

Bullying, Discrimination and Harassment at the Bar

Qualitative study by YouGov. For the Bar Standards Board

October 2020

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Executive summary

- Prior research by the BSB and other organisations has suggested that bullying, discrimination and harassment is an issue for many at the Bar, with barristers who are female, BAME, LGBT or those having a declared disability particularly likely to suffer from experiences of workplace bullying, discrimination and harassment.
- 2012 saw the introduction of the Equality Rules¹, which set the minimum requirements that chambers, and entities must meet, with the aim of improving working cultures. In summary, chambers and entities must have and comply with several policies, which include equality and diversity, parental leave, anti-harassment, flexible working and reasonable adjustments.
- The aim of this qualitative study was to explore the impacts and possible drivers of workplace bullying, discrimination and harassment, and the enablers and barriers to reporting it, as well as to identify any unmet support needs.
- YouGov conducted 35 telephone interviews with barristers (30) and non-barristers (5) who had directly experienced or observed workplace bullying, discrimination or / and harassment at the Bar.
- This qualitative research found that workplace bullying, discrimination and harassment still exists at the Bar in 2020, despite the introduction of the Equality Rules of the BSB Handbook (Equality Rules) in 2012, and is perceived to be tolerated to a certain extent due to the adversarial, male dominated culture and competitive nature of the Bar.
- Low to medium level incidents² were the most common, especially for those who are from more than one underrepresented group.³ The interviews highlighted the profession's unique composition – most barristers are self-employed and rely on

¹ The Equality Rules (2012) were inserted in the Code of Conduct at paragraphs 305 and 408 and are supported by BSB's guidelines on Equality Provisions of the Code of Conduct, downloadable from BSB's website:

<https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html>

² Low level incidents as defined by respondents included; inappropriate jokes, sexual innuendos, unwanted flirting, swearing and shouting, unreasonable work demands etc.

³ For example, a barrister who was female and BAME

clerks for their caseload with little official management or HR structure uniting the two. This was felt to allow harassment and discrimination to 'slip through the net'.

- Workplace bullying, discrimination and harassment were found to have both short and long-term consequences. Diminished self-esteem, anxiety, mental health complications and chronic physical conditions were some of the long-term effects cited.
- Negative socioeconomic consequences were also reported: a dip in earning capacity, disruption of fruitful professional relationships, low job satisfaction and absenteeism.
- Despite an increased focus on equality and diversity at the Bar, including through the Equality Rules and training, most barristers interviewed had not formally reported their experiences. Some had spoken to friends / family or informally to their peers.
- The largest barrier to reporting to the BSB or to chambers / employers was the fear of a negative impact on their reputation and therefore, their earning potential and career progression.
- Many of the incidents raised in the interviews happened when barristers were undertaking their pupillage – and therefore they felt disinclined to speak out for fear of appearing ungrateful to the chambers or establishing reputations as 'troublemakers'. Pupillage is the stage in which many barristers felt at their most vulnerable, and the stage with the greatest power imbalance.
- The perceived lack of clear, anonymous and supportive formal and informal pathways to reporting was another barrier. Many barristers did not have access to HR professionals or similar forms of support, and those outside of chambers were often managed by someone who was not well-versed in the legal profession, who participants felt did not fully understand their needs and concerns.
- The BSB's Duty to Report⁴ was an enabler for reporting for some but a barrier for many - they see the route as too formal and prescriptive. There were also low levels of detailed knowledge of how this would work in practice.

⁴ Guidance on the Duty to Report (gC96 of the BSB Handbook) lists harassment as an example of serious misconduct.

- There is significant variation in how well equality and anti-discrimination policies and practices are monitored and implemented within chambers – all do ‘something’, but it is often only perfunctory. Those that do it best have buy-in from senior leaders in chambers.
- The research concluded that clear guidance on what discrimination and harassment is, its impacts and when to report is needed. Many were unsure if they had a case and what the reporting process involved.
- Furthermore, for policies and procedures to be effective, such as the Equality Rules and the Duty to Report, there needs to be a fundamental shift in culture at the Bar to encourage openness and discourage discriminatory and inappropriate behaviour.
- There is a role for other organisations, such as the Bar Council and networks (e.g. the female barristers’ network Behind the Gown), to provide a middle ground where barristers can seek guidance and report lower level incidents.
- Ultimately, barristers and non-barristers who took part in the research believed that if formal reporting levels remain low and there remains a lack of diversity of staff, as well as a lack of transparency over work allocation, then workplace bullying, discrimination and harassment will continue to exist.

Research objectives and context

The Bar Standards Board (BSB) is the regulator for barristers in England and Wales and is overseen by the Legal Services Board. The BSB is a public body for the purposes of the Equality Act 2010 and is bound by, and committed, to meeting the requirements of the Public Sector Equality Duty. This role includes paying due regard to the need to eliminate unlawful discrimination, harassment and victimisation, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between those persons.

Since July 2018, the BSB has been working on an 'Addressing Bullying and Harassment at the Bar' project, and as part of this, commissioned YouGov in 2020 to undertake a series of one on one interviews with those who have experienced or observed discrimination, harassment or workplace bullying. This qualitative study will contribute towards a wider evidence base that will inform the BSB's policies and actions to address discrimination and harassment at the Bar. The focus on the research is gender, ethnicity, disability and sexual orientation, as these are the protected characteristics that the BSB have identified as having the strongest evidence of experiences of discrimination and harassment (see research context section below).

The specific research questions for this qualitative study included:

- How have experiences of workplace bullying, discrimination and harassment at the Bar impacted the lives and careers of those affected?
- What actions, if any, have barristers taken in response to these experiences? What are the barriers and enablers to taking action?
- What support is available at the Bar around issues of workplace bullying, discrimination and harassment?
- To what extent have the Equality Rules impacted on experiences of discrimination and harassment at the Bar?
- How can issues around workplace bullying, discrimination and harassment at the Bar be addressed by the BSB or other stakeholders?

Research context

Available evidence suggests that bullying, discrimination and harassment remains an issue at the Bar. For all demographic groups included in the Bar Council's "Barristers' Working Lives 2017" report⁵, there had been a rise in the proportion who had experienced discrimination and harassment from the 2013 report, suggesting that levels of harassment and discrimination at the Bar may be on the rise.

Data from "Barristers' Working Lives 2017: Barristers' experience of harassment, bullying and discrimination" report, released by the Bar Council, indicate that the most common form of bullying/harassment reported was based on gender (53% – up 5% from 2013 data). 33% of women reported personal experiences compared with just 12% of men, and barristers with a disability were more than twice as likely to report personal experiences as non-disabled barristers (28% compared with 13%). Those with primary caring responsibilities for children were more likely than those with no children (26% compared to 14%) to report. 16% was based on ethnicity, which is an increase of 1% compared to 2013. 37% of respondents cited 'other' grounds as the basis (i.e. outside the characteristics protected by equality legislation). In the BSB's 2016 Women at the Bar survey, 45% of female barristers reported experiencing discrimination at the Bar, and 40.2% reported experiencing harassment, with Black, Asian and Minority Ethnic (BAME)⁶ respondents and respondents with caring responsibilities more likely to experience these issues.

The most recent figures from the BSB (2018)⁷ revealed that BAME barristers are more likely to experience bullying, discrimination and harassment than White barristers. In "Barristers' Working Lives 2017", 34% of BAME barristers said they had personally experienced bullying, discrimination or harassment in the last two years, in contrast to 19%

⁵ This report was published by the Bar Council in June 2018, available at <https://www.barcouncil.org.uk/uploads/assets/9bb5d426-8379-4bbb-b5913c89d4b749aa/Working-Lives-2017-harassment-and-bullying.pdf>

⁶ "BAME" stands for Black, Asian and Minority Ethnic. The term is widely used by government departments, public bodies and the media. However, we appreciate that the term, and similar terms, are debated and that no single term is universally accepted.

⁷ Published by the Bar Standards Board, available at <https://www.barstandardsboard.org.uk/uploads/assets/912f7278-48fc-46df-893503eb729598b8/Diversity-at-the-Bar-2019.pdf>

of White barristers. BAME students and students from lower socio-economic status backgrounds face additional barriers in gaining access to the profession and are less likely than White students and/or students with higher socio-economic status to gain pupillage.

Research conducted by UCL and the University of Westminster in 2017⁸ revealed that just over half of survey respondents had experienced some form of discrimination at work or in their professional studies on account of their sexuality, and that one third had experienced some form of bullying or harassment. The data suggest that homophobia is more prevalent at the Bar than in the general population; with a quarter (26%) of lesbian, gay and bi-sexual staff saying they have personally experienced bullying or poor treatment from colleagues in the last five years because of their sexual orientation.

According to the Association of Women Barristers (2019)⁹, a “culture of fear” around reporting bullying, harassment or discrimination exists at the Bar, with many barristers being afraid to speak out against discrimination, harassment or bullying due to fear that to do so would negatively impact upon their careers — or that they could be ‘victimised’ by those more senior or their peers as a result. The Bar Council (2017) revealed that at the self-employed Bar, 50% of those who reported personal experience of bullying or harassment, and 47% of those reporting personal experience of discrimination, cited another barrister or colleague as responsible.

⁸ The research was conducted by UCL and University of Westminster in 2017, available at <https://www.westminster.ac.uk/sites/default/public-files/general-documents/sexuality-at-the-bar-sept-2017.pdf>

⁹ The research was published by AWB in 2019 and is available at: https://www.city.ac.uk/_data/assets/pdf_file/0006/492594/AWB-Anti-Bullying-Round-Table-Report-Oct-2019.pdf

Method and sample overview

As the study is exploratory and the topic is highly sensitive and personal, in-depth one on one interviews were deemed the most appropriate method. All interviews were conducted over the telephone¹⁰ by dedicated qualitative experts at YouGov across May, June and early July 2020. The interviews lasted 30 – 45 minutes.

30 interviews were conducted with barristers who self-reported experiencing (the majority of the sample) or observing workplace bullying, discrimination or / and harassment within the last ten years. This was supplemented by 5 interviews with non-barristers¹¹ who had observed workplace bullying, discrimination or / and harassment towards barristers or had equality and diversity responsibilities at the Bar.

The sample was identified by the BSB from their contact database. The BSB sent out invites to three waves of randomised contacts who matched the profile of participants desired for this study (i.e. focussing on female, BAME, and LGBT barristers, barristers with a declared disability, and with a mix of other characteristics, such as practising status, primary area of practice and region). The invite text explained the objectives of the research, that the study was being conducted by YouGov, the data protection guidelines followed, timings of the fieldwork and how to take part. Interested contacts were asked to click on a link to an online recruitment survey designed by, and hosted on, YouGov's secure survey platform. The recruitment screener collected the following information from the interested respondents:

- Demographics (including gender, age, sexuality, disability status, ethnicity)
- Role, length of time at the Bar, size and type of organisation
- Whether they had observed or experienced any form of workplace bullying, discrimination and harassment, and which type
- Time period of any of workplace bullying, discrimination and harassment experienced or observed
- An open-ended question to capture their experiences
- GDPR compliant research opt-in question
- Their contact details and availability to take part in an interview.

