

## **Policy against Bullying, Harassment, and other Inappropriate Behaviours**

### **1. Introduction**

In any workplace there will be a range of attitudes about what conduct is considered offensive, humiliating, intimidating, hostile or degrading. What one person, member, pupil, or employee might see as harmless fun or 'banter' another might find unacceptable. Someone complaining about conduct may be considered by others to be overly sensitive or prudish. It is important to understand that conduct can amount to harassment or sexual harassment even if that is not how it was intended.

### **2. Statement of Policy**

Chambers is committed to providing a working environment, which is conducive to the professional growth of its members and employees and to the promotion of equality of opportunity. It is also committed to providing a safe working environment that is free from any form of bullying or harassment and where everyone, including members, pupils, mini-pupils, employees, clients, and the public<sup>1</sup>, is treated with dignity and respect. Everyone has a responsibility to comply with this policy as chambers operate a zero-tolerance approach to bullying or harassment on any grounds. Even unintentional harassment or bullying is unacceptable. This extends to behaviour outside of the workplace, including business trips and social functions. All allegations of bullying or harassment will be fully investigated and, if an allegation against a member, pupil or employee is substantiated, disciplinary action will be taken.

Bullying or harassment constitutes professional misconduct and is prohibited by the BSB Handbook. Harassment on the grounds of age, disability, gender reassignment, race, religion or belief, sex or sexual orientation is unlawful under section 26 of the Equality Act 2010 ("the 2010 Act"). Further, a barrister and a barrister's clerk must not, in relation to a pupillage or tenancy, harass (a) the pupil or tenant or (b) a person who has applied for the pupillage or tenancy (sections 47(3) and (8) of the 2010 Act).

### **3. The Scope of the Policy**

This policy applies to all members and employees of Chambers, to pupils and mini-pupils, and to persons who have applied for a pupillage or tenancy. This policy also covers harassment by third parties such as clients, suppliers, or visitors. The policy applies to:

- All premises where Chambers' business is conducted
- All Chambers' related activities performed at any other site away from the main Chambers premises
- Any social, business, or other function where conduct or comments, including on social media, may influence Chambers or relationships within Chambers, or their suitability to carry out their role in chambers.

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<sup>1</sup> This policy also applies to job applicants, contract workers (including consultants), police officers, personal and public office holders and those who undertake vocational training.

Examples of bullying, harassment and sexual harassment are contained within the policy and as an Appendix to it.

## **4. Bullying**

### **4.1 Definition of Bullying**

Bullying is offensive, intimidating, malicious or insulting behavior (and is usually persistent) which is unwanted and has a detrimental effect on the recipient. It may involve an abuse or misuse of power through means intended to undermine self-confidence, humiliate, denigrate, or threaten the recipient.

Victimisation of a member or an employee for making an allegation of bullying in good faith or supporting someone to make such a complaint is also viewed as unacceptable behaviour. Victimisation, if substantiated, is a disciplinary offence.

Bullying can happen anywhere: face-to-face, in written communications (including e-mail) or by telephone, by text messages or on the web. It is not limited by age, gender, or education level. It is not a 'phase', and it is not a joke. Bullying can cause lasting harm. Whatever form it takes, it is unwarranted and unwelcome to the recipient.

Although definitions of bullying vary, most agree that bullying involves:

- Imbalance of Power: people who bully use their power (whether by being in a more senior position or by strength of personality) to control or harm and the people being bullied may have a hard time defending themselves
- Intent to Cause Harm: actions done by accident do not generally constitute bullying; the person bullying deliberately manipulates, belittles, intimidates, and tries to control or undermine their victim using any means available to them
- Repetition: incidents of bullying happen to the same the person over and over by the same person or group.

### **4.2 Types of Bullying**

Bullying can take many forms. Examples include:

- Verbal: name-calling, teasing
- Social: spreading rumors, leaving people out on purpose, breaking up friendships
- Physical: hitting, punching, shoving
- Cyber-bullying: using the Internet, mobile phones or other digital technologies to harm others.

An act of bullying may fit into more than one of these categories.

