



## Bar Council Equality and Diversity Guides Tackling Sexual Harassment: Information for Chambers

How to tackle sexual harassment at the Bar, including, what you should do when an allegation of sexual harassment has been made against a member of chambers, a member of chambers' staff or against any other person whose conduct chambers may have some responsibility for or influence over (including instructing solicitors).

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### Executive Summary

1. Research shows that sexual harassment is still a significant problem at the Bar. Recent Bar Standards Board research suggested 40% of women at the Bar had experienced harassment (with 80% of those who experienced harassment failing to report it through any formal route<sup>1</sup>). Bar Council's own research on harassment and

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<sup>1</sup> Women at the Bar, BSB 2016

[https://www.barstandardsboard.org.uk/media/1773934/women\\_at\\_the\\_bar\\_-\\_full\\_report\\_-\\_final\\_12\\_07\\_16.pdf](https://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf)

bullying<sup>2</sup> (part of Working Lives Research in 2017) also gave cause for concern. If you think that sexual harassment is not a problem in your chambers, you are almost certainly wrong.

2. Allegations of sexual harassment are a serious matter. It is incumbent on Chambers, as a matter of fairness and to uphold the integrity of the profession, to treat the complainant and alleged perpetrator justly. This Guide considers the definition of sexual harassment, the requirement on Chambers to have a proper procedure for handling complaints of sexual harassment, the duties of Heads of Chambers and the obligations to report certain matters to the BSB.

3. Steps taken in Chambers should aim to:

- i) reduce the incidents of sexual harassment
- ii) provide support to victims of sexual harassment
- iii) take appropriate and proportionate action towards perpetrators of sexual harassment

4. Allegations of sexual harassment should be handled promptly and sensitively. A written harassment procedure is a mandatory requirement for Chambers. Following receipt of an allegation appropriate action must be taken<sup>3</sup> (see a 'decision tree' attached as a guide at Appendix 3). Confidentiality must be maintained at all times, to protect the reputation of both complainant and alleged perpetrator, particularly while facts are yet to be established. Throughout, appropriate support should be offered to the complainant. At the conclusion of the process, an appropriate resolution or outcome should be in place which may involve sanctions.

## **Understanding Sexual Harassment**

5. Chambers are encouraged not to take an overly legalistic approach to allegations of sexual harassment. Referring to the definition of sexual harassment within the Equality Act 2010 and the approach taken by the courts may prove helpful for Chambers, but a victim's concerns should not be dismissed out of hand because they may not fulfil the legal criteria. You may find it more helpful to consider this issue in terms of 'inappropriate behaviour' or 'dignity at work', rather than focussing solely on harassment when setting policy, in training and in managing a complaint.

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<sup>2</sup> Barristers' Working Lives 2017: Third survey of barristers' experience of harassment, bullying & discrimination

[https://www.barcouncil.org.uk/media/664669/barristers\\_working\\_lives\\_2017\\_harassment\\_and\\_bullying.pdf](https://www.barcouncil.org.uk/media/664669/barristers_working_lives_2017_harassment_and_bullying.pdf)

<sup>3</sup> This need not always be a formal investigation which may deter a complainant from reporting an incident

### **Definition: Sexual Harassment**

The definition of sexual harassment is contained in section 26 of the Equality Act 2010. This provides that:

- [...] (2) A also harasses B if—
- (a) A engages in unwanted conduct of a sexual nature, and
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b) [namely  
conduct which has the purpose or effect of violating B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for B].
- (3) A also harasses B if—
- (a) A or another person engages in unwanted conduct of a sexual nature or that  
is related to gender reassignment or sex,
  - (b) the conduct has the purpose or effect referred to in subsection (1)(b), and
  - (c) because of B's rejection of, or submission to the conduct, A treats B less favourably than A would treat B if B had not rejected or submitted to the conduct.
- (4) In deciding whether conduct has the effect referred to in subsection (1)(b), each of  
the following must be taken into account—
- (a) the perception of B;
  - (b) the other circumstances of the case;
  - (c) whether it is reasonable for the conduct to have that effect.

6. There will be a spectrum of conduct that can be properly described as sexual harassment. As a guide, the Equality Act 2010 describes it as unwanted conduct of a sexual nature (or related to gender assignment or sex) which has the purpose or effect of violating the victim's dignity or which creates an intimidating, hostile, degrading, humiliating or offensive environment for the victim. A single incident can constitute harassment.

7. Under the Equality Act 2010, determining whether unlawful sexual harassment has taken place involves an objective and a subjective element; analysis must be made both of the factual event which took place but also of both the alleged perpetrator's intention and the victim's perception of that event. Those in Chambers with responsibility for receiving and investigating allegations of sexual harassment should similarly take into account the perception of the complainant and all the other relevant circumstances, including the conduct and point of view of the alleged perpetrator and,

possibly, of any witnesses. Even if the alleged perpetrator's intention was not to harass or cause offence, where their conduct has had this effect – whether on the target or a witness – appropriate action should be taken.

8. What may appear, superficially, to have been innocuous conduct by the alleged harasser, might from the perspective of the victim be more serious - particularly if, for example, the victim is a more junior member of chambers than the alleged perpetrator, or in some other way vulnerable. Equally, the fact that an individual has a long-standing reputation which is a bit of a joke in chambers (“oh that’s just so-and-so, he’s harmless”) does not mean that their conduct should be excused or overlooked.

9. Chambers will also need to deal carefully with situations in which a complainant has had an unreasonably sensitive reaction to objectively inoffensive behaviour from an alleged harasser. While harassment is important and not to be underestimated, it is also important not to encourage a culture of hypersensitivity.

10. Given, however, that recent research indicates that 80% of victims of sexual harassment at the Bar do not report their experience within chambers<sup>4</sup>, it is clear that Chambers’ efforts are better focussed on encouraging the reporting of such conduct than worrying about over-reporting.

## Handling Complaints of Sexual Harassment in Chambers

**rC110** You must take reasonable steps to ensure that in relation to your *chambers or BSB authorised body*:

.3 the following requirements are complied with:

### Harassment

.j *chambers or BSB authorised body* has a written anti-harassment policy which, as a minimum:

.i states that *harassment* will not be tolerated or condoned and that *managers, employees, members of chambers, pupils* and others temporarily in your *chambers or BSB authorised body* such as mini-pupils have a right to complain if it occurs;

.ii sets out how the policy will be communicated;

.iii sets out the procedure for dealing with *complaints of harassment*;

11. The BSB Handbook provides that Chambers must have an anti-harassment policy which, as a minimum, states that “harassment will not be tolerated or condoned and that managers, employees, members of chambers, *pupils* and others temporarily in *chambers or any BSB authorised body* such as mini-pupils have a right to complain if it occurs”. You must also set out how the Policy will be communicated and the procedure

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<sup>4</sup> BSB Women at the Bar survey 2016

to be followed (rC110.3.J.iii). The BSB Handbook also places a specific duty on Heads of Chambers to ensure there is a robust anti-harassment policy in place<sup>5</sup>.

12. Where an allegation of harassment is made it is the duty of Chambers to properly investigate and consider what appropriate action should be taken. BSB Guidance states that any chambers harassment policy should provide an informal means of resolving complaints about harassment in the first instance. Clearly, the policy must also provide a formal means of resolving complaints. The procedure for investigating complaints must be independent, objective, sensitive and fair.

13. BSB Guidance also states that there should be a designated advisor to assist those subjected to harassment. This may be chambers' EDO. It may well be appropriate to have more than one such designated person: it is important that anyone in chambers who is harassed has someone that they feel comfortable speaking to about their experience and what action if any they would like to see taken. For example, a senior, male, member of chambers may not be seen as approachable by a young, female victim of sexual harassment and if they are the only person to whom such complaints can be made, they are likely to be deterred from coming forwards.

14. BSB Guidance also indicates that those in senior or supervisory roles should undergo training on how to keep the work environment free from harassment, and those involved in dealing with harassment should also be trained. This is essential: a policy may be beautifully crafted but if implemented insensitively or without a proper understanding of the nature of sexual harassment and the challenges in dealing with it effectively, harm rather than good will result – victims will lose confidence and not report harassment when it occurs, reputational damage may occur (both to chambers and those involved) and harassment will be able to continue unchecked.