¹⁰ YouGov's proposal included provision for a small number of face to face interviews. However, these could not be offered during summer 2020 due to COVID-19 government restrictions.

¹¹ By non-barristers we mean other staff members at the Bar who regularly interact with barristers.

For the purposes of this research, the definition of Discrimination¹² and the definition of Harassment were taken from the Equality Act of 2010¹³ and were outlined in the screener. For the purposes of this research, we also include experiences of workplace bullying which will be examined under “Harassment”¹⁴. YouGov provided these definitions at the recruitment stage only and were not prescriptive in the interviews about what could or couldn’t be discussed – this allowed respondents to share their own personal experiences of what they felt was discrimination, harassment or bullying.

Data from the recruitment screener were only made available to YouGov. YouGov then selected and invited a mix of relevant barristers and non-barristers to take part in a telephone interview. Participants were chosen to ensure good representation of the four targeted groups (BAME, women, LGBTQ and those with a disability). All depths were scheduled in by YouGov’s recruitment administrator. No data were shared with the BSB on who took part in the recruitment screener or the interviews. Please see the Annex for an overview of the sample.

Limitations

With all qualitative study, the research has some limitations. Firstly, the findings cannot be generalised to the profession as a whole, given the small, targeted sample and the conclusions drawn from a limited number of comments. The sample was deliberately selected from accounts offered during the recruitment stage of either experienced or

¹² **Direct Discrimination** - A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favorably than A treats or would treat others.

Indirect Discrimination - A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

Discrimination arising from disability - A person (A) discriminates against a disabled person (B) if—
(a) A treats B unfavorably because of something arising in consequence of B's disability, and
(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

¹³ The **definition of Harassment** is from the Equality Act of 2010 – i.e. unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. The definition will also include sexual harassment as defined in the Sex Discrimination Act of 2005, i.e. unwanted conduct on the grounds of someone's sex; and unwanted physical, verbal or non-verbal conduct of a sexual nature.

¹⁴ **Workplace bullying** may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient. For more information, please see the ACAS guidance: <https://archive.acas.org.uk/media/304/Advice-leaflet--Bullying-and-harassment-at-work-a-guide-for-managers-and-employers/pdf/Bullying-and-harassment-in-the-workplace-a-guide-for-managers-and-employers.pdf>



observed instances of bullying, discrimination and harassment; thus, the research findings might not reflect those who have not experienced or witnessed these behaviours. Finally, participation in the research was voluntary, hence the accounts given may not reflect the majority of those at the Bar who experienced bullying, discrimination or harassment.

Context and culture of the Bar

Key takeouts

- The Bar has a unique composition – most barristers are self-employed and rely on clerks for their caseload with little official management structure uniting the two.
- This often allows bullying, discrimination and harassment to ‘slip through the net’.
- Many of the reported incidents happened when barristers were undertaking their pupillage – and therefore they felt disinclined to speak out for fear of appearing ungrateful to the chambers that took them on or establishing reputations as ‘troublemakers’.
- Pupillage is arguably the most vulnerable stage in a barrister’s career and the stage with the greatest power imbalance.

Prior to discussing the prevalence of bullying, harassment and discrimination it is worth understanding the layout of the barrister profession and how it operates, as articulated by our participants. For many, the Bar is a place which goes further than simply permitting such behaviour – it often actually encourages it.

Barristers pointed out that the Bar is an environment in which power is key, and the ability to dominate over other people in order to win an argument is crucial. In this environment, bullying and intimidation are rife, and often seem like part of everyday life at the Bar.

*“The culture of the Bar is one that is of bullying. Everything we do is about power.
(Barrister)”*

Barristers reported that this culture of bullying and aggression is often a learned behaviour pattern – many were bullied or victimised themselves as young barristers, and therefore can feel it is the norm to act this way as they progress through their careers.

*“Judges are bullying you to the point of crying because it happened to them... we are at the Dark Ages at the Barand we bully each other because we are used to it...
(Barrister)”*

Furthermore, it was suggested in the interviews that the actual architecture of chambers can make a difference – with more traditional Chancery sets operating in older buildings with a warren of small rooms and poorly lit courtyards, producing a more conspiratorial, and less open and discursive atmosphere, as opposed to more modern and open plan offices.

There is also the issue of what a typical barrister is perceived to look like and to behave. Barristers reported to us that well-educated White men are still the ‘image’ of the profession, as such, female, LGBTQ+ and BAME barristers can struggle to fit in.

“I was barely marketed since I've been in chambers - we hired a south Asian woman as our marketing manager. She took me in for a meeting and I was so grateful - she said that 'you are the only BAME woman in chambers and we can market this. Let's celebrate this and approach the Indian journals and the south Asian business networks.’” (Barrister)

Furthermore, many barristers talked about the male-dominated culture at the Bar, with a significant number of male barristers congregating together in the pub in the evening, in a way that many female barristers, and barristers from different religions and cultures may not feel as inclined to do. This creates two problems – it means that such barristers are excluded from some networking opportunities, and it reinforces the idea that they do not ‘fit in’ with the culture at the Bar.

“When I was a pupil I was really bullied in chambers by my supervisor - every piece of work I did wasn't good enough. I'd be shouted at because I left the pub at 10 o'clock rather than 11pm” (Barrister)

Clerks

One crucial aspect of life at the Bar is the interplay between barristers and clerks, which is something seemingly unique to the profession, whereby the barristers rely on the clerks for their allocation of work. The clerking teams operate relatively independently of the barristers, with their own line management structures, and many barristers are unsure about how these clerking teams operate and make decisions.

Some barristers we spoke to said there was a great deal of distrust towards the clerking team. Much of this was due to a perceived lack of transparency about how the clerking team make their decisions about how to allocate work and the sense that there is favouritism towards certain barristers, irrespective of their talents and suitability to contest a particular case.

“He [senior clerk] was an individual who sought to control every aspect of chambers by bestowing on certain people the good work and therefore controlling chambers. He was sexist, racist, had very stereotypical ideas about how a barrister should be or act. Within 2 years the whole chambers collapsed because of him. He was trying to control the profile of chambers - if he didn't want someone there he would starve them of work. I was forced to go on multiple secondments...individuals who weren't perceived to fit his model were forced out... supported by the powers that be in chambers.” (Barrister)

“I was considered to be a thorn in the side of chambers - I'm aware there is an inner circle, people too close to our senior clerk.” (Barrister)

Many of the issues in chambers stem from a ‘clique mentality’ and, as the above quotations help to demonstrate, many participants felt the clerks are part of that inner clique, and particularly at a more senior level when they have been in their post for a long time, meaning that they are able to wield huge power and influence. Sometimes, as in the first example above, this stems from a senior clerk with a desire to ‘control’ chambers, and therefore control the composition of barristers within it. Just as common as this, however, was the suggestion that more senior barristers, including QCs, were putting pressure on the clerking team to allocate the work to certain barristers, and not to others. What this effectively meant was that the clerks were, either complicity or not, actively involved in the personnel movements in chambers, as by starving certain barristers of work in the way described above, this gives them no choice but to move chambers.

“In speaking to colleagues at the Bar, the unfair allocation of work is rife. It maybe it's not always down to clerks. It was probably just one individual that drove that, but it was that individual that makes the decisions, in terms of allocation of work. What I experienced, though, is that person was also a misogynist, and he just had his favourites, who were the White males.” (Barrister)

From our interviews, it seems to be the case that this mechanism is often employed to avoid difficult conversations – senior barristers or clerks who feel that other barristers in their chambers are not suited to the work in that particular set, but are unwilling to talk directly to the barrister concerned. Participants felt like this was more common in more traditional Chancery sets but perhaps less so in modern commercial sets. One interview with a clerk in a corporate law set was quite revealing in terms of what best practice should look like – he described a healthy relationship both within the clerking team and between them and the barristers.

“It's very supportive - we have a Chief Executive, lots of chambers don't and I have very good relationships with all the barristers. Collegiate is the operative word...Barristers see us as people to collaborate with rather than people to be dictated to.” (Non-barrister)

This interview also highlighted many of the issues that the clerking team face in terms of the difficulties of people management that they often have to face – very often there is a perception among barristers that favouritism has taken place when it has not, and difficult, accusatory conversations are quite frequent. Furthermore, as this clerk explained, much of the perceived discrimination emanates from the client who may want a particular type of barrister.

“I've had calls over the last few weeks saying that we would like a barrister over 50. I will always call someone out on discrimination and raise it with the client and make it clear that I won't discriminate on their behalf - I'll put forward a range of options.” (Non-barrister)

What this above interview demonstrates is that best practice is all about transparency – the clerks making it clear to the barristers why they are allocating in the way they are, to mitigate against any sense that the clerks are simply ‘doing the dirty work’ for either senior barristers or clients in discriminating against certain individuals or barristers with particular demographic characteristics. It also highlights that chambers can benefit from having structures and protocols in place to ensure that discriminatory instructions are addressed and/or are refused.

Self-employed status

Another way in which the Bar is unique is the fact that the majority (79.1% in 2019)¹⁵ of barristers are self-employed, and, though they operate within the structure of a chambers, are, to a great extent, responsible for their own caseload. As described in the previous section, this means that they have a difficult, and sometimes fractious, relationship with the clerks, but it also means that there is a lack of management structure that would, in a more typical office environment, help to isolate and manage instances of harassment, bullying and discrimination. Many barristers talked about how they have to ‘build up’ their own ‘businesses’ and this means they are often unprotected from disputes in chambers that might be detrimental to their reputation.

The role of chambers and the extent to which barristers *identify* with their chambers is also something unique to the profession – there was little sense from many of the interviews that chambers feel there is a ‘duty of care’ to their barristers. In turn, barristers do not seem to *represent* their chambers as much as they represent themselves and their own reputation – the chambers exists as a place for them to pick up cases and earn a living, but its role seems to end there.

“I think the problem is that the way that people work at the Bar is very diverse, so not everybody works for a chambers or entity, there are lots of sole practitioners, people like myself that are effectively a sole practitioner in that I go from contract to contract, so I don't belong to an organisation that employs me personally, so there's no way of putting those policies into practice.” (Barrister)

¹⁵ <https://www.barstandardsboard.org.uk/news-publications/research-and-statistics/statistics-about-the-bar.html>

Pupillage

Another important contextual consideration is the method through which barristers gain experience and training, namely through embarking on pupillage at a chambers or through employed pupillages (although the latter are rarer). Such placements are highly sought after and are hard to achieve.

The result of this is that many barristers simply do not want to do or say anything that will upset their pupillage. Many of the reported incidents of bullying, discrimination and harassment happened during this time, however junior barristers were unwilling to report them as they felt it would damage both their chances of completing their pupillage (and likelihood of being awarded tenancy) and their fledgling reputations.

