way of doing things. But it's now seeped over here, so people always look for a way to go for you personally rather than the case, as an extra way to leverage their case overall' (Silk, 4, M)

HCA's and judges also talked about how expressing kindness in court can mistakenly be perceived as being biased or showing favouritism. An HCA said that in some cases this can lead advocates to 'showboat' (HCA, 1, M):

'So, we're in an adversarial process and we've also got clients that are instructing us... although I tried to be nice and pleasant to the people, sometimes if the client's watching, they'll go back and complain or you're friendly, you know, because a lot of the people, they're in a difficult situation. There's conspiracies... So sometimes you've got to be careful. So, some people are putting on a show for their client' (HCA, 1, M)

'But also I'm mindful that we have a duty to be fair and impartial, so an act of kindness can't be perceived as showing favouritism to one side or another. So there needs to be some making sure that that doesn't come across, or at least addressing to others that if you decide to take on board an act of kindness towards counsel, that doesn't mean you're showing favouritism... So it's sort of addressing potentially what people might think in their minds (Judge, 7, F)

In this context, the drive to win can easily outweigh the respect for work-life balance described earlier:

'If you are available and you are the "yes" person and you always deliver and you always win and you're always available, you get the work. It's that simple. And so in order to change that, the culture would have to change in terms of the instructing solicitors and their expectations and your clerks and their expectations in terms of our culture. I was going to use the word boundaries as well' (Silk, 3, F)

Moreover, these kinds of competing pressures were felt to pose significant difficulties for calling out unkind behaviour:

'The Bar is very often looking to judges to give them references for this or that and different levels of the judiciary are looking to higher levels of the judiciary to give them references for this or that. And it makes it quite difficult to find safe spaces to feed back, to discuss issues that have arisen, to convey dissatisfactions or criticisms ... I think the Bar worry that if they said anything, it might count against them in some way' (Judge, 1, F)

There's also the sort of fear that some people have about reporting their colleagues - be they people who they're against or even judges because ...it could have an impact on how this particular judge treats you in the future.... or how a certain opponent might interact with you in the future or again, treat you in the future... because there is this fear that this will have

reprisals and especially for people like in my position, who are quite junior to the profession, and you sometimes don't really want to make much of a fuss... I think there's an unfortunate culture of trying to discourage people from taking a stand and also highlighting when things aren't being done as they should be' (Junior, 6, F)

The Bar Council's online resource called 'Talk to Spot' was mentioned by some participants and was described as easy to use; some also found it useful in terms of the advice given and the fact that they have a monitoring service to check if the same individuals' names come up repeatedly. However, not everyone was aware of the mechanism for making a complaint, and even among those who understood the process, one Junior described it as '*incredibly exhausting*' (Junior, 5, M), or lacking in clear follow-up to see what has happened after making a complaint:

I'm sure there's probably something in place for if you've had a negative experience with the judge, I'm sure you can probably complain to someone. I'm not aware of what it is, or if I would feel comfortable doing it because of obviously the power imbalance and also the impact that might have later down the line and not necessarily personally, but professionally on a client. I'd hate to, you know, have a knock-on effect at a later hearing' (Junior, 1, F)

'I know about things like Talk to Spot. Whenever something happens, when someone raises an issue, like in any of my group chats, someone always says send it to Spot, send it to this person, send to that person. But it's like you send it to this person and that person. Then where does it go afterwards? Because we can raise these complaints, but nothing will be done with them. And I know of people personally who've had real issues with their opponents or with judges, and they've raised complaints, but nothing happens. And so it can be quite demoralising because you're just thinking to yourself, what's the point in complaining if nothing's going to change?' (Junior, 6, F).

Coupled with these concerns about the professional culture in general, a number of barristers and HCAs highlighted the negative impact of being in courtrooms where a **hostile atmosphere** was felt to have been created by the judge:

'It's most obvious when judges are unkind. Time seems to be a theme here, pressuring you to rush, pressuring you to be ready when you're not or being sarcastic or scathing because you're taking too long over something, which I think plagues all of us, but perhaps the junior Bar a bit more. And these judges don't get the best out of the advocates in front of them. If you're worried about the next thing that's going to come out the judge's mouth, you're not focusing on doing the best advocacy you can do' (Senior Junior, 2, M)