There are many warning signs that could indicate that someone is involved in bullying. If anyone suspects that someone they know in Chambers is being bullied or is bullying others, they should report their concerns to the Chambers Director or an EDO as soon as possible.

## **5. Harassment**

### **5.1 Definition of Harassment**

Harassment is any form of “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” (section 26(1) of the 2010 Act). The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation. However, the complainant need not possess the relevant characteristic themselves and harassment can occur because of their association with a person who has a protected characteristic, or because they are wrongly perceived to have one or are treated as if they do. Harassment also occurs where a person engages in unwanted conduct of a sexual nature which has the purpose or effect referred to in section 26(1) (section 26(2) of the 2010 Act).

The essence of all harassment is that it is unwelcome conduct which is offensive or causes distress to the recipient. The test under section 26(4) of the 2010 Act is, in part, a subjective one and the fact that one person may be able to ignore or deal comfortably with certain behaviour does not mean that it is acceptable if directed at another. For conduct to be unwanted it does not require that the recipient of that conduct must have expressed objection to that conduct. Further, one incident alone may amount to harassment.

Chambers prohibits all harassment. Harassment may take a variety of forms and includes behaviour:

- which is unwanted by the recipient and perceived as threatening
- which causes a hostile or threatening working environment
- where rejection or submission is used as a basis for decisions concerning the recipient and/or less favourable treatment of the recipient, e.g., decisions relating to award of pupillage, appointment of tenancy, promotion, or other opportunities for career advancement (see section 26(3) of the 2010 Act).

The following are examples of behaviour, which may amount to harassment:

- physical assault, including sexual assault
- demands for sexual favours in return for career advancement
- unnecessary physical contact
- unwanted<sup>2</sup> conduct such as spoken words, banter, written words, posts or contact on social media, imagery, physical gestures, facial expressions, mimicry, jokes or pranks
- exclusion from social networks and activities
- isolation
- bullying
- compromising suggestions or invitations
- suggestive remarks or looks
- display of offensive materials, including on computer screens
- tasteless jokes or verbal abuse
- offensive remarks or ridicule
- dealing inappropriately with complaints of harassment.

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<sup>2</sup> The word ‘unwanted’ means essentially the same as ‘unwelcome’ or ‘uninvited’

Illustrations of behaviour that may amount to harassment are at Appendix 1. Disciplinary action will be taken against any member or employee of Chambers found to have harassed a colleague or other person in the conduct of their work.

## **6. Communication of the Policy against Bullying or Harassment**

A copy of this policy will be made available to all members, employees, pupils, and mini pupils of Chambers. A copy of this procedure will also be placed on the 3VB website. If necessary, a briefing will be provided so that all such individuals are aware of behaviour which is unacceptable and are aware of the Harassment Policy, procedures for making complaints and the assistance and support available.

## **7. Pupil Supervisors**

Pupillage is a period of professional training and Chambers regard it as inappropriate for a sexual relationship to develop between a pupil supervisor, or any other member or employee of Chambers, and a pupil. No member of Chambers may participate in decisions concerning a pupil where they are or have been in such a relationship with that pupil.

## **8. Resolving Complaints of Bullying or Harassment**

Chambers is committed to providing a supportive environment in which to resolve problems of bullying or harassment and has put in place several options or resolving problems. A non-adversarial approach will be adopted.

## **9. *Raising a Complaint***

A person experiencing bullying or harassment is encouraged to raise a complaint at an early stage, preferably through the informal procedure. Raising a complaint at an early stage is more likely to result in a satisfactory resolution. If left unresolved, the harassment may escalate to the point where the situation becomes much more difficult to deal with effectively.

Any member, employee, pupil, or mini pupil in Chambers has the right to bring to the attention of an appropriate person any behaviour, which they consider to be contrary to the bullying or harassment policy, irrespective of whether they are the recipients of such conduct. A member, pupil, or employee of Chambers who witnesses behaviour which they consider contravenes the harassment policy should take immediate action to indicate that such behaviour is unacceptable as failure to do so could (i) be interpreted as condoning such behaviour, and (ii) even if the bullying or harassment is perpetrated by a third party, give rise to liability under section 40 of the 2010 Act.