As such, at this stage of their career, barristers are at their most vulnerable, and subject to the greatest imbalance of power. There was also a sense that senior barristers will exploit this vulnerability and mistreat junior barristers who feel unwilling to report it.

“I observed huge amounts when a pupil. Highly sought after to be a pupil - so is a power relationship here. You don't rock the boat etc. Very obedient. After all that debt and hardship to get a place in chambers - to raise an issue would be tantamount to throw it away. We have the right to raise it but there would be consequences. Chambers say they wouldn't take it into account when deciding if to take pupil on full time - but in reality...”
(Barrister)

There are financial implications too – there was the sense from some that they knew the cost to chambers of upskilling them and they did not want to be ‘ungrateful’ by reporting individual instances of misbehaviour or drawing attention to any particular chambers. Certainly, the likelihood of pupils reporting members of chambers externally was low, but the chance of reporting individuals internally also appeared low.

“I made complaints - I sent them to the Head of Chambers before I left....it was just brushed under the carpet...We had meetings. Other people were drafted in to talk me out of it. The reason why it was never reported externally was because my pupil master had left chambers leaving me exposed. As a junior barrister with a young family my primary concern was our financial position. If there was an infrastructure in place like we have here I would have complained sooner - and it would have made its way to the Bar Council¹⁶ and it would have been dealt with.” (Barrister)

¹⁶ Although the respondent cited here mentioned the Bar Council, it is technically the BSB's responsibility to deal with official complaints.

Many of the instances of harassment and inappropriateness occurred between senior male barristers and younger female pupils – such occurrences, though often unpleasant and embarrassing, seemed less likely to be escalated by the pupils in question. However, it was pupil barristers who had been subjected to more sustained periods of bullying, that often resulted in stress and mental illness, that had often considered making complaints, and on rare occasions had done so, as we will explore in the next chapter.

Experiences of workplace bullying, discrimination and harassment

Key takeouts

- Workplace bullying, discrimination and harassment still exists and is perceived to be tolerated to a certain extent due to the 'macho' and competitive nature of the Bar.
- Low to medium level incidents of harassment¹⁷ and discrimination were common, including intersectional multiple discrimination¹⁸.
- Discrimination¹⁹ and bullying²⁰ typically manifested as belittling comments, inappropriate jokes, unreasonable work demands and unfair work allocation.

Please note, formal definitions of workplace bullying, discrimination and harassment were provided in the recruitment screener (see footnote and method chapter) but during the interviews respondents were not asked to define each act and were not given definitions. This allowed respondents instead to share their own experiences of what they thought was bullying, discrimination and harassment.

Across the interviews, discrimination broadly covered less preferential treatment (such as work allocation, or a lack of promotion/progression). Harassment broadly covered both sexual harassment, and harassment related to protected characteristics (such as insults, 'jokes' related to gender, ethnicity). Bullying often overlapped with harassment (i.e.

¹⁷The definition of **Harassment** used in the recruitment screener was from the Equality Act of 2010 – i.e. unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. The definition also included sexual harassment as defined in the Sex Discrimination Act of 2005, i.e. unwanted conduct on the grounds of someone's sex; and unwanted physical, verbal or non-verbal conduct of a sexual nature.

¹⁸ Fawcett Society states: "The government must recognise that multiple discrimination of protected characteristics can be intersectional and/or additive and make these unlawful to offer full protection to women. Intersectional multiple discrimination is where a combination of protected characteristics result in discrimination."
<https://www.fawcettsociety.org.uk/blog/uk-equality-act-is-not-fit-for-purpose-its-time-for-the-law-to-recognise-multiple-discrimination>

¹⁹ As outlined in the recruitment screener - **Direct Discrimination** was defined as when A person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.

Indirect Discrimination - A person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

Discrimination arising from disability - A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

²⁰ As defined in the recruitment screener **workplace bullying** maybe characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means that undermine, humiliate, denigrate or injure the recipient.

behaviour felt to be malicious, intimidating, or degrading) but was not always directly related to a protected characteristic, in contrast to harassment. Bullying was also seen as evidence of discrimination in some cases (e.g. if some individuals or groups with particular protected characteristics were bullied by an individual and others who did not share these characteristics were not).

Barristers reported in the interviews a wide range of bullying, discrimination and harassment experiences, from unfair treatment based on their protected characteristics, inappropriate sexual behaviour to long term bullying. Most barristers interviewed had experienced low to medium level incidents (e.g. someone getting drunk and making inappropriate jokes, undue pressure to work long hours) regularly over months or even years. A minority had experienced more serious incidents (e.g. touching someone inappropriately) on one or more occasions.

Alleged incidents took place in various settings including within chambers, the courtroom, court robing rooms and at formal events held by various organisations at the Bar. Most often, incidents occurred in informal settings such as at the pub or a meal organised by the chambers or Inn of Court.

The range in frequency and seriousness of the incident(s), and the locations they took place, means that the picture of bullying, discrimination and harassment at the Bar is complex and often grey / subjective; it can be hard to identify, define and record (see chapter on the barriers to reporting). For a small minority, it was only years later (e.g. as part of this study or during Black Lives Matter protests) that they even realised they had suffered from discrimination for example. Below are the most common examples of bullying, discrimination and harassment experienced and observed by barristers and non-barristers, including perceived drivers for these incidents from the respondent's perspective.

Workplace bullying

Across the interviews, bullying was common and manifested itself in various ways; directly and indirectly (i.e. working in an organisation with an underlying 'culture of bullying'). Most often the alleged bully was a senior barrister, QC / Silk, Head of Chambers or judge, and involved undermining and belittling more junior barristers in front of colleagues, solicitors and even members of the public (in court). Bullies were reported to be both male and

female colleagues. Many respondents, especially pupils and junior barristers, explained that they had been shouted and sworn at, and been subject to rude and personal comments (e.g. about their appearance, sexuality, intelligence, accent, social background and gender), which left them feeling embarrassed, upset and even worthless.

“It was led by a woman - she was a bully and made me deeply miserable. She also bullied other juniors.... We did a big case together and she dealt with her own stress by dumping it on me. She put you down in front of clients and ignored my work. She made me want to leave chambers” (Barrister)

“There was a bullying culture towards lawyers – they were denied autonomy. The senior leaders (non-barristers) tried to make us all cogs rather than thinking people. Management had a desire to measure everything” (Barrister)

Those who experienced this type of behaviour often thought it was due to the alleged perpetrator holding discriminatory views or / and them exercising their power inappropriately. A couple of female barristers believed they were bullied by more senior females because they were jealous of them due to their age, appearance or popularity within chambers. There were several examples provided in the interviews of derogatory comments made to females about their gender and appearance by judges in the courtroom and by male barristers in chambers and informal settings, such as at work socials. Furthermore, a few believed the bullying was driven by them previously reporting the alleged preparator for inappropriate behaviour or from rejecting their sexual advances.

“It was almost like a witch hunt, because the leader of the team has been really bothered by the fact that the bullying had been called out in the staff survey and wanted to know who made some of the remarks and in fact the bullying just got worse. He would belittle me in team meetings for minor things.” (Barrister)

“I did actually wonder whether it had got something to do with that, because I’d rebuffed him, I reaped the whirlwind forever after. I’ve no evidence that is a connection but that has always been in the back of my mind.” (Barrister)

“For example, a female barrister who quite properly chooses to decline an invitation to go for a drink with an instructing solicitor may receive no further briefs from that solicitor.” (Barrister)

Commonly, pupils and junior barristers experienced bullying in the form of unreasonable work requests and their work being repeatedly criticised, which they believe is due to the unequal power dynamic – meaning some senior barristers expect them to drop everything for them at any time. This was especially hard for barristers who have children to manage.

*“There was quite a culture of bullying... There was absolutely no gratitude for that, just a permanent expectation of more, more, more. There was no interest of work-life balance.”
(Barrister)*

“He was just unpleasant and made sarcastic remarks about everything. He just piled on the pressure, more and more work.... If you went to him about anything, to raise an issue, he would just dismiss you and make out it was all my fault. It was always my fault, it was never anyone else’s fault” (Barrister)

“Every day there was a criticism. I had a breakdown on pupillage.” (Barrister)

*“I had a female supervisor who was Head of Chambers... She would call me in office and stand up and shout you down, made me feel like a school child. She would make reference to the fact that ‘why we pay this f**king money for you” (Barrister)*

Unfair work allocation was reported by many barristers; if this occurred over a sustained period then it was viewed as bullying or discrimination²¹ by the individual.

“He took no notice how the work was distributed or, you know, if there was an even balance. It really just ground me down, totally and utterly ground me down.” (Barrister)

In the interviews, it was hard for the individuals who had been subject to bullying to identify the reasons why it had happened to them, especially if they haven’t addressed the situation with the alleged preparator. However, as discussed in the research context section of this report, there was a shared sense that if a barrister didn’t fit the stereotypical image (White male, high social grade) then some clerks would not recommend them, senior barristers may not ask them to work on the case and solicitors may not employ them, potentially due to the fear of what their clients may think.

*“Barristers are generally a very privileged group of people so there is a class issue and that underpins everything. Predominantly white public school and Oxbridge....and I was queer and Asian. You'd be sitting at a table and you'd say, 'I think the answer is this' and they ignore you.... like you're invisible. We are diminished as if we don't understand”
(Barrister)*

“He just turned against her.... I think he was just threatened by her because she was very good. The difference in treatment between my colleague a male barrister with no experience whatsoever, far more junior than I am, was stark, the male colleague didn't have that sort of experience at all [with bullying]” (Barrister)

²¹ Withholding work can come under bullying, when intended to undermine the recipient, but it can also be an act as discrimination when based on a protected characteristic. The key difference is that discrimination must be based on a protected characteristic, whereas bullying doesn’t need to be (as per the definitions provided in the method chapter).

“I think this was a factor as my Head of Chambers didn’t like me - I didn’t fit in. I was an outsider. I was a Christian which she didn’t like but this wasn’t formally expressed. Also, a power dynamic as I was a pupil” (Barrister)

Sexual harassment

A small number of female barristers interviewed had experienced sexual harassment within the last ten years, but many more had observed or heard of it happening to others, especially to females, pupils and younger / junior barristers. A few older barristers shared a belief that it was a lot more common ten years ago at the Bar, and that rates have decreased since the introduction of the Equality Rules and the #MeToo²² social movement (founded in 2006). Within the interviews, alleged preparators were most often older and senior male barristers; who were from their chambers or other organisations (e.g. who they met at an Inn meal or training course). Others had experienced or observed harassment being conducted by solicitors and other non-barristers within or external to their organisation.

“Sexual harassment is not as rife now. I would do something about it - I am senior enough now to.” (Barrister)

“It’s not always barristers, the perpetrator would sometimes be solicitors” (Non-barrister)

Our research suggests that sexual harassment is more likely to happen in an informal setting such as at an event, training course, after hours in the office or at work socials, and in situations where the preparator had been consuming alcohol. Incidents ranged from low levels of sexual harassment such as sexual innuendos and unwanted flirting, to more serious incidents such as unwanted kissing and touching.