'You know you don't have the opportunity to remove yourself from the situation. You're in the middle of a hearing. This is the judge you've got. You've got to do the best for your clients' (Junior, 1, F)

An HCA suggested that some judges' behaviour may be inappropriate because they do not have a frame of reference from which to work – their work was described as quite solitary and it was noted that many judges do not get to see how other judges run their courts:

'The judge can speak to you in a very rude tone or ask why things haven't been done. Or sometimes if they want to have a go at, say for example the firm, they'll have a go at the advocate. They'll pass on coded messages... if you've got the kind of judge that doesn't say good morning ... A lot of judges, because they become more solitary, they've not seen how all the judges act. They don't sometimes realise that their behaviour is inappropriate or hostile... Yeah, they don't have a reference. And sometimes they take their frustrations out on you, unfairly or sometimes it's in an embarrassing way because you've got a client there and they'll try to belittle you. If you look at the forums on judges' behaviour, they're littered with examples' (HCA, 1, M)

Participants linked some of these issues to **ongoing issues with diversity and inclusion** at the Bar. While recognising that measures are being taken to change attitudes, they said that there is still more work to be done:

'I think we have to recognise that the main barriers to people being authentic at the Bar are still very structural. They're things like racism, sexism, disablism, lack of recognition of neurodiversity being a huge asset within the Bar's skillsets. So, people coming into the Bar thinking, "Oh, it's not for me because I'm, you know, I'm dyslexic and I've got ADHD and the Bar isn't for me" And those things are changing. There's lots of great work going on to change the Bar to make it more inclusive. But I think there's definitely more that we need to do there' (Silk, 6, F)

Both Silks and Juniors were able to highlight behaviour from barristers towards women that was described as unkind, aggressive, and bullying, and in at least some cases apparently reinforced by judges:

I think the judiciary needs to be aware... that bullying includes not just aggressive behaviour but microaggressions. And part of that can include gendered microaggressions. So, the example I wanted to give was where I was against a particularly difficult opponent who I think was bullying me. Now, looking back at my junior self. He absolutely was bullying me And the judge was kind of doing their best but was nodding along with this fellow Oxbridge waistcoat. They wore the same three-piece suit. They had lots in common. And so whenever he, whenever my opponent was making points, I could just see he was kind of intrinsically on board with some of it... I think people think they're doing a good job, but actually they're missing some of the unkindnesses that they're extending... how male judges just react to my voice in a different way to a deep, sonorous baritone voice and making exactly the same point. Those kind of things, you know, we can't ignore the fact that they exist.' (Silk, 6, F)

'It was a much older male barrister with a lot more experience. He was very, very aggressive in his approach. Every time I spoke he talked over me and this was in a conference prior to the hearing... And then we went into the hearing. And interestingly, I thought that the judge would shut down some of this behaviour, but it became quite apparent that they were very well known to each other. And the judge had quite a laid-back approach to what was going on in his courtroom. And he sort of just let him run wild' (Junior, 1, F)

All of the above challenges were felt to be seriously exacerbated by a **lack of time and resources**. There was an acknowledgment that everyone working in the criminal justice system is under pressure and that is not conducive to expressing kindness.

'There is enormous stress on the system... I do believe that the stress on the system generally has made people less kind, actually. They're more aware of kindness as a thing that we all ought to be thinking about, as people have said with well-being etc, but really and truly the physical pressures and the economic pressures on the system have really undermined that message' (Silk, 5, F)

One of the barriers is that when you've got, you know, six interviews to print off and the slowest printer in the world. And the poor paralegal who doesn't know the case at all decides to start with interview #5 and you're meant to be reading interview #1 to the jury, and, you know 20 minutes ago. It'd be very easy to get frustrated with them ... because all of the pressure feels like it is on our shoulders' (Senior Junior, 2, M)

'The CPS (Crown Prosecution Service) ... they just don't have the people and the people they've got don't have the training to be able to deal with you, you get fobbed off and then you'll have to wait until you get to the trial and the trial gets adjourned because they haven't provided all the information' (HCA, 2, F)

One Junior highlighted the difference to kindness that is made when a court is well-resourced, citing in particular the Royal Court of Justice (RCJ):

'The RCJ people have proper time. Every judge has a clerk, the clerks have administrative people that can go and do various different things. So, people have that capacity to be kind' (Junior, 5, M)

Overall, the accumulation of stresses and strains, in a culture that at least sometimes can feel remarkably unkind, was felt to create a workplace context where the experience of kindness – and all of its positive consequences – is in danger of being lost. This was the perception of focus group participants who were relatively early in their career as barristers, as well of those who had attained a senior status in the judiciary.