15. The Bar Council now offers training for those in management positions in chambers or otherwise involved in the formulation and/or implementation of harassment policies<sup>6</sup>.

16. Sample harassment policies are provided in Appendices 1 and 2. It is important that as a Chambers you carefully consider how these sample policies can best be adapted to suit your Chambers. The second, the Bar Council sample policy, is very comprehensive and it is anticipated chambers would cut and paste elements to create a policy best suited to their needs. Consultation with key stakeholders – those who have been victims of harassment and those who will have responsibility for implementing the policy – is advised.

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<sup>5</sup> rC89 – Administration of Chambers

<sup>6</sup> <https://www.barcouncil.org.uk/supporting-the-bar/bar-council-training-courses/managers-harassment-training/>

17. It is helpful if your policy gives an indication of what may class as harassment under the policy. In particular, it is important that members of chambers understand that “banter” can amount to harassment, and that just because a comment is intended as a joke does not mean it is not capable of constituting harassment.

18. We would also recommend that your policy encourage not just victims but also witnesses of harassment to both challenge and report it. If chambers hear from any source of inappropriate conduct, then steps should be taken to address it: a decision whether to take action should not depend on whether the victim feels able to come forward to complain about what has happened.

19. Your Chambers harassment policy should cover “work socials” as much as the normal working day. Whilst everyone will be more relaxed and wanting to have fun at such events, this does not mean that anyone should be subjected to harassment. “Jokes” made at someone else’s expense, leaving someone else feeling humiliated, are as unacceptable at such events as at Court. Further, these events are far from voluntary: if someone stops going to them because of anxiety about harassment or fear of a harasser, their practice, standing in chambers and/or reputation can be damaged.

20. Your policy should provide for a range of potential outcomes, with significant flexibility if an informal route is followed. For example, a victim may simply want a record kept of what has happened in case it should be repeated or happen to another. They may simply want someone with authority to have a quiet word with the perpetrator so that the harassment is not repeated. It is however important that Chambers makes an independent assessment of the situation: it may be that, despite the victim’s wishes, the seriousness of the allegation is such that further action should be taken.

21. Where the alleged perpetrator is spoken to and the harassment is admitted the seriousness of the conduct must be considered and appropriate and proportionate action taken. This is not just about punishment/sanctions but also about ensuring the harassment does not continue. For example, it may be appropriate to place restrictions on their attendance at Chambers events, to ensure they are clerked so that the victim is not expected to work with them, or to arrange for them to attend a harassment training course. The sanction may involve anything from a reprimand to expulsion from Chambers. Your Chambers’ constitution should cater for these eventualities.

22. Where harassment is not admitted, it may be necessary to carry out an investigation (this should be provided for by your Chambers’ constitution and/or your harassment policy); this should consist of taking written evidence from the victim, harasser and anyone else who can shed light on the allegation, such as witnesses. However, such a process could be too distressing for the victim, so it is important that a decision to proceed to such an investigation is only made after careful and sensitive consultation.

23. The decision maker(s) established by your Chambers' harassment policy should consider all the evidence and decide whether the allegation is proven. If proven the seriousness and nature of the conduct must be considered in determining appropriate action. This could include the outcomes noted above. It will also be important to carefully manage the working relationship between victim and alleged perpetrator (and possibly witnesses) which is likely to be at least awkward and may well be acrimonious and/or upsetting.

24. Given the seriousness of any allegation to both the complainant and the alleged perpetrator, there should be an appeal process.

25. Where the complaint is about a professional client or a member of another chambers, support should be given to the victim and careful thought given as to how to best address the situation. This may involve contacting the client's supervisor or the barrister's head of chambers, and where the alleged perpetrator is a solicitor it may be appropriate to make a report to the SRA. Where the complaint is about a judge, it may be appropriate to contact their senior presider or support the victim in reporting to the Judicial Conduct Investigations Office.

26. Junior and new tenants, and pupils, are particularly vulnerable. There is anecdotal evidence that pupils suffer disproportionately from sexual harassment. Further, they will often be extremely reluctant to make a complaint, fearing that their prospects of tenancy will be damaged and/or that as the "newbie" in chambers they are less likely to be believed or treated fairly than someone who has been there for years. It is therefore important to ensure they are aware of Chambers' policy from the start of their pupillage, are familiar with the person they should go to if anything untoward happens and are given reassurance throughout their pupillage that they should come forward with concerns and that it will not affect their tenancy prospects. Confidentiality is of course key. They should also be provided with details of support services available such as the Bar Council Pupil Support line.

27. If a pupil makes an allegation of sexual harassment by their pupil supervisor, consideration should immediately be given as to whether the pupil should be moved from the harasser to another supervisor (and it would be rare that this step would not be taken immediately). It must also be made clear that this does not affect the pupil's position in Chambers, and of course the reason for the move must be kept absolutely confidential.

28. All allegations of harassment must be dealt with promptly. A victim is likely to be extremely anxious after coming forward. An alleged perpetrator is also likely to be very anxious once they learn that a complaint has been made about them. We advise that the aim should be to reach a decision/resolution within 7 days or at most 14.

29. Whilst BSB rules state that your policy must state that employees have a right to complain if harassment occurs, most chambers will (and ought to) have a separate equality policy, grievance procedure and disciplinary procedure applying to staff. Complaints by and about staff must be dealt with consistently with those policies/procedures.

30. The BSB recommends that the policy is actively promoted by people in senior positions in chambers and this is important to show that the efforts to address harassment are supported by those in authority – that what is being done is more than a “tick box exercise” and that the policy will not simply lie on a shelf, gathering dust.

**TIP**

In developing a policy and agreeing procedures consider the following scenarios as you may need to develop slightly differing approaches for each:

- A tenant alleges harassment from another tenant;
- A pupil alleges harassment by a tenant or a member of chambers’ staff;
- A member of staff alleges harassment by a tenant;
- A pupil or tenant alleges harassment by a member of staff (e.g. clerk); and
- A tenant/pupil/member of staff alleges harassment by a solicitor who instructs chambers.
- A tenant/pupil alleges harassment by a judge.

In relation to allegations against staff, Chambers should also have a disciplinary process through which appropriate action can be taken.

Where an allegation is made against a solicitor Chambers will have to consider whether it needs to report the matter to the SRA<sup>7</sup> and must take the allegations seriously regardless of whether this affects the relationship of Chambers with the solicitor.

**TIP: Informal vs. Formal Complaints handling**

We recommend that Chambers consider handling complaints informally in certain circumstances. In the first instance, it is sensible to ask the complainant if s/he wishes the matter to be dealt with informally whilst at the same time making it clear that there is a formal route, which can be immediately followed or taken up if the informal route does not resolve the matter.

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<sup>7</sup> Solicitors Regulation Authority



There will however be allegations of sexual harassment which are sufficiently serious that they have to be managed by following a formal procedure, and the duty to report to the BSB should always be borne in mind (p.11).

### **WARNING**

In some circumstances allegations may be so serious you need to consider involving the police.

### **TIP**

The Bar Council recommends that all Heads of Chambers (and managers in Chambers) should be aware of their responsibility to ensure, so far as they are able, that:

- policy is translated into practice;
- members of Chambers are aware of the policy;
- all allegations are taken seriously and dealt with sensitively, appropriately and proportionately;
- those reporting sexual harassment are not victimised for so doing; and
- all allegations and investigations are kept confidential.

## **The Extra Mile**

31. In order to make your policy and procedures as effective as possible, keep your policy under review. At an appropriate moment ask those who have made use of the policy for their feedback: what did they think Chambers got right, what do they think Chambers could have done better. Use this to improve your policy and procedures. Thank those who have come forward to report harassment and any who were spoken to as witnesses: they are all likely to be worried about having spoken up, and to know that Chambers appreciates their input will encourage them to speak up again in the future if necessary. Encourage them to “spread the word” that Chambers can handle allegations of harassment effectively and appropriately, to encourage others to make use of your policy.

32. Ensure that new starters in chambers – whether new tenants or pupils – are provided with a copy of the policy and try to ensure they meet the person to whom reports of harassment should be made so that they are a familiar face should the worst happen.

33. Familiarise yourself with active listening techniques. These are useful when taking an account from a victim, and also potentially when speaking to an alleged perpetrator or witnesses.