“Harassment particularly faced by pupils and also practitioners, tends to be in social events... Low level types of harassment so for example, somebody who’s drunk too much and said something inappropriate would be the most common circumstances. There are isolated incidents which are much more serious, borderline sexual assault, where somebody has been, you know, grabbed in a taxi or in a bar” (Non-barrister)

“[The] QC...thought it was funny to make off-colour references to women who are blonde. It was lots of sexual innuendo, which were not crude but inappropriate. If you picked up him on it, he would have just said it is a joke” (Barrister)

²² For more information: <https://metoomvmt.org/about/>

“He was an older guy; we were on a work event.... he’d had a couple of drinks and then made an advance at me, tried to kiss me.... Over the weekend I was angry about it and I ignored him from then on” (Barrister)

“I was aware of a pupil barrister who was sexually harassed by a senior member of chambers.... This happened at least once a week.” (Barrister)

“Two drunk males made very offensive remarks about my chest. I was deeply upset about it but wasn’t going to say anything about it.” (Barrister)

A couple of non-barristers raised concerns about older and more senior barristers attending events to meet younger staff or students; purposefully sitting next to individuals they were attracted to.

[Unwanted touching] “That’s happened on our estate before the environment’s quite dark, and after an event... people have then walked out and that has happened” (Non-barrister)

“Where maybe a particular barrister is very involved in student activities at universities... they might build a relationship up with particular students, and really they enjoy going to it because they can meet younger females. I’ve certainly had cases of people telling me of incidents where they’ve maybe then been kissed or tried to be kissed by that person, and said no” (Non-barrister)

Again, it was hard for those who had experienced harassment to determine the reasons or drivers for the incident. Some believed that when harassment was happening to a pupil or junior barrister by an older or / and more senior barrister, it was due to the unequal power dynamic and the alleged perpetrator knowing that the junior staff member would find it hard to report due to a fear of not being taken on full-time by the chambers. One non-barrister felt that those from a lower social grade were more vulnerable, as they are less likely to have a strong network to protect them.

“That’s one of the groups that I think is most likely to be very vulnerable to harassment at the Bar because they are in an exceptionally vulnerable position, in terms of not having networks or finances to be able to progress in the profession” (Non-barrister)

“Masters²³ have affairs with pupils. The master and pupil relationship is a power one.... And should be unacceptable. It should be a disciplinary offence to have sexual relations or pursue with a pupil as such an unequal relationship” (Barrister)

²³ “Master” (‘pupil master’ or ‘pupil-master’) or, in the case of a female barrister, “Mistress”, is the former name given to an experienced barrister who a pupil shadows during their pupillage. The terms have now been replaced by the term ‘pupil supervisor’.

Discrimination

The majority of respondents believed that the Bar still lacks diversity, which means discrimination still exists, despite greater awareness and importance placed on equality and diversity since the Equality Rules were introduced in 2012. In the interviews, there were many examples of alleged discrimination on the grounds of gender, sexuality and race. There were also a few examples of discrimination on the grounds of disability / health status. It was noted that those with multiple underrepresented protected characteristics felt at greatest risk of discrimination (e.g. they are BAME and LGBTQ+) as they ‘really don’t fit in with the old boy’s network’ or the ‘clique of Oxbridge privileged types’.

Discrimination at the Bar appears to often manifest as bullying and unfair work allocation, and can be explicit / obvious (e.g. receiving negative comments about their sexuality and being excluded in the workplace) or hidden / a subjective feeling (e.g. not being promoted and thinking it may be due to their ethnicity). This ‘greyness’ can make it harder for barristers to report discrimination as explored in the next chapter.

“People that are traditionalist think that certain things must continue to be done in the same way they’ve always been done, which can in itself be discriminatory (re. religion, gender, sexuality). There is a tendency for people to brush over things and think everything is fine when there is evidence that it is not (e.g. women leaving the Bar when they have childcare responsibilities).” (Barrister)

“It can be subtle examples - so hard to define racism. I am a Black woman - was it because I was Black or a woman, or both?” (Barrister)

Gender discrimination

Gender discrimination was one of the most frequently reported types of discrimination in the interviews and is believed by many barristers to be systemic, despite work around the gender pay gap and there being more women at the Bar and in senior Silk / QC positions compared to ten years ago (see chapter on the Equality Rules).

In the interviews, gender discrimination was most commonly experienced or observed when female barristers had children or were pregnant. A few female barristers felt that as they are not part of the ‘old boys’ network’ and don’t always socialise with male colleagues at the pub, they then had less work allocated to them.

“Two females in my set fell pregnant. And the way the senior clerk dealt with them, you know they were thinking ‘women should be at home anyway, having babies and being homemakers’” (Barrister)

“When work is diverted away from you and you’re constantly fighting, the old boys’ network is very hard to beat.” (Barrister)

“I didn’t feel part of the in-crowd. I was wondering why my work allocation was different compared to before I had a child. I felt like I was being blamed...You hear people moan about people who are not in office [due to childcare]” (Barrister)

“I think being a barrister is such an ancient profession that’s been so male dominated for so many years, the older generation still don’t accept that the women are just as good. I think it’s a genuine belief that they’re better than we are” (Barrister)

“A lot of the issues are around fair distribution of work between the genders. It takes a lot of guts to say, 'I should have had that job' because you are very vulnerable to someone saying that 'you're not good enough.’” (Barrister)

Racial discrimination

Racial discrimination was reported in the interviews despite there being an increase of initiatives at the Bar on equality and diversity, and many having attended training on unconscious bias. Most of the BAME barristers shared examples of overhearing or directly receiving inappropriate comments about their ethnicity, especially within informal settings and the courtroom, by both barristers and judges. There was some evidence of these beliefs translating consciously or unconsciously into unfair work allocation and fewer opportunities for BAME barristers to progress in their careers. Those who were BAME and female, disabled or / and LGBTQ+ felt they experienced greater levels of discrimination.

“She struggled with women or brown people - she didn’t promote brown people” (Barrister)

“Maybe it’s not always down to clerks. When we decide we need to understand race, that doesn’t mean that the clerk, the individual concerned, has got it in for people of colour. It just means that they are unwittingly favouring a particular group that perhaps unwittingly they feel are more suitable to do certain things” (Barrister)

“A senior member of the chambers who attended a Christmas party got drunk and made a series of very offensive racial remarks against a then very junior member of chambers who is Black and gay.” (Barrister)

“My previous chambers tolerated a level of covert discrimination. I was going to leave because of her - she didn’t see my value and wouldn’t have promoted me” (Barrister)

“I do sometimes feel I meet people at the Bar who probably have never spoken to someone with a turban before. That makes them a little bit uncomfortable...I’ve found, on one occasion, a judge very aggressive towards me and my client, who was also the same background as me, and it was embarrassing. It was actually quite hurtful, and I do regret not taking it further...I can’t show that that was racist, but I felt it was, and my client felt it was.” (Barrister)

Disability discrimination

Disability²⁴ discrimination was reported by a few barristers in terms of them not being provided with the reasonable adjustments they required.

“There were no reasonable adjustments. The court is not user friendly for disabilities, now it is totally impossible because I'm in a wheelchair. That's a hostile environment in many ways for a disabled lawyer” (Barrister)

“I love my job, but it's almost impossible as a disabled person...It's awful” (Barrister)

Additionally, a couple of barristers shared experiences of where their mental health conditions were raised in appraisal or investigation meetings to undermine them. There was evidence that the fear of such negative treatment led other barristers to hide their mental health conditions.

“If you had a mental health issue you would NEVER tell anybody - there is a focus on wellbeing at the moment but if they think you are weaker, they won't instruct you.” (Barrister)

“Any time a complaint is raised, it gets viewed in this prism of this old tradition... ‘you can't have mental health problems because, if you do, it's just not the right place for you to be.’” (Barrister)

Sexual orientation discrimination

Sexual orientation discrimination was reported in the interviews. LGBTQ+ barristers found themselves being socially excluded or / and the subject of jokes at social events for example.

“I think some of the troubles I've had, whether direct or indirect discrimination, because I'm gay as well and not your macho sort of person, people sometimes perceive that as a weakness. I felt the two people I had issues with were both very alpha male” (Barrister)

“Incidents that I have heard have ranged from older members at events saying about another member, 'Oh that person's one of the theatre', or terms like that to suggest that they are gay” (Non-Barrister)

²⁴ Disability was defined in the recruitment screener using the ONS definition. This can include mental health conditions.
Q. Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?

1. Yes, limited a lot
2. Yes, limited a little

Those who witnessed staff making negative comments about LGBTQ+ barristers and judges felt uncomfortable, which led them to keep their own sexuality a secret in fear of the repercussions on their careers. One barrister shared an experience of overhearing the chambers Equality and Diversity Officer (EDO) joking about a colleague's sexuality, leading them to no longer trust the EDO to provide them with neutral advice and support.

"I only came out when I was promoted to senior clerk as I felt it might affect my career, so I held back telling anyone. Someone at another chambers at a wedding once used the phrase 'f...ing queer'... Once a barrister asked to bring his male partner to a party and was told he could not" (Non-barrister)

"Lots of banter at events about people's sexuality. A bi-sexual man at work was the butt of people's banter when he wasn't around... I found that offensive as I was also bi-sexual"
(Barrister)

Impacts of bullying, discrimination and harassment

Key takeouts

- Bullying, discrimination and harassment had both short and long-term consequences for barristers.
- Diminished self-esteem, anxiety, mental health complications and chronic physical conditions were some of the long-term effects cited.
- Stress and mental distress were often cited as psychological aftermaths of workplace bullying and harassment, even years after the behaviour had stopped.
- Negative socioeconomic consequences were also reported: a dip in earning capacity, disruption of fruitful professional relationships, low job satisfaction and absenteeism.

Being on the receiving end of bullying, discrimination or / and harassment had long-term negative consequences for barristers' physical and mental wellbeing. It also impacted on their confidence, their careers and their relationships, both inside and outside of the profession. Work related stress caused by bullying and harassment was cited by a few to have caused a chronic condition and in severe cases led to clinical depression and hospitalisation.

Impacts described in the interviews were both short (under 5 years) and long term (5 years plus). Diminished self-esteem, poor mental health and chronic physical conditions were some of the long-term impacts cited.

“My confidence was shattered, and I’ve never been the same since – it’s been over 10 years. I am more anxious now in court. It took a toll on me. It led to the breakup with my partner, I lost my flat, had to go back home, I had a breakdown. I’ve lost 2 years of my life. It had an impact on my career – I wonder if I had more support, would my career be more successful? I have become so risk adverse at the Bar that when offered cases at High Court, I have turned them down. I lack the confidence now, there’s an inherent fear in me, I get nervous when I may be criticised. I have had counselling on it.” (Barrister)

Diminished confidence

Many barristers reported a decrease in their work performance as a result of being subjected to bullying or harassment in the workplace. A loss of self-esteem and confidence resulted in lower productivity, an incapacity to work / concentrate, nervousness to take on complex cases and even thoughts of leaving the profession or field of law for some.