'I think that once people are feeling a strain on work, kindness is one of the first commodities to go, and actually it's the most underrated commodity.' (Junior, 2, M)

'It is a critical component but that is only possible if your working environment makes it possible or you're able to have sufficient control over your working environment to make it possible... I think your working environment is incredibly important. I call it the oxygen mask rule with the staff. And I say that they have to look after their own welfare before they try to help others. Because if you look after your own welfare, you have adequate time to do your work, you will not be unnecessarily stressed and then you're more likely to be well disposed, to have the mental space and time to be kind to others. This becomes significantly reduced if you're under huge pressure yourself. We can still do it, but it becomes significantly more difficult as you become stressed and worried throughout the day' (Judge, 8, F)

Mechanisms for promoting kindness at the Bar

A large part of the focus group discussions concerned the strategies that could potentially combine to overcome the multiple, significant barriers discussed above. First, there was a recognition that even though **written policies, documents, and procedures** in themselves would not be sufficient to foster kindness, their presence is significant and do have a significant role to play in changing the culture and spreading kindness, especially if they can be strengthened.

Examples cited include the 'Civil Procedure' rules, the interpretation of which were thought to possibly give new meaning linking it to kindness. A judge talked about the 'Statement of Expected Behaviour', though concerns were also expressed that it would not be read by those who needed to be targeted. A Silk mentioned a useful set of resources for practitioners in Coroners' Courts (published by the Bar Standards Board) and a toolkit of how to report concerns, and explained how this had been used in training:

'Whenever it's talked about in professional training... it's normally in the context of reminding them not to be too adversarial, to step back and say, "OK, let's try and assist the court here. Let's not make this too personal. Let's think about what we're really asking here." So, I think there are some examples growing, but I think they could be strengthened' (Silk, 6, F)

Another Silk asserted the importance of the 'Code of Conduct' in terms of moving kindness from being about the individual to the culture of the judiciary:

'I think at the moment kindness is an individual thing. It depends on the personality of the people that you've got in the team. I think, to create a cultural change ... whether it's done through the Bar Council, there's got to be some external pressure to set this as the Code of Conduct almost or what the expectations are' (Silk, 1, F)

Crucially, a number of focus group participants highlighted the need for these kinds of policy documents to be given greater strength through adding in sharper and more concrete consequences for non-compliance. For example, a Silk (5, F) described the current 'Code of Conduct' for the Judiciary as '*pretty weak*' and '*unenforceable in the sense that there's no sanction for not doing what it says*', though she went on to emphasise that '*the fact that it's there is really, really important*'. Another Silk said he would like to eventually get to a position where commercial court judges can apply cost sanctions for improper behaviour. He described this as '*a bit of stick and carrot*' (Silk, 4, M).

Interestingly, there was also a recognition that solicitors have a role to play in changing the culture, reflecting the points discussed above regarding pressures from instructing solicitors and their expectations. One Silk talked about how the Commercial Bar Association was working to put together a code of conduct based on a Canadian document which outlines how advocates should behave in and around court, which he felt could go some way to addressing this issue:

'And the point is not only to educate other barristers, but also so we've got something on paper that we can show to a solicitor who's asking us to behave in a certain way and say, "Well, look, actually, it's not going to be acceptable to do that. It's against the spirit of this document and I'm sort of bound by it"' (Silk, 4, M)

Nonetheless, it was clear to the focus group participants that, regardless of codes of conduct and other written policies, culture change that fosters the spreading of kindness requires **leaders who model kindness** and, in particular, **judges who set the tone** from the outset of proceedings:

'It's also having role models and examples of people in higher status, perhaps because it's not a weakness to be kind. But you know, people doing the right thing and demonstrating it... that can be contagious in the same way that doing the wrong thing can breed unkindness... There was one female Silk when I was very junior who was just class. And I thought I would like to be the way she treats people. It's just class to treat everybody on a level. You know, she's a leader in her field and she just oozes kindness and class and is fantastic at her job. And it adds to what she does, it doesn't detract from what she does' (Senior Junior, 3, F)