- find a time to speak to them when you will not be disturbed, or distracted by other commitments
- pay attention and make eye contact
- do not grill/cross-examine them – ask open questions and use an empathetic tone of voice
- reflect back what they have said, to show you have listened and understood
- at the end, summarise, check that you have understood everything correctly and invite them to add anything further

34. Don't consider the resolution of a complaint to be a "closed book". The victim may need ongoing support. The conduct of the alleged perpetrator may need ongoing monitoring, or indeed support. If further reports are received from the same victim, or about the same alleged perpetrator, then a historical report or investigation will be relevant to how the later report is handled.

35. As well as formulating a comprehensive complaints process and ensuring it is implemented effectively by trained individuals, there are additional "soft" steps which will help to make Chambers and life at the Bar a harassment-free zone.

36. Evening events where alcohol is served are flashpoints for harassment and therefore deserve special attention. It is worth thinking carefully about the availability of soft drinks at such events, and the amount of food available. Be prepared to send home anyone who has drunk too much. Think about reminding members of chambers of the standard of behaviour expected before such events and be particularly alive to reports of inappropriate behaviour in the days that follow such events.

37. Promote the Bar Council's **Confidential Equality and Diversity Helpline in Chambers (T: 0207 611 1426)**, so victims know they can seek advice and support if they are not comfortable using Chambers' procedures

## **Data Protection and Confidentiality**

38. Confidentiality is absolutely essential to all aspects of the effective handling of allegations. Information should only be passed to others on a "need to know" basis, and careful track should be kept of who knows what so that information is not accidentally disseminated further than it needs to be. Every person involved in handling a complaint about harassment should be reminded at every stage of the need for confidentiality. This should not however extend to putting pressure on victims not to seek support or advice from friends.

### **Victimisation**

Rule rC69, which mirrors the statutory provision prohibiting victimisation (s.27 Equality Act 2010) creates an obligation on all barristers not to victimise anyone for making in good faith a report of serious misconduct. This means anyone making

an allegation of having been sexually harassed or a person who witnesses sexual harassment and reports it must not suffer any disadvantage as a result of making a complaint. As already noted, it should be made clear to a complainant that they will not suffer any detriment because they have made a complaint or chosen to go down the formal route rather than ask for the matter to be dealt with informally. It should also be made clear to any witness who reports harassment or who provides evidence about what they witnessed that they will suffer no detriment.

39. Victimization of someone who has reported or witnessed harassment could result in liability for Chambers. The fewer the people who are aware of the allegation the less chance of victimisation, so this is another reason for maintaining the strictest levels of confidentiality.

40. Careful records should be kept of the details of any allegation, the outcome of any enquiries and any findings or decisions made. This is important firstly to ensure that complaints are handled based on accurate information but also in the event of a later related allegation, a claim of victimisation or an appeal.

41. GDPR requires that strict controls be kept on data generated in handling a complaint. It is therefore important that chambers' data/privacy policy covers data generated in relation to allegations and investigations and that such data is easily locatable, retained for an appropriate period of time and destroyed after an appropriate period of time.

## **Reporting to the Bar Standards Board (BSB)**

### **Relevant BSB Rules**

rC12 – "You must not discriminate unlawfully against, victimise or harass any other person on the grounds of race, colour, ethnic or national origin, nationality, citizenship, sex, gender re-assignment, sexual orientation, marital or civil partnership status, disability, age, religion or belief, or pregnancy and maternity."

Relevant Core duties are:

- CD3 You must act with honesty and integrity
- CD5 You must not behave in a way which is likely to diminish the trust and confidence which the public places in you or in the profession
- CD8 You must not discriminate unlawfully against any person

rC65 You must report to the BSB promptly if you have committed serious misconduct.

rC66 You must report to the BSB if you have reasonable grounds to believe that there has been serious misconduct by a barrister.

gC96.2 Serious misconduct includes harassment.

42. Barristers have a duty to report harassment to the Bar Standards Board (BSB). There is also a specific duty on Heads of Chambers to report harassment to the BSB, but this should not detract from an individual's own duty. When any allegation of harassment by a barrister is made, a decision must be made as to whether it is to be reported to the BSB or not.

43. The BSB provides guidance on the reasons for and scope of the reporting obligation, as well as how to make a report, in the Handbook (gC97-gC99) and in separate BSB guidance available on their website<sup>8</sup>.

44. The guidance notes that whether misconduct is "serious" may be a question of degree and is a matter of judgment (paras 6 & 7), and notes that discrimination, which includes harassment, can constitute serious misconduct depending on its severity and impact (para 8). This means that there may be instances of inappropriate conduct at the lesser end of the spectrum which do not mandate a BSB report.

45. The guidance indicates that the alleged perpetrator should usually be given an opportunity to explain their conduct before a report is made (para 25) and that a report should be made "where you have material before you which as it stands establishes a reasonably credible instance of serious misconduct."

46. If you are aware that the matter has already been reported to the BSB then you do not need to report it yourself (para 24).

47. Whilst the duty to report strictly applies to a victim of harassment, the guidance has recently been amended to state that the BSB has a policy not to take enforcement action against victims who do not report their harassment (para 16). The guidance also notes that the BSB will treat any report of harassment as sensitively as possible and, importantly, will not act without first consulting the victim.

48. Rule rC69 creates an obligation not to victimise anyone for making a BSB report in good faith. It is important that no one in chambers is discouraged from making a report if they consider it to be appropriate.

49. We advise:

- Where the allegation amounts to serious misconduct and is admitted then it should normally be reported as soon as possible to the BSB. However, it is

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[https://www.barstandardsboard.org.uk/media/1687156/bsb\\_guidance\\_on\\_reporting\\_serious\\_misconduct\\_of\\_others\\_-\\_external\\_produced\\_by\\_reg\\_pol.pdf](https://www.barstandardsboard.org.uk/media/1687156/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external_produced_by_reg_pol.pdf)

important to discuss with the victim – hopefully to gain their consent but at least to ensure they are aware that the report is being made.

### **Tip**

Where the allegation is admitted, encourage the person who has committed the harassment to self-report to the BSB.

- Where the allegation is denied, and an internal investigation is going to be carried out, the decision of whether to report may await the outcome of the investigation since this is likely to shed further light on the allegation.
- Even if the allegation is found to be not proven by Chambers it may still be necessary to report the incident to the BSB.
- Any decision to report, delay reporting or not to report to the BSB should be the decision of an accountable decision-making person (e.g. HoC), or body, within Chambers, and should be made upon consideration of all relevant circumstances.
- If in doubt, call the Bar Council Ethical Queries Helpline 0207 611 14426

## **BSB Reporting Waiver Pilot Scheme**

50. The BSB is currently running a pilot scheme granting exemption from the reporting requirement to certain trained individuals and organisations providing support to victims of harassment. The scheme is intended to address concerns that victims may have that if they report harassment within chambers, it may be reported to the BSB against their wishes, and that this may deter them from coming forwards. Full details are available online<sup>9</sup>. It is unlikely to be appropriate for Chambers to apply for an exemption under the scheme as it precludes the investigation and adjudication of complaints but there may be an organisation with links to your Chambers which has an exemption under the pilot scheme and could therefore offer a wholly confidential support service to victims of harassment. This may be a specialist bar association, an Inn of Court or another organisation such as a women’s forum. If you wish to make reference to this in communications or your policy, please contact the Bar Council for details of organisations with an exemption under the pilot scheme. A confidential advice for victims is also available from the Bar Council’s Equality and Diversity Helpline on 020 7611 1426.

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[https://www.barstandardsboard.org.uk/media/1957296/pilot\\_harassment\\_support\\_schemes\\_waiver\\_guidance.pdf](https://www.barstandardsboard.org.uk/media/1957296/pilot_harassment_support_schemes_waiver_guidance.pdf)

## Examples of scenarios you might face in chambers

51. It is worth thinking through some scenarios which could arise to ascertain whether your chambers policy provides an appropriate framework to enable appropriate action to be taken.

### Scenario 1:

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 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. 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 about how her concern has been handled.

*What chambers did right?* The Head of the Pupillage Committee was correct to transfer the pupil.

*What chambers could have done better?* However, the procedure adopted by Chambers was wholly inadequate.