### **9.1 *Informal Resolution Options***

When an incident of bullying or harassment occurs, the complainant might wish to make the individual concerned aware that their conduct is causing offence and ask them to stop the behaviour. Alternatively, the complainant could write to the individual or ask a member of Chambers, a more senior employee, or a colleague to talk to them on the complainant's behalf. The complainant may also wish to ask a member of Chambers, a more senior employee or colleague for advice and support even if they prefer to speak to the individual themselves in the first instance. This person should listen to the complainant and work out how best they can help them to resolve the issue informally and in a way with which the complainant is most comfortable having considered the different options. They may for example:

- provide the complainant with advice on how to approach the issue directly with the alleged harasser
- support the complainant in raising the issue with the alleged harasser by accompanying them in any discussion of helping them to set out their thoughts in writing
- raise the matter informally with the harasser on the complainant's behalf
- talk to Spot, the Bar Council's online tool for confidentially recording and optionally reporting inappropriate behaviour. The tool is available at <http://talktospot.com/barcouncil> and more information is available at <https://www.barcouncil.org.uk/support-for-barristers/equality-diversity-and-inclusion/talk-to-spot.html>.
- The Bar Council E&D Helpline on 0207 611 1426.
- For pupils, the Bar Council Pupils' Helpline, on 020 7611 1415 or via email at [PupilHelpline@BarCouncil.org.uk](mailto:PupilHelpline@BarCouncil.org.uk). For more information see <https://www.barcouncil.org.uk/becoming-a-barrister/pupil-barristers/pupils-helpline.html>.
- For any wellbeing support, LawCare at <https://www.lawcare.org.uk> or on 0800 279 6888.

If the complainant chooses the informal route, they may not want the member of Chambers, a more senior employee or colleague to take any action or to raise the matter with the alleged bully/harasser. Wherever possible the complainant's wishes will be respected and complied with. However, in circumstances where it is considered that the welfare, health, or safety of the complainant/others may be at risk, or that there are other overriding reasons to do so, it may be necessary for Chambers to approach the alleged bully/harasser and conduct a formal investigation. This will typically take place in instances where the severity of the allegations made warrant immediate investigation.

If the complainant feels they are being bullied or harassed by a third party, Chambers encourages them to speak to a member of Chambers or more senior employee in the first instance for advice on the best way forward.

In all cases Chambers will provide advice or support as requested and will undertake any investigation necessary to resolve the matter, speedily and in confidence. Within one week of the receipt of the informal complaint an investigation will be made, if necessary.

## **9.2 Formal Complaints Resolution**

Where the person subject to bullying or harassment does not wish to pursue the informal resolution options or has exhausted such options, they may make a formal complaint in accordance with the Complaints or Grievance Procedures of Chambers. All such complaints will be promptly investigated.

A formal complaint should be made in writing to the Head of the Equality and Diversity Committee (EDC). Upon receipt of the complaint, it will be dealt with in accordance with the procedure for Formal Complaints set out in the Chambers Complaints or Grievance Procedures. If the matter concerns the Head of the EDC, the individual should refer it to one of the E&D Officers (EDOs who, currently, are Jonathan Davies- Jones QC and Kate Holderness).

The written complaint should set out full details of the conduct in question, including the name of the harasser or bully, the nature of the harassment or bullying, the date(s) and time(s) at which it occurred, the names of any witnesses and any action that has been taken so far to attempt to stop it from occurring.

As a general principle, the decision whether to progress a complaint is up to the individual. However, Chambers may pursue the matter independently if, in all the circumstances, the Head of the EDC considers it appropriate to do so.

## **10. Investigation**

Investigations will be conducted in accordance with standards of natural justice. The investigation will normally involve a meeting with the aggrieved person and others if required. Where possible, members of Chambers or staff directly involved in the complaint should be permitted to be accompanied by a colleague or friend at any hearing.