An HCA talked about deliberately going out of her way to introduce younger colleagues to the other people in the room and a judge described how she leads from the front and goes out of her way to include new judges. There was a sense that court users follow a judge's lead and that when a judge is kind the atmosphere within the whole court becomes more positive, with ripple effects on all staff in the location:

'I think often for me kindness kind of starts at the top down, so particularly when you walk into a courtroom, for example. We're all living very demanding lives with schedules that are constantly changing and moving and defendants that are very volatile. Just having a judge who understands those different dynamics and communicates with you in a way that is respectful and polite, I think is a really, really powerful position to be in. It sets the tone for the rest of the hearing as well' (Junior, 2, M)

'In my building I set the tone by demonstrating how I behave as new judges or part-timers come in. I go and see them immediately. I lead by example even when I'm having a rubbish day and don't feel like being cheerful. And always be cheerful when I get into the dining room. You know, I encourage people actively to come and sit and if they don't come down to the dining room, I will just wander down discreetly and have a chat, make sure they're OK without being sort of overly intrusive. But I think you lead by example and if you create that tone, the staff will learn, for example, when something goes wrong, they can stop, pause, [and ask] "What's happened? What do we learn from it?", rather than having the witch hunt. So that I think is... but leading from the front is the most important aspect of that' (Judge, 8, F)

Some focus group participants particularly highlighted the positive effects of **being explicit about expectations of kindness**, in particular in relation to how advocates behave in the courtroom. A Junior described it as '*setting the temperature of the case*' (2, M) and a Silk talked about a judge grabbing control of a hearing:

'I think a judge grabbing control of a hearing, in particular right from the outset, and setting out their expectations for how that hearing should be managed is incredibly helpful... If part of the problem is the pressure the advocate feels to put their case across in a certain way or be a certain way to win the case for their client, if the judge is expressly saying X, Y and Z will not win the case for your client, it's very helpful for the client to hear that sitting in the back of the room and the advocate then feels empowered' (Silk, 4, M)

On a related note, some focus groups participants focused on explicit messaging about fostering diversity and inclusion played an important role in fostering a sense of kindness and welcome towards all working in that space. Other participants also mentioned that even small, practical improvements in their environment can lead to barristers and other staff feeling more valued:

'We make sure that our all our visual messaging is inclusive in terms of diversity to say, you know, you're welcome here – people who wear headscarves are welcome here, young black men are welcome here. We're very, very overt about that. So yes, I think that sort of kindness of inclusion is necessary and authenticity should create that sort of kindness as well' (Silk, 6, F)

'I went to X yesterday and in the ... robing room these little vases with kind of plastic flowers had suddenly appeared from nowhere ... And there was a kettle. And there's some little paper cups and somebody's put some National Geographic... What a nice thing to do... It's just a little something that makes you feel that little bit more valued... I don't know if it's kindness or whether it's just on a practical level, but things like being able to have a cup of tea while you're at court and not sort of being in this environment where you can't even get a sip of water sometimes. It's kindness on one level. For there to be just some facilities like a kettle and a little fridge and some, you know, some milk and some coffee, because we're living a very stressful time all day. ... We don't always get a lunch break. We don't always get an opportunity to just decompress for half an hour or take a walk around the block or zip out to the Tesco's. But something like that, just that, you know, an honesty mini-cafe within our little environment, it would be kind. For us to be able to have, just have that facility... just practical things I think would just show us that somebody cares' (Senior Junior, 5, F)

Participants make it clear that they wanted to see more efforts to **raise the profile of kindness** within the Bar. There was a sense among participants that the people who attended the focus groups were already aware of the relevance of kindness in the workplace and that it is important to generate conversations about kindness more widely, in particular among those who may not yet appreciate its value. A Junior recounted how there had recently been greater discussion about wellbeing but would like to see more emphasis on kindness:

'It doesn't have to be a policy, but just as a topic of conversation. Just like we've all been having. It makes you so much more aware of the impact it has in your life when you just start thinking about it and talking about it. So, I think that's probably where I'd start. You know, have these conversations with each other and with judges' (Junior 3, M)