“It has an impact on your confidence in yourself and your ability to do work you've always done fine before; it really dents your ego.” (Barrister)

“It gave barristers the impression, early on in their career, that they were not good enough...No-one has left as a result of it, but it wouldn't have surprised me if someone had decided this career wasn't for them, because they were just so in [the bully's] world in the early years, that they didn't have the evidence from other people that they were good at their job.” (Barrister)

“I felt that I didn't have the confidence to go back. It really did undermine my confidence at the time. I just thought, ‘I can't face this. I can't do this job any longer. I'll do a different job.’ It really did undermine me.” (Barrister)

Emotional / psychological and physical impacts

Poor mental health was often cited as a psychological aftermath of workplace bullying, discrimination and harassment, even years after the incidents had stopped. Depression, high stress levels, anxiety, fatigue, self-medication with drugs and alcohol and sleep disturbances were some of the emotional difficulties mentioned. In addition to emotional / psychological impacts, a few barristers also reported physical impacts. These included a reduced immunity, poor diet leading to diabetes, sleep deprivation and weight gain.

Additionally, many barristers felt discouraged from taking time off work to recover; worried about how it could impact their image / career or fearing further bullying from senior staff for requesting time off.

“I went to see a psychiatrist and he wrote me off sick for 3 months straight away and said, ‘You are suffering from clinical depression and anxiety and you need to see a psychologist for CBT²⁵.’” (Barrister)

“It became toxic and poisonous. Work issues made me start to stammer and I had mini strokes. I ended up in A&E, having had a stress breakdown. I was off work for 3 months; it broke me for a period of time. You question everything you do.” (Barrister)

“Honestly over the last 10 years I've been more ill mentally than I've ever been. My confidence, self-esteem is so low that I actually feel unintelligent, not capable of doing this job anymore - I find it stressful and want to leave. I became seriously depressed and not getting help until 2014. Things got bad and I was self-medicating with alcohol and drugs.” (Barrister)

²⁵ Cognitive Behavioural Therapy (CBT) is a short-term, goal-oriented psychotherapy treatment that takes a hands-on, practical approach to problem-solving. Its goal is to change patterns of thinking or behaviour that are behind people's difficulties, and so change the way they feel.

“You felt physically ill because you couldn't sleep, you are stressed out, you dreaded going in.” (Barrister)

“I've equally known people, and I was one of them, who when ill would avoid being off sick because of the repercussions.” (Barrister)

Socioeconomic impacts

Bullying, discrimination and harassment at the Bar were also reported to have detrimental impacts on the work environment; some barristers described how it affected wider staff members' morale and 'created a hostile work environment' leading to increased absenteeism and low job satisfaction.

A small number described leaving a set of chambers due to or partly due to their experiences. Leaving a set of chambers to avoid working with a bully, for example, often meant disrupting other fruitful professional relationships. Some barristers reported a dip in their earning capacity as a result of having to cut contracts short, change the field of law or to take time off due to poor mental health.

“My earning capacity went down, I lost working relationships forever and I won't be able to get it back. It had a long-term effect.” (Barrister)

“The sad thing was that had he never joined, I could have probably stayed on for another year, two years there, and it was very well-paid job, and I lost out, so financially I suffered” (Non- barrister)

Case study: Barrister, Male, BAME

Experiences

He finds the culture at the Bar to be **traditionalist** and full of **gatekeepers**. As a **BAME barrister**, he has faced **bullying and discrimination** both for his **race** and for being from a **different socioeconomic background than his peers**.

I don't wear a wig because I wear a religious head-dress, and I was told by some people, 'That's not very barristerial.'

When you go to these dinners and you meet very senior people who are part of the Inns, they look out for people who resemble them, who went to the same college as they did in Oxford or Cambridge.

Impacts

He had **poor job satisfaction** as a result of the bullying, and was affected emotionally. He sought help from the **Bar Council's helpline**. Eventually he resorted to seeking **counselling**.

I felt so incredibly trapped - all his micro aggressions and his passive aggressive comments and behaviour got so much. There was a person I spoke to [at the Bar Council]... I phoned about three times.

Barriers and enablers to taking action

He raised a complaint with his higher up's but nothing could be done unless he made his complaint official, but he was **too scared** to do this in case it affected his career negatively. He **contacted the Bar Council**, but little could be done as the bullying he faced could not undoubtedly be linked to a protected characteristic.

Support at the Bar

He found the helpline **cathartic**, although they were only able to provide him with **emotional support**. He thinks BSB should do more to address the **wider cultural problem** at the Bar.

The helpline was good in the sense that the person I spoke to was very pastoral. It felt good to talk to somebody.

The culture at the Bar isn't going to change with tokenism. You don't get a deep, cultural change. The BSB needs to go to the heart of the culture at the Bar.

Case study: Barrister, Female, Disability

Experiences

This respondent had been the victim of **bullying** and **gender discrimination** in the workplace. She finds the courts unsuitable for a **disabled barrister** to access.

I came to the conclusion that he was very threatened by women who were very good at their job, and I was good at my job. I think he just didn't like women, full stop.

The court is so un-user friendly for disabilities. That's a hostile environment in many ways for a disabled lawyer.

Impacts

Lack of progression in her career and **decreased job satisfaction** were some of the long term impacts she experienced. The lack of facilities for disabled barristers left her **embarrassed** on multiple occasions.

I love my job, but it's almost impossible as a disabled person. The court rooms are small, there are bits of furniture around, you can't manoeuvre the wheelchair around it and you just feel like you are in the way and that you shouldn't be there. It's awful and that really has to change.

Barriers and enablers to taking action

Fear of losing her job prevented this respondent from taking any actions against the alleged perpetrator, although she found **sympathy** by talking to other **female colleagues**.

I never did anything apart from talking to the other women which made me realise we're all suffering the same thing.

He had a habit of humiliating people in meetings. I was frightened that I could lose my job.

Support at the Bar

She thinks the Bar has done little to improve working conditions for **disabled barristers**.

Somehow it feels very remote to employed barristers, it's all about the independent Bar. It's never occurred to me to go to them for help.

What has the BSB done about improving access in the court? It's humiliating, I've been in situations when colleagues have had to pick me up in a wheelchair and drop me down in the court room.

Case study: Barrister, Male, Christian

Experiences

During his **pupillage**, he faced a negative **power dynamic** between him and his **supervisor**. She would **bully** him and subject him to **emotional outbursts** and **insults**. He also felt **discriminated against** by his peers **because of his religion**.

I had a female supervisor who was a very dominant figure. She would call me in office and made me feel like a school child, saying things like 'why do we pay this xxx money for you'.

I was Christian and married - I didn't drink or smoke. They made derogative comments about me being religious.

Impacts

His **confidence was shattered**, he became **anxious** and **risk adverse** and struggled with **self-doubt**. It also led to him **developing chronic depression** and **consciously avoiding work**.

I am more anxious now in court. I have become so risk adverse at the bar that when offered cases at High Court, I have turned them down.

There's an inherent fear in me. I can imagine the person jabbing their figure at me, humiliating me.

Barriers and enablers to taking action

He felt he **couldn't raise the issue** in his Chambers as that would **jeopardise his chance of attaining tenancy**. He contacted the **Bar Council**, felt **listened to** but **didn't receive a resolution**.

I contacted the Bar Council and was given a contact, a barrister. He would listen and be helpful, but he couldn't change it for me. He was realistic and said it was wrong, but said we know the consequences of blowing the whistle.

Support at the Bar

He appreciates **Bar Council's initiatives** for barristers' **wellbeing**, although they are aimed at **emotional support**, not at a practical resolution.

I have seen initiatives from Bar Council on wellbeing. They are more on this now which is a good thing.

There is no easy remedy to help people make a complaint and avoid it impacting their career.

Case study: Barrister, Female

Experiences

This respondent experienced **bullying** from a **senior barrister**, in the form of **unfair allocation of work, constant criticism, overt insults** and **unreasonable requests**. She suspects it was driven by her **rejecting his sexual advances**.

He was just unpleasant and made sarcastic remarks about everything. He just piled on the pressure, more and more work.

I did actually wonder whether it had got something to do with that, because I'd rebuffed him, I reaped the whirlwind forever after.

Impacts

She was diagnosed with **clinical depression** and she was **written off sick for an extended period**.

I went to see a psychiatrist and he wrote me off sick and said, 'You are suffering from clinical depression and anxiety and you need to see a psychologist.'

Barriers and enablers to taking action

She was **advised against complaining about his behaviour**, as he could **deny the events**; she was able to make a **Work-Related Stress claim** instead. **The process was long winded** until the involvement of a **senior legal practitioner**, who was able to quickly reach a resolution.

He [the alleged preparator] actually said in the meeting, 'Well, she's got a mental health problem, she's not a reliable witness.'

People are very reticent to come forward, because they are very worried about what would happen to themselves.

Support at the Bar

She found the Bar **unhelpful** and **dismissive**, she thinks the BSB only offers support for **independent barristers**. She had to **seek support and advice privately**.

They were only interested if you were in the independent bar, it was as if employed lawyers were just nothing, we were just second-class citizens even though we pay the same fees. They couldn't have been less helpful. There was no support.

Barriers to addressing workplace bullying, discrimination and harassment

Key takeouts

- The largest barrier to reporting bullying, discrimination and harassment was the fear of a negative impact on their reputation and therefore, their earning potential and career progression.
- The perception of a lack of clear, anonymous and supportive formal and informal pathways to reporting was a barrier for many.
- Additionally, the BSB's Duty to Report was a perceived barrier for some – generally barristers see the route being too formal and prescriptive.

The majority of those interviewed had not formally reported their experiences or observations of bullying, discrimination and harassment to the BSB or to their employer or chambers (for example, by reporting the incident to their Head of Chambers). Only a small number had reported it to a senior colleague or sought guidance from another organisation, such as the Bar Council.

Barristers instead tended to seek informal advice and support from their partners / friends or peers after working hours and often in social settings. However, these informal conversations often exacerbated the individual's fear of formally reporting the issue; with some actively being advised not to report as they will be seen as 'weak' and a troublemaker which could damage their career. The lack of formal reporting to the BSB and even one's organisation, led many to question how real change at the Bar will ever be achieved; if the fear of reporting is so strong then acts of discrimination and harassment will continue to exist.

