

Research Summary

Bullying, Discrimination and Harassment at the Bar



Research Background

Available evidence suggests that bullying, discrimination and harassment remain an issue at the Bar. Among other themes identified by previous research was a “culture of fear” around reporting these incidents, with many barristers being afraid to speak out due to the fear that it would have a negative impact on their careers, or that they could be ‘victimised’ as a result.

The aim of the ‘Bullying, Discrimination and Harassment at the Bar’ research was to contribute towards a wider evidence base and inform the BSB’s strategies to address bullying, discrimination and harassment at the Bar. The focus of the study was gender, ethnicity, disability and sexual orientation, as these are protected characteristics¹ that have been identified by previous research as experiencing disproportionately high levels of bullying, discrimination and harassment.

The research provides evidence of the experiences of barristers and non-barristers who were the subject of, or witness to, instances of bullying, discrimination and harassment at the Bar within the last ten years. 30 interviews were conducted with barristers who self-reported experiencing or observing bullying, discrimination and harassment. This was supplemented by 5 interviews with non-barristers who had observed bullying, discrimination and harassment towards barristers or had equality and diversity responsibilities at the Bar. All interviews were conducted over the telephone by YouGov researchers across May, June and early July 2020. The interviews lasted 30 – 45 minutes.

Key Findings

The research explores a series of key issues and themes, including the impact of these experiences on the lives and careers of those affected, barriers and enablers to reporting bullying, discrimination and harassment, awareness and implementation of the Equality Rules of the BSB Handbook, unmet support needs, and the role of the BSB and other key stakeholders. The research summarises key recommendations and highlights what can be done to tackle these issues at the Bar.

Composition and Culture at the Bar - Participants felt that bullying, discrimination and harassment were tolerated to a certain extent due to the adversarial, male dominated culture of the Bar. The Bar has a unique structure – most barristers are self-employed and reliant on clerks for their caseload, often with little formal management or HR structure uniting the two. Some participants felt this lack of formal management structure allowed harassment and discrimination to “slip through the net.” Pupil barristers, who are early in their career and reliant on chambers for their progression, were seen as particularly vulnerable.

Experiences of bullying, discrimination and harassment - Participants described a wide range of these experiences, varying from unfair treatment based on protected characteristics, sexual harassment, long term bullying, unreasonable work demands and unfair work allocation. The range in frequency and seriousness of experiences meant that the picture of bullying, discrimination and harassment at the Bar was complex; it can be hard to identify, define and record.

Impacts of bullying, discrimination and harassment - Bullying, discrimination and harassment had both short and long-term consequences for barristers. These included diminished self-esteem, anxiety, mental health complications and negative impact on physical health. Negative socioeconomic consequences were also reported, including a dip in earning capacity, disruption of fruitful professional relationships, low job satisfaction and absenteeism.

Barriers to addressing bullying, discrimination and harassment Barriers to reporting bullying, discrimination and harassment included the fear of a negative impact on the victim's reputation, earning potential and career progression. A lack of anonymous and supportive pathways to reporting led barristers to worry that their concerns may not be treated professionally, kept anonymous or fully acted on. Other barriers to addressing the issues included the unique structure of the Bar, with limited line management structures or HR teams and procedures.

Enablers to addressing bullying, discrimination and harassment - Many participants felt that a supportive, anonymous, clearer and more accessible process of reporting either within their organisation or via a neutral third party would help, in order to provide a 'middle ground' between formal reporting and taking no action. A need for a fundamental shift in culture at the Bar to encourage openness and discourage discriminatory behaviour was also highlighted by participants.

Awareness and implementation of the Equality Rules - Overall, the Equality Rules were welcomed and felt to be necessary, as the Bar is felt to lack diversity, and in some cases equality. However, the implementation and awareness of the Equality Rules was seen as inconsistent, with huge variation in how well policies and rules are understood and implemented within chambers – all did 'something', but the participants felt it was only perfunctory. There was also a view that barristers often felt reluctant to volunteer to take on equality and diversity roles as there was little incentive and formal support to do so.

Unmet support needs; the role of the BSB and other key stakeholders - Awareness of the role of the BSB, as differentiated from the Bar Council or other stakeholders, needs to be raised. The BSB's regulatory requirements, which include a duty on all barristers to report harassment as serious misconduct, were in some cases seen as too formal and could be a barrier to reporting. Not all participants felt comfortable approaching the regulator when they experienced instances of bullying, discrimination and harassment. However, others felt that the duty was an enabler to reporting and showed that the regulator takes these issues seriously.

How will the BSB use these findings?

- The research findings will be used to shape recommendations about the BSB's approach to bullying, discrimination and harassment at the Bar, including the review of the Duty to Report.
- The findings will be discussed in a series of roundtables about our approach to bullying, discrimination and harassment at the Bar and opportunities for collaboration. A wide range of stakeholders will be invited to take part, including representative bodies at the Bar, other legal regulators, regulators from other sectors and other jurisdictions. We aim to finalise recommendations about our approach to bullying, discrimination and harassment in the near future.
- The research findings will contribute to the review of the BSB's Equality Rules. Since May 2019, we have already engaged over 80 stakeholders to review the impact of the Rules. We

will develop and consult on options to reform the Rules.

- As a risk and evidence-based regulator, the research will inform the BSB's wider work to identify and address risks at the Bar in relation to poor working cultures and bullying, discrimination and harassment, which are a high priority for action for our Board - see BSB Risk Outlook 2019, Risk Theme 1² and BSB Strategic Plan 2019-22, Aim 2.³

What do the findings mean for key stakeholders?

- There was felt to be a key 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. A range of different reporting options would be welcome, particularly options that could enable issues to be raised anonymously.
- Participants from underrepresented groups particularly highlighted the need for better networking opportunities within the profession.
- To effectively address bullying, discrimination and harassment in chambers, there needs to be a proactive approach to issues of equality and diversity, and senior members of chambers need to buy into the agenda.
- The report suggests that sexual harassment is more likely to take place at social events involving alcohol, which are common at the Bar and likely to exclude certain groups.
- The allocation of work was a significant concern for many barrister participants, particularly the transparency of the allocation process and potential discrimination going unchecked in chambers.
- Many participants emphasised the important influence that non-barristers, particularly clerks, have on the culture within chambers and the wider profession. This suggests that there is work to be done to ensure that it is always positive.

1 As defined in the Equality Act 2010

2 www.barstandardsboard.org.uk/resources/resource-library/bsb-risk-outlook-2019-pdf.html

3 www.barstandardsboard.org.uk/resources/resource-library/bsb-strategic-plan-2019-22-pdf.html