A number of specific contexts for raising the profile of kindness were suggested. One example discussed in some depth by the HCA focus group was the implementation of **mentoring circles**. The HCAs were extremely positive about mentoring in terms of learning to understand other people's perspective and breaking down barriers in an informal, non-hierarchical setting, which includes *'people from the defence side, prosecution side and obviously judiciary, even clerks from chambers to paralegals'* (HCA, 3, F):

'Knowing the judges, seeing what the paralegal has to say or seeing the issues that the senior solicitors have when they haven't got anybody to send to court with their client and the judge is moaning that your client is there on your own and that sort of business, you know. If they see

that and understand and listen in a mentoring situation it is far better than any formal training or formal policies or whatever' (HCA, 2, F)

'And also, I think because it's not like a top-down thing. It's like everybody learns from everyone else. So, everyone's got something to contribute and so there's no hierarchy in that sort of situation. You just come together as a group and therefore people, I think just instinctively are more open to just like having a conversation. And it's not, "I'm going to have to listen to the judge because that's the judge", it's like "We're going to have a conversation as human beings and everyone's got something interesting to say"' (HCA, 3, F)

The mentoring circle was described as having a significant impact on improving relationships in court:

'It just makes things so much easier. So, then when you see them at court, like, yesterday I was on my way to court and I saw one of the women that I just met from women in criminal law at the train station. And I said, "Oh, hiya, how are you going? ... where are you off to?"... and it's just so nice to be able to have that sort of informal connection with someone that's not because you've been in opposition to them in a case, but you just sort of have met them and you've had a chat. And I think that although you can have, like, formal training, I think things that are more organic or informal work are so much better' (HCA, 3, F)

Pre-court and post-court review meetings were also suggested by a judge who had initiated them in her area as part of efforts to foster diversity and inclusion. These were given as a good illustration of how a kind culture can be cultivated by planning ahead for the court case, and having an open and authentic process for reviewing how things proceeded:

'In a pre-court meeting we're encouraging everybody, in line with, for example, the Statement of Expected Behaviour... to think about what we all might need during the day. So, for example, if anyone's got any like, hard of hearing, they might need to sit on one side of the bench rather than the other, or they might need to rise to go to the loo because they might have a health issue or whatever it is... to talk about it or to raise it at beginning so we can all be aware of each other and look after each other during the day. And then the post-court review is where we encourage people to challenge ... if there's something that they think hasn't necessarily gone the way it should have done. Or for example, if someone's made an inappropriate remark that's made someone else feel uncomfortable. We're saying look, talk about it because otherwise the person you made the remark to may not really appreciate what they've said or how it's made someone feel' (Judge, 4, F)

Other judges were positive about holding these meetings, saying that it opens up a space for discussion. A few said that they were already doing something similar, although less formally, while others were unsure if they would be able to make it work both before and after court sessions.

Finally, a specific focus on kindness in training and professional development was regarded by participants as necessary to support people to understand the significance of kindness in the context of the Bar, as well as to understand more about identifying and naming bullying and microaggressions:

'I think it starts with training. I would have it at Bar school. I would have it as part of the ethics

course. How to behave yourself, what to expect from others. And I think it needs to be fundamental core basis of how we operate honestly' (Silk, 3, F)

'You need to inculcate these sorts of thoughts and values right at the start because when people start at the Bar, if they start young and they've not really done very much – and I speak for myself as much as anybody else – you look at people above, you look at your colleagues. You try and take on what you think are the most successful attributes that they have. And you know, if you're not careful, the mask becomes the face and you end up being one that's sort of bullying, aggressive, unpleasant people that we've heard about. So you've got to get in early, got to get them young, I think' (Silk, 2, M)

There may also be a role for training, throughout barristers' careers, in empowering them to deal more effectively with people who are unkind in the workplace, for example diffusing situations by being kind and *'being the bigger person or as Michelle Obama says, "when they go low, I go high"'* (Senior Junior, 3, F). A few Junior barristers repeated the saying *"you catch more flies with honey"* to explain the benefits of being kind:

'Basically, the crux of that was that even if people are being arsey to you, it's always really important to be nicer to them because that reflects better on you and worse on them. And you never know when later on down the line you may need something from them or whether they may need to assist you with something. And even if they're being really arsey at one moment, if you're constantly being kind and pleasant and not stooping down to their level, then that can work out more favourably for you – especially if their arseiness is on show in front of the judge and they're being very difficult with their position for no apparent reason' (Junior, 6, F)