The victim was not provided with any support, nor was she involved in the decision-making. Whilst there will be occasions when chambers has to take steps against the wishes of a victim, efforts should always be made to agree a pathway that they feel comfortable with and to explain to them why certain steps have to be taken.

The alleged harasser was not subjected to any process and the pupil may feel justified in thinking that the issue had been 'brushed under the carpet'. The nature and seriousness of the harassment should be considered as well as whether the pupil supervisor is a repeat offender, as the rumours appear to indicate. Simply moving the pupil, who was in a position of vulnerability, is not a sufficient response to the allegations.

The alleged harasser should have been spoken to about the allegation to ascertain his side of the story. Depending on his response it may then have been necessary to move to an investigation. Consideration should have been given to suspending or barring him from acting as a pupil supervisor, arranging for him to take a harassment training course, arranging for him to apologise to the pupil, and potentially an appropriate sanction under Chambers' disciplinary policy.

More careful consideration should have been given as to whether a BSB report was appropriate. This may depend on the details of the allegations and the supervisor's explanation/account. A snap decision should not have been taken, and the victim should have been consulted and kept informed.

Confidentiality may have been breached, leading to the rumours around chambers, so steps should be taken to ascertain who may have done this and potentially reprimand them.

The senior clerk should undergo training on how to appropriately handle an allegation of harassment. The pupil supervisor and head of chambers would also benefit from such training, to ensure such mistakes are avoided in the future.

Steps should be put in place to reassure other pupils and inform them about Chambers' policy so that they can have confidence that any complaint by them will be handled better.

### **Scenario 2:**

A member of staff reports to her line manager that at a Chambers' party a drunk male barrister aggressively attempted to kiss her against her will. The line manager reports this to the Head of Chambers. The male barrister is immediately asked to stay away from chambers and is clerked from home pending an investigation. Statements are taken from a number of people who attended the event and notes kept. Some of the witnesses are reluctant to provide statements, not wanting to get involved. The complaint is reported to the BSB. Chambers creates a panel to investigate the claim and determine what action needed to be taken against the barrister. On completion of the investigation the allegation is found proven and the barrister is expelled from Chambers. Chambers' investigation is kept separate to the BSB investigation.

*What chambers did right?* This is a serious incident. The line manager was right to bring it to the attention of the Head of Chambers. Chambers have taken appropriate steps to ensure that staff and other tenants are protected by requiring the tenant to work from home. Equally, it is important not to deprive the barrister of his income stream, if possible, before the outcome of the investigation is known, so clerking him from home is appropriate.

If an investigation was necessary (see below), it was appropriate to appoint an investigating panel, to take statements from witnesses and keep careful notes.

It was appropriate to report the matter to the BSB, and expulsion was a proportionate and appropriate sanction: the incident amounts to a sexual assault and further the staff member would not have felt safe having to continue working with the perpetrator.

*What chambers could have done better?* Rather than jumping straight to an investigation it would have been better to first speak to the alleged perpetrator to obtain his account. If he admitted the allegation then there would have been no need to put the victim (and indeed the perpetrator, and witnesses) through



the stress of an investigation. It would also be appropriate to invite him to report himself to the BSB.

It is possible that he has an alcohol abuse problem; if so, he should be encouraged to access support for this.

Chambers should have an appeal process available so that a perpetrator can challenge a finding and/or sanction.

Consideration should have been given as to whether the matter should be reported to the police – this should have been discussed with the victim.

Counselling and/or other support should have been offered to/arranged for the victim, throughout the chambers' investigation, the BSB process and thereafter as needed.

Witnesses should have been reassured about the importance of handling such matters appropriately and thanked for their involvement. It may be appropriate to arrange a harassment training course for all members of chambers, to educate them about the problem and the importance of challenging it and speaking up about it.

**Tip:**

When you consider scenarios, it is worth also considering the type of sanctions you might wish to place on any alleged perpetrator with respect to harassment or inappropriate behaviour (e.g. not coming into chambers during the investigation period; a requirement to attend training etc.) it is important to ensure your chambers' constitution enables this.

**Further Advice**

If you require additional assistance or have any queries on handling cases of sexual harassment, the Head of Policy for Equality & Diversity at the Bar Council can offer advice. Please call 020 7611 1426

**Equality, Diversity and Social Mobility Committee  
April 2019**



## Appendix 1: BSB Model Policy<sup>10</sup>

### MODEL ANTI-HARASSMENT POLICY FOR CHAMBERS

1. This policy covers all those working in chambers, visiting chambers and providing services to Chambers. It covers, amongst others, tenants, pupils, members of staff and instructing solicitors.
2. *[Name of Chambers]* is committed to providing a work environment in which all individuals, clients and the public are treated with dignity and respect. *[Name of Chambers]* is determined to promote a work environment in which everyone is treated equally and with dignity and can flourish. This Anti-Harassment Policy is a central plank of Chamber's commitment and will be applied rigorously.
3. Harassment in any form will not be tolerated at *[Name of Chambers]*. Harassment includes any unwanted conduct related to sex, race, disability, gender re-assignment, religion or belief, sexual orientation or age. Such behaviour may take many forms including:
  - Conduct which is unwanted by the recipient and perceived as hostile or threatening;
  - Conduct which gives rise to a hostile or threatening work environment;
  - Conduct which creates an atmosphere in which it is feared that rejection or submission will be used as a basis for decisions which have an impact on the recipient at work such as an allocation of work or tenancy decision.
4. The following are examples of types of behaviour which may amount to harassment:
  - Physical or sexual assault;
  - Requests for sexual favours in return for career advancement;
  - Unnecessary physical contact;
  - Exclusion from social networks and activities or other forms of isolation;
  - Bullying;
  - Compromising suggestions or invitations;
  - Suggestive remarks or looks;
  - Display of offensive materials, including on a computer screen;
  - Tasteless jokes or verbal abuse, including any sent by email;
  - Offensive remarks or ridicule;
  - Dealing inappropriately or inadequately with complaints of harassment.

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<sup>10</sup> Note that this document is a statement of Policy and is predicated on there being a Grievance and Disciplinary Procedure in Chambers.

5. Harassment is unlawful under the Equality Act 2010. In addition to the above unwanted conduct, it can arise where a person engages in any kind of unwanted sexual behaviour (or gender reassignment or sex related behaviour).
6. Complaints of harassment may be raised informally in the first instance with the Equality and Diversity officer [*Name of Chambers' Equality and Diversity Officer*], the Head of Chambers or another senior member of chambers who will agree an appropriate response. Formal complaints should be made under the [*Name of Chambers*]' Grievance procedure.
7. Harassment is misconduct or gross misconduct for employees or a breach of the Bar Code of Conduct for barristers. Allegations of harassment will be dealt with under the [*Name of Chambers*]' Disciplinary procedure.
8. Allegations which may amount to serious misconduct by a barrister may be reported to the BSB under its reporting procedure.
9. Chambers is committed to ensuring that no one who makes an allegation of harassment in good faith should be subjected to any detriment as a result. Any victimisation of a complainant, witness or anyone else involved in the investigation of a complaint will be viewed as a disciplinary matter.
10. A copy of this policy is provided to all those for whom chambers constitutes a working environment, including members of chambers, pupils, squatters, clerks and other employees, temporary workers, those who provide services to chambers such as contract cleaners, accountants and IT consultants, and mini-pupils and work experience students.
11. This policy was adopted on [*date*] and will be reviewed on [*date*].