The Head of the EDC will appoint a senior member of chambers, or senior staff member ("the Appointed Investigator") to investigate any complaint promptly and confidentially in a manner appropriate to the circumstances, including meeting separately with the individual making the complaint and the alleged harasser to hear their account of events. Individuals not involved in the complaint, or the investigation should not be told about it. The investigation should be thorough, impartial, and objective, and carried out with sensitivity and due respect for the rights of all parties concerned.

Where the alleged harasser is a member of Chambers, an employee or a pupil, temporary changes to working arrangements may be made pending the outcome of the investigation, if circumstances require.

## **11. Action following investigation**

If the Appointed Investigator considers that harassment has occurred, he or she will report their findings and recommended actions to the Head of the EDC. Thereafter prompt action will be taken by the Head of the EDC, which may include but is not limited to one or more of the following sanctions (to be implemented, if necessary, by way of Chambers meeting or such other formal process as is required by Chambers' constitution):

- formal apology
- counselling
- written warning
- change of work assignment
- report to the relevant Inn recommending the removal of pupil supervisor status
- suspension or dismissal of employee
- suspension or expulsion of member
- referral to the Bar Standards Board.

Where the harasser is a third party, appropriate action might include putting up signs setting out acceptable and unacceptable behaviour; speaking or writing to the person and/or their superior about their behaviour or, in very serious cases, banning them from Chambers premises or terminating a contract with them.

In addition to the sanction that may be imposed on a member or an employee by Chambers as part of a complaint resolution, members of Chambers who engage in harassment may be liable for damages in the event of a civil lawsuit or may face further sanctions imposed by the Bar Standards Board, or, in a very serious case, criminal sanctions.

## **12. Right of Appeal**

If a complainant is not satisfied with the outcome of the investigation under the Formal Procedure, he/she has the right to appeal.

Any appeal should be made in writing to the Joint Heads of Chambers, setting out what aspects of the decision are not accepted and why. If the appeal concerns one or both Joint Heads of Chambers, then the appeal should be sent to another member of the Management Board. The complainant should do this without reasonable delay, which will normally mean no longer than five working days after being told of the decision. The Joint Heads of Chambers, the member(s) of the Management Board or an appointed deputy (appointed by either the Joint Heads of Chambers or by the member(s) of the Management Board) will then arrange an appeal meeting to discuss the matter fully and to try to reach a satisfactory solution. The complainant must take all reasonable steps to attend the meeting. As during the investigation, the complainant may choose to be accompanied. The outcome of the appeal will be confirmed in writing, normally within five working days of the meeting with the Joint Heads of Chambers, the member of the Management Board or an appointed deputy.

A member or an employee who has been accused of harassing another MoC, or employee has a right of appeal. A MoC has the right of appeal under the terms of the Constitution. An employee has the right of appeal under the Staff Disciplinary Policy, a copy of which can be accessed [here](#).

### **13. *Standard of Proof***

For the purposes of any investigation under the Formal Procedure and any appeal in Chambers the civil standard of proof will be applied.

### **14. *Confidentiality***

Chambers recognise that a recipient of bullying or harassment may find it difficult to come forward with a complaint and they understand that recipients and alleged bullies or harassers may be particularly concerned about confidentiality and the effect that a complaint may have on career advancement. To protect the interests of the complainant, the person complained against, and any others who may report or be witnesses to incidents of bullying or harassment, confidentiality will be maintained throughout any investigatory process to the extent that this is practical and appropriate under the circumstances. However, Chambers has a duty to ensure that bullying or harassment does not re-occur. All records of complaints, including notes of meetings, interviews, results of investigations and other relevant material will be kept confidential by Chambers in order that repeated behaviour and any trends can be identified, except where disclosure is required for disciplinary or other remedial processes.

Such confidential data will be stored securely. Appropriate safeguards are in place to protect the data and to ensure that any processing of data is proportionate.