"I was groped so many times in my old set - I didn't report them. I told one woman and she gave me advice; told me to shelve it. It would have destroyed my career. I actually think it was good advice" (Barrister)

"I talked to my [family members] who are barristers - they were sympathetic but said it was a bad idea to report. Picking a fight with a QC is a bad idea ... it is important you don't look too sensitive, hard to work with it... Because we are self-employed so you are only as good as your last case and need to be instructed, so you can't annoy people" (Barrister)

“I was told by someone that if you bring this it will destroy your career. Someone else told me that if you drop it, we will give you a tenancy” (Barrister)

The *impact on one’s career* is the biggest barrier to reporting discrimination and harassment at the Bar. As explained in the chapter on context, there remains a culture at the Bar of barristers needing to be strong and implacable, and not weak, emotional or troublemakers. The very nature of most barristers being self-employed means that they need to not ‘burn any bridges’ nor ‘expose’ themselves, as, if their reputation is damaged, then they may receive less work and income, and subsequently have less chance of being promoted. The unequal power dynamic of barristers needing to bring in money for the chambers (and themselves), increases the fear that they will not be taken seriously or believed in order to protect the higher earners (often the alleged perpetrators). This fear can be heightened if they work in an organisation with a long-standing culture of bullying and gaslighting²⁶; they worry that if they report the issue the alleged perpetrator will deny the event.

“The power structure in chambers; where you've got a senior member of chambers who is potentially a high-income earner for the chambers vs a very junior practitioner who perhaps isn't generating much income for chambers. You can imagine, because of the self-employed nature of the Bar, you'd feel very exposed as a younger junior person who's not bringing in a lot of money that chambers wouldn't deal with a more senior and high income earner when it wouldn't be in the chambers' interest to perhaps exclude that member because of their behaviour” (Non-barrister)

“Law is stressful and if you are a solicitor are you going to brief a barrister if you know they are stressed / have mental health issues etc. Barristers are self-employed so trade on their reputation” (Barrister)

“In my old workplace the culture stank - for any woman, for anyone of colour... Clerks struggled to see women and brown people as intelligent. Would they critique themselves?”

²⁶ Gaslighting is a form of psychological manipulation in which a person or a group covertly sows seeds of doubt in a targeted individual or group, making them question their own memory, perception, or judgement, often evoking in them, cognitive dissonance and other changes including low self-esteem. Using denial, misdirection, contradiction, and misinformation, gaslighting involves attempts to destabilize the victim and delegitimize the victim's beliefs. Instances can range from the denial by an abuser that previous abusive incidents occurred, to belittling the victim's emotions and feelings, to the staging of bizarre events by the abuser with the intention of disorienting the victim.

No? There is too much invested in relationships to objectively question it. I think the Bar is worse than other professions because we are self-employed - so it is all about relationships” (Barrister)

“I received a telephone call from this member saying I must stop [reporting her issue] because she had been threatened by certain members that if she continued that her career would be blocked” (Barrister)

If the issue arose when the barrister was a pupil, they found it especially hard to ‘expose’ themselves by reporting it, as most often the alleged preparator was more senior and played a key role in whether they were taken on by the chambers or not. This puts pupils and junior barristers in a highly emotional and difficult situation as they have spent a lot of money and time on their training, and tenancies within high quality chambers are hard to come by.

“[It is] hard if [you are a] junior and [your complaint] is against a judge – it is hard to stand up in court and say no. You have to be careful as goes back to your reputation. You don’t want to be seen as soft or to be raising issues)” (Barrister)

“It is harder to report if they are more senior. I wouldn’t want to fall out.... wouldn’t be worth the rumpus. I would lose work. I can’t risk his bad will” (Barrister)

“You become unpopular in the management, and that in turn limits your career. Those that are getting on there are those that are very buddy-buddy with the managers. Those that dare speak out are ostracised.” (Barrister)

A second barrier preventing the reporting of discrimination and harassment is its *complex and subjective nature*; it can be hard for people to define, evidence and solve, especially if it has taken place within a social setting or outside of their organisation. There was a concern that they may not be believed or / and the reported behaviour will be justified as a joke or a misunderstanding. Those with multiple underrepresented protected characteristics found it especially hard to identify what might be driving the incidents, which can in turn make it harder to evidence and address.

“‘What does it mean if somebody touches me on my knee?’ Particularly when pupils and prospective members are in a very vulnerable position or are perceived to be in a vulnerable position” (Non-barrister)

“I think, because harassment is such a spectrum of behaviours and it’s so context based, we should encourage chambers to get their own houses in order. I think people think he just grabbed me, it was inappropriate. Do I want to destroy his career over that? Probably not.” (Non-barrister)

“If I think of the other experiences I’ve had, because of the culture, we take it. It’s seen as being just part and parcel of, you’ve had a shitty day, a judge has been out of order, but it’s part of the job.” (Barrister)

The *structure of the Bar* (i.e. the large number of self-employed and sole-entity barristers), specifically the large number of small chambers with little or no line management structures or formal HR teams / procedures, was seen by some participants as another key barrier to reporting and decreasing harassment and discrimination. It is not always clear who to report to within an organisation and there is a worry for many barristers that their concerns may not be treated professionally, kept anonymous or fully acted upon. If the incident has happened within another organisation’s setting (e.g. at court, or at one of the Inns) it is especially difficult to know who to report it to and how.

Additionally, barristers who work within other organisations (non-chambers) noted how hard it can be to speak to their line manager if their manager is not a barrister, as they feel that non-barrister colleagues do not fully understand their role or the culture at the Bar.

It could be argued that there is a lack of accountability at the Bar, as well as a lack of (or an unclear understanding of) responsibility and hierarchy. Combined, this creates a culture of secrecy in which instances of bullying, discrimination and harassment often go unchecked, which may allow such instances to become normalised and commonplace.

“I raised it with HR and they just weren’t interested. I got a very politically correct email at the outset saying, ‘We’re here to support you as well as the manager’... That apparent support rapidly disappeared if you dared to raise anything controversial.” (Barrister)

“They just didn’t seem to have the follow-through or the methods. If someone doesn’t want to make a formal complaint and isn’t willing to let you make a complaint on their behalf or use their story, then it’s hard to know how to fix it” (Barrister)

“I’m not really sure who I can report it to, because the people who are doing it are responsible for making decisions.” (Barrister)

“The Bar is a small place – there are not many barristers, so people know the QCs. If you report it, people will know them. It wouldn’t really be kept confidential.” (Barrister)

“It is very difficult to take it further, because the problem is that the solicitors in my area of the law, there is a very small number of them and if you start complaining about firms of solicitors to the BSB or wherever else it might be, work will dry up” (Barrister)

Across the interviews with barristers and non-barristers there were mixed views on whether the BSB's Duty to Report is an enabler or barrier to reporting bullying, discrimination and harassment. A large number had low levels of knowledge of the guidance and perceived the route to be too formal, serious and 'rigid', leading them to question whether their observations and experiences fitted the 'criteria' and whether they would make the situation worse with the alleged perpetrator if they reported to the BSB. Many saw the BSB as the last port of call for serious incidents only, when other reporting routes have failed. It was also perceived to be the last port of call as anonymity would not be maintained and therefore careers and reputations could be damaged. This topic is further explored in the later chapters.

“Reporting to the BSB feels like taking things too far, alienating yourself, leading to a lot of tension.” (Barrister)

“We're afraid that it actually creates a barrier to any action being taken. I think it's really easy, where it's a very serious case of harassment... But I think it's far more difficult for somebody who has had problems, drunk too much and behaved inappropriately at a party... And the problem that we've got with the Duty to Report is the kind of straight "harassment equals serious misconduct". Rather than "harassment may equal serious misconduct". I understand why the BSB is very serious to put a peg in the ground, but it means that people don't report it.” (Non-barrister)

“It is a big thing to go to the BSB and it is still hard to know when to report – it is not always clear.” (Barrister)

“I would be in breach if I don't report it, but it is hard if I haven't seen it... I can't force the witnesses to report. They were frightened to report.” (Barrister)

“Most are not aware of it. I struggle with it – you would be viewed as a grass. There is a level of reluctance around this.” (Barrister)

Enablers to reporting and addressing workplace bullying, discrimination and harassment

Key takeouts

- Clear guidance on what bullying, discrimination and harassment is and when to report is needed. Many were unsure if they had a case and what the reporting process involved.
- Barristers often want an informal discussion with a neutral member of staff or third party, before making a formal complaint.
- The BSB's Duty to Report can help to justify reporting and shows that it is being taken seriously by the regulator.

One of the biggest enablers to reporting is having a supportive, clear and anonymous process of reporting available both inside the organisation in question and via a neutral third party. Many wanted to discuss their experiences informally first with a dedicated staff member so they could seek guidance on the process and likely outcomes if they were to formally report. They wanted to gain reassurance in a confidential setting that they have a case before, as they see it, potentially put their careers at risk by reporting to the BSB or the Head of Chambers. The Bar Council's Spot App and Ethical Enquires line to an extent fulfil this need as they are anonymous and can provide guidance on next steps. However, knowledge on which organisation offers which support or tool is low and confusion exists - for more insight see the chapter on unmet support needs.

"The Spot App is a good idea. But I also want an option for face-to-face or telephone support, as I need a personal element to talk it through - like a sounding board" (Barrister)

"Now you can report via Spot anonymously. They can see if there is an overall issue with someone. They can then look at a totality to see if lots of complaints against one person" (Barrister)

"I need someone to go to as a sounding board and ask was it unreasonable or not. I would prefer more of an informal chat first and see if I should complain formally. Should I have reported it formally? When should you do this or not? It is hard to know" (Barrister)

"Identifying someone within the organisation that isn't necessarily somebody you work with in your division, that you can speak to that doesn't know both parties....speaking to somebody else who doesn't know both parties so is a bit more anonymous is maybe something that could be done." (Barrister)

A small minority viewed the BSB's *Duty to Report* as an enabler (or at least not a barrier) to reporting incidents, as it provides a justification for reporting an issue for witnesses and those affected, and it demonstrates that the Bar takes such issues seriously.

"I think it is good to put in a Code of Conduct²⁷ as makes it more serious, but it isn't always effective.... The Code of Conduct does give you some justification and would be useful for some." (Barrister)

"The Duty to Report²⁸ can be an enabler and a barrier. You are seen less of snitch if can say it was a Duty." (Barrister)

"You want to make it easy to raise concerns - so if you have no choice - you have to report it." (Barrister)

More importantly, for reporting rates to increase and harassment, bullying and discrimination to decrease, there needs to be a fundamental *change in the culture* at the Bar (as seen in some chambers and organisations). To truly enable barristers to confidently report issues the culture needs to be one of openness, trust and fairness, and one where such behaviour is not tolerated, regardless of the alleged preparators earnings or seniority. The stigma of being a 'snitch' or 'troublemaker' for raising an issue needs to be contested. As outlined in the next two chapters, training and education play a fundamental role here.