(Source: BSB Handbook's Supporting Information Document<sup>11</sup>)

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<sup>11</sup>

[https://www.barstandardsboard.org.uk/media/1977492/bsb\\_equality\\_rules\\_handbook\\_2019\\_update.pdf](https://www.barstandardsboard.org.uk/media/1977492/bsb_equality_rules_handbook_2019_update.pdf)

## Appendix 2: Bar Council Model Policy



### Bar Council Policy Template: Dignity at Work (Harassment)

#### Some guidelines/point to consider:

1. Having an anonymous means of raising concerns and seeking advice is a common feature of harassment policies in many professions. Anonymous “complaints” should not result in action against individuals but should be used to enable chambers to advise the concerned individual about Chambers’ policies, encourage them to raise a concern by the non-anonymous informal route, and offer emotional support.
2. Having an informal route for raising concerns should be an essential part of any policy. It is overwhelmingly clear that an accessible, friendly system is necessary in order for individuals to feel comfortable coming forward with concerns. Having an informal procedure in place is also a BSB recommendation.
3. Where the person raising the concern feels that a more formal approach is appropriate, a policy should make provision for this. Equally where chambers feel that the situation is best dealt with in a more formal way, the policy should provide for this.
4. Where the alleged conduct falls under the legal definition of harassment, this could potentially result in Chambers’ existing expulsion policy being invoked, or, for staff, the existing staff disciplinary process.
5. Where it is appropriate to take action as regards the individual about whom the concern has been raised, it is useful if a policy sets out a range of practical possibilities (not intended to be exhaustive, but illustrative only). Clearly not all instances of harassment are equal, and each should be dealt with appropriately, pragmatically and proportionately, with the focus on reducing the risk of any such incident being repeated. Often people who are harassed do not want disciplinary action to be taken but just want to feel confident that the harassment will not continue – and that others will not be subjected to it by the same person. This is why appropriate action may include prohibiting someone from drinking alcohol at chambers events, for example. It is helpful if there is also scope for the individual to be provided with support if there are underlying personal problems behind their conduct.

6. There should also be provision in any policy for advice to be given regarding police involvement and criminal charges. Whilst hopefully unlikely, it is possible that behaviour reported under this policy could amount to criminal conduct. If you are in a criminal set, in that situation, as part of the holistic package of support offered, if appropriate designated members who work in the field of criminal law with experience in dealing with sexual offences may be able to offer practical information and advice in relation to reporting the matter to the police.
7. In order to allow confidence in the system, it is important that the person raising a concern, and the person targeted by the behaviour (if different) are kept informed of action taken as regards the other individual.
8. It is also important for such confidence that those who use the system are, where appropriate, asked for feedback at a later stage as to how their concern was handled and addressed, and that this is used to improve chambers' policy and practices.
9. It is equally important that where action is taken against an individual, this is followed up with checks to ensure the action has been effective.
10. Training for all those who will be involved in the system is imperative: a situation can easily be made worse if a concern is handled badly – e.g. through a breach of confidentiality, appearing to minimise what happened, failing to provide follow-up support (giving an impression of a “tick box mentality”) or to follow up with a “culprit” to ensure their conduct has changed.

**This policy is very detailed, and we accept many chambers may wish to pick and choose elements of the policy they wish to adopt.**

**The same applies with respect to terminology titles.**

## SAMPLE/TEMPLATE POLICY: DIGNITY AT WORK

### Introduction

1. The aim of this policy is to promote and provide a safe environment for everyone who is associated with Chambers, or may come into contact with its members or staff, ensuring they can work without hindrance, achieve their potential, socialise with dignity and respect from others, and flourish professionally.
2. Chambers aims to achieve this through:
  - offering guidance as to what is and is not unacceptable behaviour in chambers;
  - taking appropriate practical steps to reduce the chances of harassment, bullying or other inappropriate behaviour occurring;
  - providing an effective, appropriate and user-friendly system for raising concerns about inappropriate behaviour;
  - taking effective steps to address incidents of inappropriate behaviour and to deal with perpetrators of the same in an appropriate, fair and proportionate way;
  - offering practical support for those who feel they may have been targeted by inappropriate behaviour; and
  - ensuring ongoing review, reappraisal and improvement of the policy for maximum efficacy.
3. This policy applies to and may be used by all who work in or at Chambers, including:
  - Members of chambers;
  - Pupils;
  - Clerks; and
  - Staff.

Visitors to Chambers such as

  - Clients, both lay and professional;
  - Mini-pupils; and
  - Job/tenancy/pupillage applicants

should refer to the policy for Clients and Visitors accessed via the “Complaints” link on Chambers’ website.
4. All persons shall be treated equally and fairly under this policy regardless of seniority or lack of it.
5. In relation to employees of *[Chambers]*, this policy should be read in conjunction with *[e.g. the Anti-Harassment and Bullying Policy, the Equality Policy and the Grievance and Disciplinary Procedure – as appropriate]* in the Staff Handbook, which take precedence. This policy does not form part of any employee’s

contract of employment (or of any contract with any contractor) and Chambers may amend it at any time or depart from it where considered appropriate.

6. This policy applies to all Chambers - or Bar - related situations and events, including but not limited to:
  - the working day in chambers;
  - at Court – including the robing room and the courtroom itself;
  - chambers social events;
  - chambers marketing events;
  - Circuit events;
  - Bar messes;
  - Bar Association events;
  - Inns of Court events; and
  - the aftermath of any such events.
  
7. This policy covers all forms of harassment, bullying and inappropriate behaviour.
  
8. All types of harassment, bullying and inappropriate behaviour are unacceptable at *[name]* Chambers.
  
9. Our policy is to
  - offer guidance as to the type of behaviour which may be considered inappropriate;
  - take appropriate practical steps to reduce or prevent the chances of such behaviour occurring;
  - resolve, informally and without blame, genuine misunderstandings and disagreements about whether such behaviour has occurred;
  - provide an effective and user-friendly system for raising concerns about objectionable behaviour;
  - take effective steps to address incidents of such behaviour and to deal with perpetrators of the same in a fair and proportionate way;
  - offer practical support for those who feel they have been affected by such behaviour; and
  - ensure ongoing review of the policy
  
10. Unlawful harassment is defined by the Equality Act 2010 as unwanted conduct of a sexual nature or related to gender, sexual orientation, gender re-assignment, race, religion/belief, age or disability, which has the purpose or effect of violating another’s dignity or creating a degrading, offensive, humiliating, intimidating or hostile environment for them. In considering whether conduct has this effect, it is necessary to take into account all of the circumstances, the perception of the other person and whether it is reasonable for the conduct to have had that effect.

11. Unlawful harassment does not require a course of conduct – an isolated incident can amount to unlawful harassment.
12. That a person may not have intended their conduct to be offensive does not preclude it from amounting to unlawful harassment.
13. An incident does not have to fulfil the legal definition of “harassment” to be dealt with appropriately under this policy.
14. Bullying is offensive, intimidating, malicious or insulting behaviour involving the misuse of power that can make a person feel vulnerable, upset, humiliated, undermined or threatened. Power does not always mean being in a position of authority but can include both personal strength and the power to coerce through fear of intimidation.
15. Inappropriate behaviour can include physical, verbal and non-verbal conduct.

Examples of inappropriate behaviour may include:

- Sexist, suggestive or sexual comments, “jokes” or “banter”
- Sexual innuendo
- Sexist, sexual or offensive comments regarding someone’s appearance
- Overly personal comments or over-familiar behaviour, including questions about someone’s relationships, sex life or gender identity
- Continued suggestions for social activity after it has been made clear that such suggestions are unwelcome
- Racist, sexist, anti-LGBT+ or ageist jokes, or derogatory or stereotypical remarks about those of a particular ethnic or religious group, gender, gender identity or sexual orientation
- Outing or threatening to out someone as gay, lesbian, transgender or any form of LGBTQI+<sup>12</sup>
- Knowingly misgendering someone
- Offensive or intimidating comments or gestures
- Insensitive jokes or pranks
- Mocking, mimicking or belittling a person’s disability
- Exclusion from social networks or activities, or other forms of isolation
- Staring or inappropriate/suggestive looks
- Invading someone’s personal space
- Sexual or offensive gestures
- Inappropriate sexual advances or repeated unwelcome sexual advances
- Inappropriate or unwelcome physical contact

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<sup>12</sup> Lesbian, Gay, Bisexual, Transgender, Queer, Intersex

- Suggesting that sexual favours or a sexual relationship may result in favourable treatment, provide work opportunities or career advancement, or suggesting that refusing such may lead to less favourable treatment, the loss of work opportunities or damage career advancement
- Displaying or sending or pornographic or sexually suggestive pictures or written material
- Initiating or continuing sexual contact with someone who is unable, for example through drink, to give truly informed consent
- Sexual and physical assault
- Dealing with complaints of harassment inappropriately or inadequately

Examples of bullying may include:

- Shouting at someone
- Being sarcastic towards, ridiculing or demeaning someone
- Overbearing or intimidating levels of supervision
- Inappropriate and/or derogatory remarks about someone's performance
- Abuse of authority or power by those in positions of seniority
- Deliberately excluding someone from meetings or communications without good reason

16. When considering whether a comment or action is appropriate or inappropriate the following questions may assist:

- Would you say or do it to someone of a different gender to the person you are addressing?
- Would you say or do it to someone of the same level of seniority as yourself?
- Would you want someone else to say or do it to your spouse, child or sibling?
- If in doubt, don't do it.