### **15. *Victimisation***

Chambers is committed to ensuring that no one who brings forward a bullying or harassment concern in good faith is subject to any form of reprisal or other detriment. Any victimisation of a complainant, witness, or anyone else involved in the investigation of a complaint will be viewed as a disciplinary matter. The raising of such a complaint will not have any adverse consequences for the complainant, particularly in relation to tenancy and promotion decisions. Further, it is unlawful for a barrister or a barrister's clerk to victimise (i) a person in relation to pupillage or tenancy (section 43(4) and 43(8) of the 2010 Act); or (ii) a person who is a pupil or tenant in relation to, amongst other things, his/her pupillage, or tenancy or by subjecting him/her to any other detriment (section 43(5) and 43(8) of the 2010 Act).

## **16. Further Avenues of Redress for an Individual experiencing Bullying or Harassment**

In addition to the Chambers' procedures there are several other avenues of redress. These include:

- if a complaint is not resolved within Chambers a further avenue of appealing to an external independent individual may be considered. The individual should have experience in equal opportunities
- raising a complaint with the relevant Inns Students' Officer about a sponsor or pupil supervisor. The Inns' complaints process will determine the outcome of such complaints
- complaint to the Bar Standards Board where the alleged bully or harasser is a barrister
- the taking of action in the county court or employment tribunal alleging bullying or harassment as a form of unlawful direct discrimination
- reporting this matter to the police where an act of bullying or harassment is a criminal offence e.g., assault or intentional harassment.
- seeking, through the Bar Council's Equality and Diversity Advisers, the assistance of the Bar Council's Mediation Panel members. Their role is to advise the complainant and, with his or her permission, to seek to mediate between the complainant and the alleged bully or harasser. The Panel can be approached in confidence and will aim to achieve an end to the conduct complained of without necessarily finding fault or blame and without the imposition of sanctions.

The Bar Council's Equality and Diversity Advisers are available at the Bar Council to offer advice **in confidence** to any recipient of bullying or harassment or to any member of Chambers responding to a complaint of bullying or harassment. The confidential helpline number (a direct dial number) is 0207 611 1310.

Alternatively, there is an ACAS (Advisory, Conciliation and Arbitration Service) helpline for advice:

### **ACAS helpline**

Telephone: 0300 123 1100

Textphone: 18001 0300 123 1100

Monday to Friday, 8am to 6pm

## **17. Malicious Complaints**

Chambers recognises that most complaints will be made in good faith. Members, pupils, and staff will not be subjected to disciplinary action or to any other detriment simply because their complaint is not upheld. However, they may face disciplinary action if it is found both that the allegation is false and made in bad faith (that is, without an honest belief in its truth).

## **18. General**

This policy will be reviewed annually by the EDC. Relevant training will be provided periodically to members, pupils, and staff.

Chambers has several qualified Mental Health First Aiders (MHFA) who are trained in giving support to individuals who have experienced harassment. The names of the MHFAs are displayed at numerous points around chambers, or the names can be obtained from the Chambers Director.

**Approved by the Management Board, September 2021**



### Examples of Bullying, Harassment and Sexual Harassment

**Sexual Harassment:** this occurs when someone is subjected to unwanted conduct as defined in Chambers' Policy against Bullying or Harassment. The conduct need not be sexually motivated, only sexual in nature.

For example:

- A senior member is working on a lengthy matter with two female junior members, and over the course of their collaboration, the senior member makes a number of remarks of a sexist nature to the female members. One of the female members finds the comments offensive and humiliating to her as a woman.
- A male member alters a pornographic image by pasting an image of a female colleague's face onto it. He sends it to another colleague. There was no sexual motivation behind this act, but the use of the image is sexual in nature.
- Male staff download pornographic images on to their computers in chambers where female staff work. A female staff member becomes aware that these images are being downloaded and considers that this creates a humiliating environment for her. In this situation, it is irrelevant that the male staff member did not intend to upset anybody, and that they merely considered the downloading of images as 'having a laugh'.

### Bullying

Bullying is repeated aggressive behaviour that can be physical, verbal, or relational, in-person or online. Bullies are often relentless, bullying repeatedly for long periods of time. You may live in constant fear of where and when the bully will strike next, what they'll do, and how far they'll go. Given the current growth in remote working digital bullying and discrimination is also becoming a challenge. As many people shift from face-to-face interaction to a predominantly online existence the potential for workplace bullying and discrimination is shifting in parallel.