"Encourage a positive culture in chambers - that makes the biggest difference. Policies are crucial but need to be implemented. You need a sympathetic clerk or head" (Barrister)

"Having much stronger speaking-up policies and speaking-up culture across the profession would be of great assistance. The Bar does need to penalise. It can't sit there and watch these chambers just have White male members and do nothing. It needs to start penalising them. Naming and shaming them, publish their figures" (Barrister)

"A lady disclosed sexual harassment to her practice manager. She came forward as it was made clear in her induction she could. It was an open culture where you could seek resolution." (Barrister)

Indeed, as we will go on to discuss, where best practice exists and where the rules are not just observed, but culturally embedded, it makes a big difference, particularly to barristers from underrepresented backgrounds. Participants talked of the positive reinforcement that

²⁷ The Code of Conduct regulates the professional behaviour and standards of all barristers:

<https://www.barstandardsboard.org.uk/for-barristers/bsb-handbook-and-code-guidance/the-bsb-handbook.html>

²⁸ Duty to report under Bar Standards Board Handbook, sections rC65 and rC68 of the Handbook, sets out that barristers must report to the BSB if they have either committed, or witnessed another barrister commit, serious misconduct (among other things). This could include bullying, harassment and/or discrimination.

they get in the knowledge that their chambers are looking out for their interests and would be able to protect them if there was a dispute. Often it did not take very much to persuade them that the issue was being taken seriously – examples included having training on anti-oppression, blind screening of CVs and fair, active and approachable EDOs. However, such chambers tended to be the ones whose remit focused on either commercial issues or asylum and immigration cases, and were the exception, rather than the rule.

Awareness and implementation of the Equality Rules

Key takeouts

- Overall, the Equality Rules are welcomed and felt to be necessary as the Bar is felt to lack diversity, and in some cases equality.
- However, there is huge variation in how well equality and anti-discrimination policies and rules are understood and implemented within chambers – all do ‘something’, but it is often only perfunctory.
- Those that do it best have buy-in from senior leaders in chambers – the Equality Rules from the BSB need to be role modelled from the top within chambers and other organisations at the Bar.
- Self-employed barristers can be reluctant to volunteer to take on roles related to equality and diversity as there is little incentive and formal support to do so. However, when EDOs are proactive, supportive and objective they are welcomed.

Across interviews it became clear that the implementation and awareness of the 2012 Equality Rules was inconsistent, and patchy. Most had heard of the Rules, were aware that they enshrined workplace protection for those with protected characteristics and believed them to be necessary. However, many struggled to recall or describe how the Rules had been introduced in their chambers over the preceding years and how they were implanted at this moment in time:

“It rings a bell. We do have this all in chambers...We do get voted into groups and roles. We have the policies on our intranet - but small chambers may not have this. I had to ask before for it as not on the intranet. Policies are not always accessible” (Barrister)

It is worth noting that for sole practitioners / those who work within another organisation (not chambers), their organisation may not know or implement the Equality Rules.

“I think the problem is that the way that people work at the Bar is very diverse, so not everybody works for a chambers or entity, there are lots of sole practitioners, people like myself that are effectively a sole practitioner in that I go from contract to contract, so I don't belong to an organisation that employs me personally, so there's no way of putting those policies into practice. So, you've got to look to the Bar itself to provide some of that, because I don't have a boss who can do that.” (Barrister)

For some in chambers, the Equality Rules were implemented perfunctorily – they encouraged barristers to attend training (e.g. on unconscious bias and anti-discrimination training), they have a designated Equality and Diversity Officer (EDO) but this was seen to

be akin to nominating someone as a fire warden, involving very little day to day responsibility.

“There is someone who is the diversity person because one has to but on the whole we are pretty old fashioned. Things just happen in a nebulous sort of way. It relies on basic good will and good intentions.” (Barrister)

In a similar vein, in some chambers the Rules, especially around diversity monitoring, were simply a ‘tick box’ exercise making little difference to policy and practice.

“Need to anonymously record diversity for example in chambers – we sent around the survey. But someone said bi-curious and told others to do it as a joke.” (Barrister)

“Chambers have done policies on these things. But my old set played lip service, and so does my current set. They just want to be seen to be doing it to look good, but they are just tweaks and not massive changes” (Barrister)

“If you’ve got a line manager that isn’t interested, they pay lip service to all those rules” (Barrister)

Again, this seemed to be particularly the case at the Chancery Bar. Others, particularly those in commercial law, were much more up to date in their adherence to the Rules and tended to observe them much more scrupulously.

“We have that kind of culture and I don’t think that all sets do. I don’t think that everyone in my position feels that way...we’ve have training on it, I have senior management backing me up on it, I have senior barristers backing me up on it.” (Non-barrister)

“In my chambers everything is run to the book. We have all these equality and diversity officers, and committees that deal with all these issues, there’s a constitution. In other words, now I’m in a proper chambers which deals with all these issues.” (Barrister)

One of the reported issues was that, for many, the position of EDO seemed to be an onerous one. Self-employed barristers are paid for their case work, so the prospect of working ‘pro-bono’ on what is perceived to be administrative work is often not an appealing prospect. Obviously where there are salaried employees to take on this role it seems more appropriate, but this is often not the case. The point was also made that such individuals do not have the same skillset that is found more commonly in HR professionals, which may give them the abilities and ‘softer skills’ to put policies in place and generate internal buy-in.

“We have a policy, and I think we are relatively alive to issues, but I’m not saying we’re necessarily always good at handling them. I think our problem with a lot of this stuff is the way of dealing with these things, the work ends up falling on the same people over and over again. Because a bit of a problem with the Bar is that anything that involves the structure, and organisation, and management of chambers, someone’s doing it in their free time so it’s naturally going to be the people who care most about it that do it.” (Barrister)

“EDOs are barristers as well - so it is time consuming and hard for them - so it can be slow process. It all depends on how keen they are. We do have a HR Officer as we are a larger chambers. Our HR is doing a good job - she set up a women’s group and she holds exit interviews to check on bullying etc.” (Barrister)

“Getting an EDO is just... meaningless. Make a White male an EDO and not just a brown woman. At the heart you are trying to change a power structure - you need to take it and White men to give it up. It won’t happen by asking.... There is no evidence of anybody within the Bar driving change.” (Barrister)

The interviews suggested that different elements of equality and diversity monitoring are implemented with differing levels of success. For example, some barristers reported great strides being made in recent years around maternity and paternity leave policies, such as waiving their rent for the period of their maternity leave.

“Parental leave is helpful – it sets expectations of how parents will be treated. Flexible working doesn’t work as it isn’t a flexible job. I have had two children at Bar - the whole profession is not set up for part time working (trials, etc.) You can do fewer hours but not set days. Policies about not charging rent when on maternity leave are useful, as is the process of keeping in touch.” (Barrister)

The issues that seemed much less likely to have been addressed were around monitoring how work was allocated. This issue, particularly for BAME and / or female barristers, was something that they were particularly interested in, as they were concerned that they were being left behind. This still seems to be a ‘blind spot’ in many chambers.

“Fair allocation rules are good but don’t always work in reality – you can then be bullied over it by the other barrister.” (Barrister)

For many, the key to this issue is having senior buy-in within the chambers, and senior voices (either a clerk or barrister) who are advocates for change and implementing equality and diversity policies within chambers, and who are role modelling the Rules. Without such strong voices, for the reasons described above, it seems difficult to bring about change. Additionally, some made the point that chambers are good at complying with legislation (nominating an EDO and sending out staff surveys) but less good at encouraging a more wholesale attitude change. Strong voices from within chambers need to ensure that their place of work goes beyond simple compliance and embeds more root and branch changes. Though for some chambers, as described, even being compliant is difficult enough.

“We have a diversity training which is delivered by someone outside of chambers. I think it really helped in terms of bringing it front and centre in terms of what you need to do. We also have three Diversity Officers who share the role and they make themselves available. I think the rules absolutely helped. The maternal policies were non-existent before. I think

having a good Head of Chambers and a practice manager that is completely engaged is key to ensuring these policies are respected.” (Barrister)

“I do [think they've made a difference]. But I think the hard job is always about putting policy into practice. The good thing about the rules is that they're quite black and white. I think most chambers do their best to comply. From my perspective, the key is to ensure compliance and that there are spot checks and investigations to ensure the chambers are complying. Rather than waiting for a complaint, perhaps a more proactive approach to spot checking chambers' policies.” (Non-barrister)

“We have Diversity Officers and they make themselves available. I think the rules absolutely helped. The maternal policies were non-existent before. I think having a good Head of Chambers and a practice manager that is completely engaged is key to ensuring these policies are respected. You have to include within that some sort of enforcement and make management responsible.” (Barrister)

Unmet support needs; the role of BSB and other key stakeholders

Key takeouts

- Initiatives and other forms of support – whether regulatory or representative – had low visibility amongst the barristers interviewed, with many not being aware of formal supports or / and how the supports can be accessed.
- Awareness of the services offered by the BSB specifically, as differentiated from the Bar Council or other stakeholders, was especially low.
- This led to some confusion about the current and potential role and responsibilities of the BSB verses the Bar Council.
- Currently, not all feel comfortable approaching the BSB when they experience issues as they do not believe the BSB is ‘in touch’ with the reality of the Bar.
- There is a role for other organisations, such as the Bar Council and Networks, to provide a middle ground where barristers can seek guidance and report lower level incidents.

To provide context for the findings in this chapter, it is worth noting that across the interviews, many were confused about which organisation offered which formal supports and there was some misunderstanding of the role and responsibilities of the BSB verses the Bar Council. In reality, the BSB regulates barristers in England and Wales in the public interest and is responsible for setting standards of conduct for barristers and authorising barristers to practise. The BSB also handles complaints against barristers and takes enforcement or other action where appropriate. The Bar Council represents barristers in England and Wales and acts as a voice for the profession, promoting fair access to justice for all and the highest standards of ethics, equality and diversity across the profession.

In the interviews, views of the BSB were mixed, veering towards the negative, and, though feedback from chambers on general positivity to the BSB is outside the scope of this research, it is important context in understanding how likely individual barristers are to approach the organisation or to report incidents to it. Many of the issues were around the increasing workload that the BSB’s regulation placed upon them, with many concerns about the Code of Conduct.

“It’s been an increasing trend of the BSB which put pressure on the individual sets of chambers in terms of the amount of paperwork that we are expected to do. For example, the Bar Code of Conduct, which used to be about 20 pages, has worked very well for 100 years or more. That’s been blown up into a 2-inch BSB book, nobody can find anything in it, and it’s been a massive retrograde step.” (Barrister)

These concerns did not just come from barristers. A clerk interviewed for example had a much hazier knowledge of the organisation, but despite this, felt that those in the clerks' office had to keep pace with the BSB's widening regulatory requirements, and therefore held a dim view of the regulator.

"I don't think the BSB understands chambers very well- they overregulate us - come in with new rules sometimes which people don't see the point of it. They should set aside some time to come and visit us - just to understand how we operate. Last year the transparency rules came in with pages and pages of documents." (Non-barrister)

For others, the landscape was made even more difficult due to the perception that the BSB only regulates the independent Bar²⁹. This perception serves to distance some employed barristers from the organisation even further and created both confusion and annoyance when they reached out to the organisation for help and support.