17. Chambers shall have a *[named role e.g. EDO/Dignity at Work (DAW) Co-ordinator]* who shall have primary responsibility for the implementation of this policy and to whom anyone with any concerns regarding inappropriate behaviour and/or this policy can turn to for advice or information.

### **Challenging Inappropriate Behaviour, Harassment and Bullying**

18. Everyone who works at *[name]* Chambers is encouraged to take steps to stop, deter and prevent harassment, bullying and inappropriate behaviour.

19. Anyone who witnesses such behaviour directed at another, including hearing harassing or bullying comments, is encouraged to challenge it rather than let it pass (unless to do so would place themselves in danger).



20. Anyone who witnesses such behaviour directed at another, including hearing harassing or bullying comments, is encouraged to bring it to the attention one of the *[EDOs/named role/other]* as set out below.
21. Anyone who learns of such behaviour by another should encourage those involved to raise a concern with the *[EDO/named role/other]*, informally or formally, as set out below.
22. Any barrister who has reasonable grounds to believe that there has been sexual or other harassment by another barrister also has a professional duty to report it to the Bar Standards Board. To fail to do so is a breach of the Code of Conduct, unless they reasonably believe that the misconduct has already been reported to the BSB by someone else. If you are not sure whether an incident should be reported, or has already been reported, you can seek advice from the BSB or Bar Council, or Chambers' *[EDO/named role/other]*. Guidance from the BSB, and a link to a form which can be used to report the misconduct to the BSB, can be found here:  
[https://www.barstandardsboard.org.uk/media/1687156/bsb\\_guidance\\_on\\_reporting\\_serious\\_misconduct\\_of\\_others\\_-\\_external\\_produced\\_by\\_reg\\_pol.pdf](https://www.barstandardsboard.org.uk/media/1687156/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external_produced_by_reg_pol.pdf)  
and/or advice can be obtained from the BSB by calling them on 0207 611 1444 or from the Bar Council by calling their Ethical Queries Helpline on 0207 611 1307.

*Optional depending on Chambers specific arrangements:*

### ***The Dignity at Work Officers***

*To support the role of the Dignity at Work Co-ordinator, the following officers will be trained in respect of this policy and shall be known as Dignity at Work Officers:*

- a. Head of Chambers*
- b. Deputy Heads of Chambers*
- c. Chambers' EDO*
- d. All Heads and Deputy Heads of Group*
- e. Head of Recruitment/Pupillage*
- f. Director of Pupil Training*
- g. Chief Executive/Director of Clerking*
- h. All line managers and practice managers*

*The role of the Dignity at Work Officers will be, in conjunction with the Dignity at Work Co-ordinator, to determine the appropriate resolution in respect of any concern raised informally.*

### ***The Dignity at Work Counsellors***

*Chambers shall also have designated Dignity at Work Counsellors, of various levels of seniority, practice groups and based in the different Chambers' locations, with whom concerns can be raised and who will provide support.*

*All Dignity at Work Counsellors shall have received training in dealing with concerns about harassment and bullying. The Dignity at Work Counsellors will be appointed from the following:*

- At least one member of each practice group of no less than 15 years' call*
- At least one member of each practice group of around 5-15 years' call*
- All acting pupil supervisors*
- Individuals based in [geographical location of chambers]*
- A range of clerking and non-clerking staff below line manager level, as appropriate.*

*The names of all current designated Dignity at Work Counsellors can be found in the attached appendix.*

*The Dignity at Work Counsellor's primary role will be to provide anyone who raises a concern with support. They will have no role in determining any matter in relation to a concern raised with them. Where there is a judgment to be made as to an appropriate way forward the Dignity at Work Counsellor shall always refer matters to the Dignity at Work Co-ordinator.*

## **Raising Concerns**

23. Anyone who has been the target of inappropriate behaviour and anyone who has witnessed or learnt of such behaviour by another, is strongly encouraged to raise their concerns formally or informally within Chambers in order that appropriate support can be provided, and appropriate, proportionate action taken.
24. Chambers recognises that it takes courage to raise a concern about someone's conduct and aims to make it easy and as stress-free as possible to do so.
25. Concerns about someone's behaviour can be raised formally or informally. Advice and support can be sought informally or anonymously.
26. Whether a concern is raised formally, informally or anonymously, the *[EDO/named role/other]* shall
  - respond promptly
  - ensure confidentiality
  - listen to and discuss the concern
  - explain Chambers' Dignity at Work policy and procedures
  - discuss what outcome the person raising the concern would ideally like
  - discuss which Chambers' process – formal or informal - would be the most appropriate to achieve that outcome

- explain what support Chambers can provide to the person raising the concern, or anyone else who appears to have been affected by the conduct in question
- discuss the BSB reporting requirement
- agree a way forward that the person raising the concern is happy with, in so far as is possible.

## Raising a Concern Informally

27. Concerns can be raised informally with any of the *[EDO/named role/other]* (not just those from one's own practice group or team) by speaking to them in person, calling them or emailing them. Those wishing to raise a concern should not feel in any way constrained as to which of these individuals they choose to approach but should simply choose the individual they feel most comfortable talking to about their concern.
28. Alternatively, concerns may be raised with any trusted member of Chambers or staff who must then seek advice from one of these *[EDO/named role/other]* or from the Bar Council Helpline.
29. Where the concerning conduct is particularly serious, including a repeated series of incidents or including any incident involving any form of assault, the *[EDO/named role/other]* shall encourage the person raising the concern to raise it formally.
30. Any person raising a concern informally is welcome to have a friend with them for any discussions regarding their concern.
31. Possible outcomes from raising a concern informally could include (but are not limited to), by way of example
- simply providing emotional support or guidance to any person who needs it
  - the *[EDO/named role/other]* meeting with the person whose behaviour was reported to advise them their behaviour was inappropriate, to explain why it was unwelcome and to inform them that if further similar incidents are reported the consequences might be a formal investigation.
  - arrangements being made so that the person about whom the concern was raised, and the target of their alleged behaviour are not clerked into the same cases
  - the person about whose behaviour concern was raised agreeing not to attend Chambers/Bar social functions for a period, or not to consume alcohol at such events
  - the person about whose behaviour concern was raised agreeing to attend a harassment training course

- involving Head of Chambers, head of practice group or Chief Executive, for further advice, support or action
- making a BSB report on behalf of the person raising the concern, or assisting them in making such a report
- support in lodging a complaint with the Judicial Conduct Investigations Office, if the concern relates to the conduct of a judge
- support in lodging a complaint with the Solicitors' Regulatory Authority, if the concern relates to the conduct of a solicitor
- support in accessing alcohol misuse advice
- support in accessing counselling
- ongoing monitoring of the person whose behaviour caused concern
- ongoing support for anyone involved who may benefit from it

32. The person who raised the concern will be kept informed of the outcome of any action taken, and a record will be kept.

### **Anonymous Advice and Support**

33. Advice and support can be sought anonymously, by making contact via this webpage/telephone number *[weblink or helpline, if chambers have one]*. Friendly and supportive advice and information will be provided promptly by one of the *[EDO/named role/other]* listed above. They will not know, or be able to find out, the identity of the person making contact unless that person chooses to tell them.

34. Alternatively, advice can be sought anonymously from the confidential Bar Council E&D Helpline on 0207 611 1426 or through advisors authorised under a BSB waiver scheme *[link to an appropriate scheme]*.

### **Raising a Concern Formally**

35. Anyone (other than employees of *[name]* Chambers) wishing to raise a concern formally should do so to the *[EDO/named role/other – i.e. the person allocated responsibility within chambers e.g. Dignity at Work Co-ordinator/Officers]*, who will refer the matter to either a Deputy Head of Chambers or the Head of Chambers. The individual raising the concern should make clear that the concern is being raised formally pursuant to this policy.