For example:

- A colleague or more senior person in chambers unnecessarily interrupts or disrupts someone's work; inappropriately interfering with their personal property or work equipment. They may discount a person's statements in group meetings and/or unfavourably compare one person to others.
- A colleague or more senior member takes credit for another's contributions, or deny that person access to information, consultation, or resources.
- A more common form of bullying is giving feedback in an insincere or disrespectful manner, and/or reminding them of past errors or mistakes.

### Victimisation

Victimisation means treating a colleague badly (subjecting them to detriment) because they have done a protected act, e.g., made a complaint of harassment. There is evidence that fear of victimisation is one of the biggest barriers to people reporting harassment at work.

For example:

- A member brings a claim against a more senior member relating to sexual harassment that she was subjected to while they worked together. She is subsequently denied opportunities to work with that member who does not consider her a 'team-player', a view based on her bringing a claim against the said member. She is protected against being subjected to a detriment in her work.
- A pupil complains that their pupil supervisor has been flirting with them and raises this with the senior clerk, the Head of the Pupillage Committee, and a fellow pupil in chambers. The clerk dismisses her complaint and tells her to ignore it. The Head of Pupillage acknowledges there are rumours about the supervisor and transfers the pupil to another pupil supervisor. The Head of Chambers reports the matter to the BSB. No one speaks with the pupil supervisor. The chambers rumour-mill picks up on the issue and the pupil is repeatedly asked if the rumours are correct. The pupil then leaves chambers, uncomfortable with the rumours and about how her concern has been handled. The former pupil is protected against being subjected to detriment at work (including a potential breach of confidentiality in respect of her complaint).

### **Gaslighting**

The term Gaslighting is a 'label' which embraces inappropriate and often manipulative workplace practices. Historically, these practices have been described as 'subtle workplace bullying'.

The term Gaslighting is based on a 1944 film 'Gaslight' starring Ingrid Bergman. Bergman's character marries and mysterious things start to happen to her in her marriage. Her husband convinces her that she is imagining things, when in fact he is scheming with criminal intent. Psychologists describe Gaslighting as a subtle but unhealthy manipulative behaviour. Someone who is the subject of gaslighting will likely, certainly initially, struggle to understand what is occurring – similar to Bergman's character in the film. Typically, they cannot 'put their finger on the problem'. They believe they are imagining things. They may even feel 'non-credible'. All they know is they feel constantly undermined or excluded and they start to develop trust issues within the workplace. Their confidence and productivity levels suffer. They start to feel unwell. They may even be signed off work by their GP with work-related stress.

Gaslighting is classic abuse of power. It is bullying. It is a manipulative power-game, which individuals or groups of individuals play within a workplace with deliberate intent to control an individual or control a situation. A perpetrator could be a colleague or more senior member or manager.

Signs of Gaslighting include:

- A lack of openness and transparency. This may be with immediate line management in a one-on-one relationship, or it may be at a more general level.
- A reluctance to minute meetings or draw-up file-notes.
- Refusal to follow policies unless it suits the business. For example, reluctance to acknowledge a complaint or investigate a formal grievance but at the same time applying a forceful approach to performance management and disciplinary policies.
- Drip-feeding information or failing to provide full facts (which we have historically described as 'setting a person up to fail') or repeatedly re-scheduling meetings or withholding important information.
- Moving goalposts or changing elements of an employee job description without first engaging in discussion or making reference to a change-management policy.

- Springing surprises i.e.: calling last-minute meetings but failing to share data or advise in advance what the purpose of the meeting is and what the likely outcomes may be.
- Failure to carry out fair and thorough grievance or disciplinary investigations and deciding in advance of an investigation that someone's complaint will not be upheld (i.e.: pre-determined outcomes). Warning signs include a refusal to appoint an independent, impartial, workplace investigator in grievance and disciplinary cases.
- Undermining behaviour intended to destroy someone's confidence. For example, open criticism or alleging that others have complained where, in fact, there is no evidence of any complaint.