"I'm a member of the Bar, I pay my extra £100 Bar subscription fee³⁰ to various entitlements as a service. I phoned up for some advice, asking for what help the Bar could give me. They said they couldn't give me any help because I was in employment, you just had to sort that out with your employer. They weren't interested at all. They were only interested if you were in the independent Bar, and it was as if employed lawyers were just nothing, really, we were just second-class citizens even though we pay the same fees and I was paying extra fees" (Barrister).

The result of these views was that, when asked what role the BSB should have in helping barristers report incidents of bullying, discrimination and harassment, many did not feel it was appropriate. In some senses, the organisation was seen as too paternalistic and authoritarian, when, often what barrister needs is a more welcoming and maternalistic proposition.

"BSB are the stick. They have no idea what it is like to be a barrister - they feel very different to us. Too much of a stick and less of carrot.... they are there to beat us if we falter. The Bar Council are more for us - but not sure how good they are. A forum for barristers like Mumsnet is a good idea." (Barrister)

"I don't know anyone who has that much to do with the BSB and Bar Council. What do the BSB do? They regulate us - unless you are in trouble you don't have anything to do with the BSB? Why would anyone approach them? They are like the police of the barristers - how can they help us?" (Barrister)

²⁹ Although the Equality Rules themselves only apply to chambers / entities (as employment law covers the employed bar in relation to these issues), BSB regulates the entire Bar, not just self-employed barristers.

³⁰ Bar Representation Fee (BRF) for the Bar Council Services: <https://www.barcouncil.org.uk/bar-council-services/for-barristers/bar-representation-fee.html>

As referred to earlier, there was evidence of a misunderstanding or confusion over what assistance the BSB could offer. Many felt that the organisation is designed to enforce the rules rather than protect individual barristers' interests, and, as such, were confused as to which specific mechanisms it has in place to protect barristers from bullying, discrimination and harassment.

"I'm not really sure that I know. I think there are helplines and stuff. I looked at it when I was thinking about all this stuff myself but didn't end up using any of it, and instead talking with my colleagues, who I trusted, as a way of handling it. I certainly think that an offer of external confidential support would be massive, and I know that the Wellbeing at the Bar group or organisation, however they're called, have done that to some extent with mental health issues more generally." (Barrister)

The BSB's perceived remoteness was another barrier – many felt that they do not have a good understanding of the inner workings of most chambers, and this implies a perception that they might not be able to deal with any reported incidents empathetically. This perceived lack of visibility was a genuine shortcoming here – and another barrier preventing barristers from approaching the organisation.

"The BSB can only do so much - spot checks and speaking to me like you are today but you need to have the time, the infrastructure, and the right people to deal with this - who understand the issues that impact on being a barrister. The BSB is sometimes extremely distant - just sending emails and requests for CPD. It needs to be more visible on the ground - visiting chambers, speaking to young barristers. Now it's too abstract - in its ivory towers, sending out diktats. It needs to be a more visible presence taking care of the barristers it serves. Socially and in terms of advocacy the Inns are fantastic but in terms of this sort of thing they take a backseat. But the BSB needs to lead the way and bring the Inns on board. A more visible policing of chambers." (Barrister)

In terms of other organisations and stakeholders and their role in helping to administer complaints, some made the point that they might be more likely to go to the Bar Council rather than the Bar Standards Board. They were more likely to *perceive* the Bar Council as a friendlier association, though there was some doubt about how effective it was compared with the BSB³¹. As discussed, some participants mentioned the Bar Council's 'SPOT' app – and had used it and were positive about it – but knowledge across the board was low.

A few mentioned the Inns of Court and, though there was more positivity towards them compared with the regulator, there were questions raised about the appropriateness of

³¹ This perception may stem from their different roles – as the BSB regulates the Bar for the public interest, while the Bar Council represents barristers and acts as a voice for the profession, as detailed earlier in the report.

approaching such an organisation – they were mainly thought of as organising social events.

For some, a better option as a recourse for barristers are the Specialist Bar Associations – barristers seemed to have more frequent engagement with them, and they felt that they had a better understanding of their sector-specific contexts.

“I think it's extraordinarily difficult for the BSB to do anything - I wonder whether the specialist Bar Associations could be helped by the BSB to do more - they have the great advantage of having a sense of how the power dynamics work in their fields. But they do have limited resources and rely on goodwill. The Bar Council used to have a facility where you could ring up and speak to senior practitioners in confidence if you had ethical considerations - and it worked quite well. I used it once and got some very sensible advice which fortified me to say no”. (Barrister)

“I think better monitoring, better understanding of what the role is of other organisations within the profession, and a slightly better approach at doing partnership. I think there is a tension between the professional organisations at the Bar which prevents them from taking collective action, which is suspicion on behalf of things like the Inns of Court, or even the Bar Council, of what the role of the BSB is and a sense of isolation around what they do. Also, I think the BSB could do more to realise that these organisations can unlock a lot of what they are trying to achieve.” (Non-barrister)

One unmet need that was present across many interviews, and particularly amongst participants from underrepresented groups, was the need for better networking within the profession. Were there better networks and forums or / and greater awareness of the current ones, it could be argued that barristers would be more likely to discuss incidents and behaviours and therefore be given the encouragement to report them. Whether this networking should be organised through the BSB is less clear – but there is clearly a role for the specialist Bar associations.

“I would like to be in contact with other people like me - I don't see people like me in chambers and that's really sad. There are particular issues that are faced by BAME people, so to have access to other people who know the issues personally to provide support. I would love to have contact with a network like that. BSB - the only time I have ever had contact with them is things like this, so I do feel like they are trying to look after me, but the frequency of that contact is limited.” (Barrister)

Conclusions and recommendations

This research suggests that there may be much to be done to combat the harassment, bullying and discrimination that appears widespread and in some place endemic at the Bar. It exists in many forms – both overt and implicit, both as ‘one off’ incidents and as sustained campaigns of abuse. This research suggests that younger and less experienced barristers are affected the most, and they are less inclined than their senior colleagues to call it out and raise the issues with others.

The participants reported dramatic impacts of this behaviour – that it can seriously affect barristers’ mental health, and can lead to sharp drops in confidence, and them questioning whether the profession is right for them. Some barristers suspected that senior barristers who bully and intimidate others had been subject to similar behaviour earlier in their careers, and therefore may feel it is the norm to act this way in a profession that demands assertiveness and disparages perceived ‘weakness’. These attitudes and behaviours may be removing talent, and particularly diverse talent, from the industry.

In terms of how to address and counter these issues, it should be noted, and it was pointed out by a non-barrister, that there are no specific anti-bullying laws in the UK. This means that unpleasant and aggressive behaviour could have the term bullying subjectively applied to it, but also that instances of bullying can risk being downplayed. Therefore, one recommendation based on the suggestions received from participants would be to **define and codify exactly when bullying and harassment count as serious misconduct** – and a clear role for the BSB in doing so. Perhaps the use of case studies and testimonies could help to define it and describe its impact.

On the discrimination side, one issue that was reported across almost all interviews, and particularly where there was intersectionality³² of protected characteristics, was the subject of work allocation. As discussed earlier, many we spoke to were unsure of how their caseload was allocated by clerks and what the decision-making process was. This led many to feel that they were being deprived of work and therefore discriminated in this way.

³² Intersectionality is the interconnected nature of social categorizations such as race, class, and gender as they apply to a given individual or group, regarded as creating overlapping and interdependent systems of discrimination or disadvantage.

However, some also reflected that this may be a perception that is not grounded. The point perhaps is that **greater transparency about how cases are allocated** would both demonstrate where discrimination is taking place, but also, just as crucially, where it is not, and put many minds to rest. Again, there is clearly a role for the BSB here as well.

In terms of the mechanism for reporting, there are opportunities for the BSB, but there are also barriers. It provides a formal route for reporting complaints – which will, by definition, be the most serious ones, but there is still a huge amount of reluctance to report misbehaviour to the regulator, particularly for ‘low-level’ incidents. Many such incidents are dealt with within chambers – barristers seem reluctant to take things out of that environment – and often dealt with informally with a chat and a handshake. But this research suggests that a **middle ground may be sought** – for example the ability for the BSB to arbitrate complaints whilst keeping them in chambers. The role of the regulator ensures that they are looked at seriously whilst ensuring confidentiality, which is clearly crucial for barristers, particularly junior ones.

As such, as **range of different reporting options** would be preferable, particularly where they can demonstrate the anonymity in which the cases will be dealt. Where the BSB can work with Specialist Bar Associations to understand sector-specific contexts, it should.

Essentially some of the concerns about the BSB arise from a belief across the board that they regulate from ‘on high’ with little understanding of what life is like in chambers. There is an appetite for the BSB to **further demonstrate that it does understand the Bar** – (both in its self-employed and employed forms) – and by doing so it can make empathetic and informed judgements.

Beyond this, the BSB needs to better demonstrate that it will support the equality agenda in chambers, and perhaps the best way to do this is to **better support EDOs and Equality and Diversity Committees** to prevent those working in these roles thinking that this role is either perfunctory, onerous, or both.

More broadly than this, there is possibly a role for the BSB to **help to facilitate and promote existing and new networks** in the profession. The Bar is often a lonely profession, and chambers are not always a nurturing environment for those who feel that they do not fit the mould. Having access to a wider network will both allow them to have conversations and share stories about bad practice and remind them that they are not alone in terms of who they are, and what they are.

Annex

Figure 1: Sample overview

Barrister	Male, BAME
Barrister	Female
Barrister	Female, BAME, Disability ³³ , LGBTQ+
Barrister	Female, BAME
Barrister	Male, BAME
Barrister	Female, LGBTQ+, Disability
Barrister	Female, Disability
Barrister	Female
Barrister	Female, LGBTQ+
Barrister	Female, LGBTQ+, Disability
Barrister	Female, BAME, Disability
Barrister	Female, LGBTQ+
Barrister	Male, LGBTQ+
Barrister	Female
Barrister	Male, NA
Barrister	Female, Disability
Barrister	Female
Barrister	Female
Barrister	Male, BAME, Disability
Barrister	Male, BAME
Barrister	Female, Disability
Barrister	Female, BAME, Disability
Barrister	Male, Disability
Barrister	Female, Disability
Barrister	Female, BAME, Disability
Barrister	Male, BAME, LGBTQ+, Disability
Barrister	Male, LGBTQ+
Barrister	Female, LGBTQ+, Disability
Barrister	Female
Non-Barrister	Male, LGBTQ+, Disability
Non-Barrister	Male, LGBTQ+
Non-Barrister	Male, LGBTQ+
Non-Barrister	Female
Non-Barrister	Male

³³ Disability as defined by the ONS: *Are your day-to-day activities limited because of a health problem or disability which has lasted, or is expected to last, at least 12 months?*

3. Yes, limited a lot
4. Yes, limited a little