*How concerns raised formally will be dealt with:*

*Concerns raised about the behaviour of members of Chambers or pupils*

36. The Head (or Deputy Head) of Chambers will appoint an appropriate trained person to investigate the concern in a timely, thorough, impartial, objective, sensitive and confidential manner (the “Investigating Officer”)
37. The Head (or Deputy Head) of Chambers will appoint a panel of a minimum of two persons and a maximum of three persons, (*you may wish to specify whom – e.g. Deputy Head of Chambers, heads of practice group....*) although it can be any other person that the Head of Chambers deems appropriate) to determine what action should be taken in light of the information produced by the investigation (“the Panel”). All members of the Panel should have undergone appropriate harassment training.
38. In so far as is possible, the Investigating Officer and the Panel should be individuals who do not have a personal relationship with either the person about whom the concern has been raised, or the individual raising the concern.
39. The EDO, in consultation with the investigating officer, will consider any request that the person raising the concern, or the target of the conduct in question, make for changes to their own working arrangements during the investigation. For example, changes to their duties or working hours so as to avoid or minimise contact between the person raising the concern and the subject of the investigation. The EDO, in consultation with the investigating officer, may bar any contact between the subject of the investigation and the person raising the concern while the investigation is being carried out, where appropriate. *[This may need sign off by the Head of Chambers/other depending on your chambers’ constitution, so please specify what is required]*
40. At the end of the investigation, the Investigating Officer will prepare a report setting out the Panel’s conclusions for the Head of Chambers/Management Committee. The Panel shall decide upon an appropriate and proportionate outcome, including any action to be taken for implementation by the Head of Chambers/Management Committee.
41. Any action taken as part of the outcome should be appropriate and proportionate. It might include an outcome of the sort set out at paragraph 31 above, any sanction up to and including suspension from Chambers or, in the most serious cases, expulsion under the Expulsion Procedure as set out in *[Chambers’ Constitution/Disciplinary policy]*.
42. Where the investigation has provided reasonable grounds to believe that serious professional misconduct has occurred, a recommendation should be made to the Head of Chambers/Management Committee by the Panel that reporting to the BSB should be considered.
43. If the person raising the concern is not satisfied with the outcome, he or she can appeal the outcome to the Head of Chambers, and must indicate their intention

to do so, setting out brief grounds in writing to the Head of Chambers within 14 days of being notified of decision of the Panel.

44. The appeal will be a review and not a re-hearing of the concern, although the person raising the concern, the person about whom the concern is raised, and a member of the Panel who made the determination will be entitled to make oral or written submissions to the Head of Chambers. The Head of Chambers will be at liberty to take whatever steps he or she feels is appropriate in order to consider and determine the appeal.
45. If, (i) no appeal is requested; or (ii) following the appeal, the Panel's recommendation that the matters complained of amounted to serious misconduct is upheld; and/or (iii) the conclusion on appeal is that there was serious misconduct, the Head of Chambers/management committee) should consider and make a determination as to whether the matter should be reported to the BSB.
46. If it is determined that a report should be made to the BSB, the Head of Chambers/ management committee will consider whether to await the outcome of the report to the BSB prior to taking any action pursuant to the internal outcome or not. Interim measures – of the type set out in paragraph 39 above, or up to and including suspension or expulsion – may be imposed or continued pending the BSB's determination if the Head of Chambers/Management Committee determines that it would be appropriate in all the circumstances to do so.
47. Where Chambers decides not to make a report to the BSB, no pressure shall be put on any person affected by the inappropriate behaviour not to make a report to the BSB themselves.

*Concerns raised about the behaviour of employees of [Name] Chambers*

48. Any concern raised about an employee of [Name] Chambers shall be dealt with in accordance with Chambers' Grievance and Disciplinary Processes as set out in [the Staff Handbook].

*Concerns raised about the behaviour of visitors to [Name] Chambers*

49. Paragraphs 23 to 26 above apply.
50. Where the concern is about someone other than employee, such as a contractor, client, service user, supplier or visitor, Chambers will consider what action may be appropriate to protect anyone involved pending the outcome of the investigation, bearing in mind the reasonable needs of the business and the rights of that person.

51. The Head of Chambers will decide the appropriate method of investigation of any such concern. Where the investigation has provided reasonable grounds to believe that serious professional misconduct has occurred by a professional visitor to *[Name]* Chambers, if appropriate a report will be made to that person's professional body.
52. Whether or not such a report is made, the Head of Chambers will take such action as may be appropriate in response to the concern, with a particular view to ensure the outcomes mentioned in paragraphs 55 to 57 below. This might include speaking or writing to the person and/or their superior about their behaviour, or, where appropriate, banning them from the premises, from Chambers' social events or terminating a contract with them.

*The conclusion of the formal process in all cases*

53. Following any investigation (whatever its outcome) particular consideration shall be given to steps to reduce the risk of the conduct which caused concern occurring again.
54. Whatever the findings of the investigation, the Head of Chambers or Chambers' Management Committee will consider how best to manage any ongoing professional relationship between the parties involved. It may be appropriate to arrange some form of mediation and/or counselling.
55. A written report of the outcome of any investigation/appeal/decision to report will be given to the person who raised the concern, the target of the alleged harassment or bullying (if different) and the subject of the investigation, if they so wish.

**Further Considerations when a Concern is Raised (Whether Formally or Informally)**

56. Where the conduct in question may amount to a criminal offence, further advice and support specific to this will be offered to be provided by an appropriately qualified *[EDO/named role/other]*.
57. Confidentiality is an important part of the procedures provided under this policy. Everyone involved in the operation of the policy, whether providing support to any persons or involved in any investigation, is responsible for observing the highest level of confidentiality. A breach of confidentiality may itself amount to serious professional misconduct. Details must only be disclosed where absolutely necessary, and with the prior consent of the person(s) involved where at all possible.
58. All persons shall be treated equally and fairly under this policy. In particular, a person's seniority shall have no bearing whatsoever on how they are treated;



nor shall their personal relationship to any particular member of Chambers or staff.

59. Anyone who raises a concern in good faith or provides information pertinent to a concern raised by another, or makes a report to the BSB, shall be protected against receiving less favourable treatment as a result. Victimisation of anyone who raises a concern or is involved in the investigation of a concern which has been raised, or who makes a BSB report, shall be dealt with as a serious disciplinary matter under either the *[Staff Disciplinary Procedure]* or *[Chambers' Expulsion Procedure]* as appropriate.
60. Anyone who deliberately provides false information or otherwise acts in bad faith, whether under an informal process or within a formal process, including as part of an investigation, may, if a member of staff, be subject to action under *[Chambers' Staff Disciplinary Procedure]*; if a member of Chambers, may be subject to further action in accordance with Chambers Constitution.

## **Pupils**

61. Pupils shall be introduced to the *[EDO/named role/other]* for their practice group at their induction session before starting pupillage and shall meet them again during their first six months. Thereafter the *[EDO/named role/other]* shall make contact with the pupil from time to time, to offer advice and support.
62. At their induction session or at another appropriate time around the start of their pupillage, pupils shall be provided with a copy of this policy, contact details for the relevant *[EDO/named role/other]* and details as to how to access the anonymous advice system. An *[EDO/named role/other]* shall explain this policy to them and participate in a private and confidential question and answer session with the pupils in order to give them the opportunity to ask any questions and discuss chambers' practices in a comfortable environment.
63. Where a pupil has any concern about any perceived harassment, bullying or inappropriate behaviour they may raise that concern informally with their pupil supervisor if they feel comfortable doing so, or the Director of Pupil Training, or, if they would prefer, any one of the *[EDO/named role/other]*. Alternatively they may use the formal process as set out above.
64. Where their concern relates to conduct by their pupil supervisor, consideration will be immediately given as to whether it is appropriate to allow them a different pupil supervisor, temporarily or permanently.
65. If any pupil has a concern and does not feel comfortable raising it via the procedures set out herein, they are invited to call the confidential Bar Council



Pupil Advice and Support team: See  
<https://www.barcouncil.org.uk/supporting-the-bar/bar-council-services/pupils'-helpline/>

66. Pupils will routinely be given the opportunity, shortly after taking tenancy, to raise any concerns regarding inappropriate behaviour, harassment or bullying which took place during their pupillage which they did not feel able to raise at the time.