As one illustration of this wider impact of professional development opportunities later in barristers' careers, one Silk spoke about the impact that the Bar Leadership Training course had on her in terms of how it made her feel accepted, and realise that it was ok to be neurodivergent within the Bar:

'I went on that course which involved a huge range of speakers and lots of seminars about vulnerability, recognition about authenticity and some more group work. It gave me a huge amount of permission just to breathe out... "It's OK to be myself, it's OK to identify as neurodiverse, it's OK to promote kindness", and that level of permission was just so important to me, I can't tell you ... I applied for Silk that year because I felt that suddenly the Bar was somewhere that was receptive to kindness, was receptive to authenticity... And I just think all those things and giving permission to people is just like, can be life-changing. So human stories, narratives, talking to people at the beginning of their career, midway through and at critical transition stages is really important. ... Giving people permission to be authentic and saying, you know, "What is it about me that means I can do a great job for my client today?"' (Silk, 6, F)

Summary and next steps

These focus groups demonstrated a widespread recognition of both the importance of, and the powerful benefits arising from, kindness at the Bar. Across the range of target groups that came together for these discussions, barristers at different career stages, HCAs, and senior judges were consistently able to share moving examples of kindness that they had experienced in and around courtrooms, in chambers, and in other contexts of their work. Yet, these instances were often overshadowed by a range of much more difficult interactions, and by a number of factors that posed serious obstacles

Kindness was conceived in terms of recognising the humanity in each other, often marked by qualities of warmth and friendliness, but perhaps more fundamentally characterised by empathy and perspective-taking. Kindness manifested as collegiality towards *all* those encountered at work, and was considered to be at the heart of dignity and respect towards both senior and junior colleagues, both team members and opponents, both staff and clients, regardless of hierarchy or status. Moreover, the participants who attended the focus groups were unanimous that the experience of kindness has significant value at the Bar. This was understood primarily in terms of the wide range of consequences that arise from improved relationships, not just in terms of how people felt but also in terms of very practical benefits to performance and outcome.

Yet there was no doubt in people's minds that a number of factors combine to make it difficult to realise these advantages. Some of these related to enduring qualities of culture at the Bar that serve to undermine positive relationships. These include the adversarial climate, the pressure to 'win' at all costs, ongoing gaps in relation to diversity and inclusion, and – unfortunately – numerous examples of what was experienced as an actively hostile atmosphere. While some examples of mechanisms to report problems were cited, these were undermined by worries that the effort of pursuing these would not translate into positive responses, or could even lead to reprisals. In turn, these obstacles were perceived to be exacerbated by the practical pressures arising from accumulating inadequacies in time and resources.

Notwithstanding these serious challenges, the overall tenor of the focus groups was optimistic. It was felt that positive change was possible, and in fact that genuine progress in improving culture at the Bar had been made. One overarching theme that came out of the discussions was a sense that focusing explicitly on kindness is important for offering a different way to extend and deepen the existing efforts to improve culture at the Bar. Beyond the need to call out bullying and intimidating behaviour, there was a clear sense that prioritising kindness throughout the profession would make a significant difference in driving not just wellbeing but also superior performance.

Appropriate setting of expectations in policies and procedures, with clear and strong sanctions for non-compliance, was seen as necessary even if not sufficient for promoting kind behaviour. This needed to be reinforced by the modelling of kindness by leaders and judges, and numerous examples were given of how this had a cascading effect on the behaviour of all those involved in the courts. Purposefully creating spaces for raising the profile of kindness was regarded as a critical step to take, with some of the cited examples including the use of mentoring circles and the establishment of pre-court planning and post-court review meetings. While these were understood to be dependent on local factors, not least of which is the important question of how well-resourced a given area or court is, there was widespread agreement that incorporation of kindness into training at all levels –

whether in the early induction into the Bar, or at later points in career development towards senior positions – would be an important step.

Far from being soft or weak, then, the cultivation of kindness was itself seen by barristers, HCAs, and judges as a challenge that needed to be taken seriously by the professions. This report offers an agenda for gathering support from a range of stakeholders and partners to this end. Systemic change is possible, but it depends on a concerted effort to shine a light on the nature and impact of kindness, appropriately noticing and celebrating kindness not as a peripheral luxury but as the core of professional success, and taking forward concrete actions to create and shape policy that draws upon these insights.