## **Judicial Conduct**

67. Where there is concern regarding the conduct of a judge, Chambers can provide advice and support from an *[EDO/named role/other]* through the informal process or the anonymous advice system as set out above. Alternatively, advice can be secured from the Bar Council's confidential E&D helpline 0207 611 1426
68. Where appropriate, a formal complaint should be made to the Judicial Conduct Investigations Office and Chambers can provide advice and support in relation to this.

## **Additional Practical Steps to Reduce Harassment, Bullying and Inappropriate Behaviour**

69. Recognising that inappropriate behaviour is more common at events where alcohol is served, Chambers shall:
- i. consider the possibility of non-alcoholic/daytime networking events where appropriate
  - ii. seek to ensure that a good range of soft drinks is readily available at all Chambers functions where alcohol is served, that soft drinks are promoted equally to alcoholic drinks and that soft drinks are as easily available to all as alcoholic drinks;
  - iii. seek to ensure that an appropriate quantity of food, bearing in mind the expected consumption of alcohol, is served at all Chambers functions where alcohol is served.
70. Any person considered by the Head or a Deputy Head of Chambers or any practice group to have consumed too much alcohol at an event shall be asked to leave the event and it is expected that they shall do so promptly and quietly.
71. Any person who, in the view of the Head or Deputy Head of Chambers or the head of their practice group, consumed too much alcohol at an event may be asked not to attend a future event.

## Promotion

72. This policy shall be actively promoted by Head of Chambers and all heads of practice groups.
73. This policy shall be available and easily accessible on the Chambers intranet and/or can be obtained from the *[EDO/named role/other]*.
74. Notices providing a summary of useful information regarding this policy shall be displayed in a range of readily visible and more discreet locations around Chambers such as to be easily available to all persons covered by this policy.
75. This policy shall be circulated by email around the whole of Chambers at least annually and usually shortly prior to the start of the Christmas party season.
76. A copy of this policy shall be provided to all new members of chambers, pupils and members of staff as part of their induction process.
77. This policy shall be appended to the Chambers Constitution.

## Efficacy & Feedback

78. As part of Chambers' efforts to address harassment, bullying and inappropriate behaviour as effectively as possible, confidential /anonymous soundings and surveys will be carried out from time to time to assess the efficacy of this policy.
79. All feedback on this policy – both positive and negative – is welcomed and will be taken into account to inform amendments and improvements. Any feedback or comments can be provided to the *[EDO/named role/other]* or to any of those listed above and will be treated confidentially if so requested.
80. Where possible and appropriate, users of the policy will be asked to provide feedback on their experience of making use of the policy.
81. Chambers' *[EDO/named role/other]* shall provide a report to the *Management Committee* annually (or as requested by the Committee) on the efficacy of this policy.
82. This policy shall be carefully reviewed at least every 2 years by the *[EDO/named role/other]* and amended as appropriate.

## Useful Resources

Whether or not you are comfortable raising a concern within Chambers, confidential advice in relation to harassment, bullying and inappropriate behaviour can be sought at any time from the confidential Bar Council E&D Helpline 0207 611 1426. You will reach Sam Mercer, who is supportive, knowledgeable and helpful, or a member of her team, and they will provide you with support and advice and discuss your options. You need not give your name or the names of anyone else involved, or identify your chambers, unless you are comfortable doing so.

**Lawcare** (free and confidential helpline for lawyers, providing wellbeing and mental health support): 0800 2796888

**Wellbeing at the Bar** (resources for Barristers' wellbeing; sources of advice and support <https://www.wellbeingatthebar.org.uk/>)

**Bar Council Guidance for chambers re sexual harassment**

<https://www.barcouncilethics.co.uk/subject/developing-equality-diversity-policies-for-chambers/>

And for individual barristers <https://www.barcouncil.org.uk/supporting-the-bar/equality-and-diversity/bullying-and-harassment/>

**BSB Guidance re reporting requirements**

[https://www.barstandardsboard.org.uk/media/1687156/bsb\\_guidance\\_on\\_reporting\\_serious\\_misconduct\\_of\\_others\\_-\\_external\\_produced\\_by\\_reg\\_pol\\_.pdf](https://www.barstandardsboard.org.uk/media/1687156/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external_produced_by_reg_pol_.pdf)

**BSB serious misconduct reporting form**

[https://www.barstandardsboard.org.uk/media/1702477/140619\\_-\\_pg22\\_-\\_procedure\\_for\\_dealing\\_with\\_reports\\_of\\_serious\\_misconduct\\_-\\_annex\\_a\\_-\\_form\\_-\\_live\\_updated\\_october\\_2015\\_.pdf](https://www.barstandardsboard.org.uk/media/1702477/140619_-_pg22_-_procedure_for_dealing_with_reports_of_serious_misconduct_-_annex_a_-_form_-_live_updated_october_2015_.pdf)

**Bar Council Ethical Enquiries Helpline** 0207 611 1426

**BSB Information Line** 0207 6111 444

**Judicial Conduct Investigations Office**

<http://judicialconduct.judiciary.gov.uk/making-a-complaint/> (note: complaints should preferably be lodged within 3 months of the incident)

You may need to check online for up-to-date web addresses and telephone numbers.

## Appendix 3: Decision Tree



### QUICK GUIDE TO MANAGING INAPPROPRIATE BEHAVIOUR IN CHAMBERS

**Introduction to the Flowchart:** This Flowchart is a suggested guide to an allegation of inappropriate conduct, including determining whether there are reasonable grounds to believe that there has been serious misconduct by a member of chambers, including harassment, in which case a report should be made to the BSB. It attempts to balance the need to uphold professional standards against the potentially unwelcome or worrisome duty to report on the part of alleged victims of harassment (and other types of serious misconduct or discrimination). Further, although if chambers *know*, or *have reasonable grounds to believe*, that serious misconduct has taken place they are under a duty to report the matter to the BSB, there can be difficulties in determining whether the alleged conduct amounts to serious misconduct and/or whether there are reasonable grounds to believe that such conduct has taken place, such that the duty to report would arise.

**Time Frames:** In some cases where an allegation is clearly serious, the alleged victim should speak to chambers' EDO (or other nominated person), i.e. as set out in the box 'Meeting EDO and AV' ('the Key Meeting'), as soon as possible to take advice on options and discuss their own and chambers' reporting obligations. Where the alleged conduct is obviously serious and there are obviously reasonable grounds to believe the allegations, the matter should be reported to the BSB without delay by chambers' management body (RH column, Flowchart). Chambers are free to conduct their own formal investigations in parallel with the BSB investigation process if they so wish, to determine whether internal steps are appropriate. Where the situation is less clear, the Flowchart sets out a framework that chambers can follow to see (a) whether there are reasonable grounds to believe serious misconduct has taken place; (b) whether a formal or informal approach within chambers is more appropriate; and (c) BSB reporting pathways in relation to each approach. Whether formal or informal, the process as set out in the Flowchart should be completed within a month of the Key Meeting taking place.

**Allegations against or by Members of Staff:** Normal grievance/disciplinary procedures will apply where the alleged perpetrator is a member of staff regardless of whether the alleged victim is a barrister or member of staff. The Flowchart can be used

to complement this, with modifications to the Key Meeting since there is no reporting duty.

**Witnesses:** In relation to a witness who may be under a duty to report to the BSB themselves, chambers may like to incorporate a mechanism whereby the outcome of the process (whichever route is taken) is reported back to the witness to enable them to make their own personal decision as to whether they should report.

**Weight to be Attached to Alleged Victim's Wishes on Reporting:** The AV's view or desired course of action established at the Key Meeting should be followed if possible and appropriate, unless the EDO (or nominated person) considers that the allegation involves a clear act of serious harassment in which case the AV's wish not to report can be overridden in the interests of chambers and to comply with regulatory requirements. Nothing in any chambers' procedure should purport to prevent or penalise an AV if they wish to report the matter to the BSB themselves.

***Note:** This guide was developed in June 2018 and reflects current BSB regulations and guidance. These may be revised and if so, this guide will be updated.*

**For confidential advice, please contact [smercer@barcouncil.org.uk](mailto:smercer@barcouncil.org.uk) or T: 0207 611 1426**

