



The Bar Council

BAR COUNCIL EQUALITY & DIVERSITY GUIDES CONDUCTING AN INVESTIGATION INTO A COMPLAINT OF BULLYING OR HARASSMENT IN CHAMBERS

This document aims to help Heads of Chambers, EDOs and others in conducting an effective investigation following a complaint of Harassment, Bullying or Discrimination in Chambers. It covers:

- ✓ The initial meeting
- ✓ Conducting the investigation
- ✓ Support for complaints and alleged perpetrators
- ✓ Handling vexatious complaints
- ✓ Common issues that arise during the complaints handling process

For further advice – contact equality@barcouncil.org.uk

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INTRODUCTION

This document sets out good practice in relation to investigations into bullying, discrimination and harassment, but is particularly aimed at complaints about barristers. Staff and barristers within Chambers should have separate grievance and disciplinary procedures due to the differing types of legislation and regulation that apply for each group.

You may find it useful to also refer to the decision making pathway in the Bar Council Guide to [Dealing with Sexual Harassment in Chambers](#) (page 38)

THE INITIAL MEETING WITH THE COMPLAINANT

The person taking the complaint initially, usually the Equality and Diversity Officer (EDO) or other nominated person (NP), should have had training in relation to harassment, bullying and discrimination and be fully conversant with their own chambers' policies and constitution as far as those documents deal with harassment issues and complaints. The EDO/NP should ensure that they are following the correct procedure depending upon whether the alleged perpetrator is a barrister or an employee of chambers.

It may be that the complaint comes via a witness, or after the complainant has already spoken to someone in chambers or at the Bar Council. Either way, the EDO should ensure that the complainant knows about any relevant support and the Bar Council's helpline.

At the meeting, the EDO/NP should explain chambers' complaints' investigation procedure fully, and the BSB reporting procedure (and, if relevant, the Guidance on reporting for victims of sexual harassment). It should also be explained that one outcome could be that the complainant does not wish to report to the BSB, but that chambers might be obliged to do so.

The options regarding the different types of procedure should be explained to the complainant, and the EDO should attempt to agree with the complainant a course of action with regard to the process they want followed e.g., internal, formal, or informal; reporting straight the BSB, other relevant regulators or the police if relevant.

If the matter is one that the EDO/NP believes should be reported to the BSB, but the complainant is reluctant to do so, the EDO should raise the matter with a senior member of chambers' management and/or another Responsible Officer to discuss the implications and action that can be taken. They may also wish to take advice from the Bar Council in relation to this.

The EDO/NP should clearly explain to the complainant and – when appropriate – to the alleged perpetrator what the plan involves before putting it into action.

CONDUCTING AN INVESTIGATION

TIP:

- ❖ Try to resolve matters informally/at the lowest level possible - when amenable – this will generally be the best option for everyone concerned.
- ❖ Ensure the investigation starts promptly and is completed as quickly as possible.
- ❖ Establish good communication with all those involved.
- ❖ Properly explain the concepts e.g. harassment.
- ❖ Be consistent.
- ❖ Maintain confidentiality.
- ❖ Keep meticulous records (see above, in relation to designing a complaints procedure).

Informal Resolution

Issues can often be resolved most effectively through informal methods. If an informal complaint is made, the complainant may want to log the complaint but for no further action to be taken. Chambers will have to consider if this is appropriate in the context of the complaint and their ongoing duty of care to others in the workplace.

If appropriate, an informal complaint can result in an informal conversation with the person being complained about. This should be carried out by the most appropriate person depending on the position and seniority of the person being complained about.

Depending on the outcome of that conversation, possible outcomes from an informal complaint could include:

- a) Agreed resolution of the issue raised;
- b) A facilitated meeting with the person who raised the complaint allowing them to advise how the behaviour was inappropriate, to explain why it was unwelcomed and the consequences of it happening again;

- c) Arrangements to minimise contact between the parties involved including:
 - i. being clerked separately
 - ii. agreeing not to attend Chambers/Bar social functions for a period, or not to consume alcohol at such events;
 - iii. agreeing to work remotely.
- d) Agreeing to attend a relevant training course;
- e) The complainant or a member of Chambers making a report of serious misconduct to the BSB or other relevant regulator;
- f) Ongoing monitoring.

An issue which is being dealt with informally can be escalated to a formal disciplinary process at the request of the complainant or Chambers. Where the conduct in issue is particularly serious, including a series of incidents or including any incident involving any form of assault, Chambers should deal with this via the formal disciplinary procedure.

Notes should be kept about any informal process and may be relevant if there are subsequent complaints about the same member or related issues arise.

Formal Resolution

Formal complaints, and issues of a serious nature, require a formal process which should be set out in a members disciplinary policy. The policy should include a framework around which an investigation should be structured, a process for decision making and an appeal process.

The process will normally be led by the Head of Chambers or most senior chamber's executive, who will appoint a panel of trained members/staff to undertake an investigation. There should be a system to ensure conflicts of interest can be dealt with effectively, which may include appointing an external investigator if necessary.

The formal process should enable complaints to be handled quickly, fairly and proportionately, with complainants and respondents suitably supported throughout the process, including being given the opportunity to bring a friend or colleague into any interview.

Complaints should be kept confidential by those investigating it, save insofar as reasonably required in order to carry out the investigation, and subject to any requirement to disclose serious misconduct to the Bar Standards Board.

If a complaint is found to be substantiated, appropriate steps should be taken to remedy the problem. The process may allow for the panel to implement the remedy, or a decision may be referred back to the Head of Chambers or management committee. If the process includes a referral to the Head of Chambers or management committee, chambers should take care to ensure independence in decision making and that recommendations made by the committee are followed.

Remedies following a formal process may include:

- a) a written warning kept on file.
- b) mediation
- c) an apology
- d) training course or intervention
- e) suspension from chambers activities (for example marketing events, socials, meetings etc) or agreeing not to drink alcohol at such events.
- f) working from home/outside chambers
- g) temporary suspension from chambers, or from being a pupil supervisor.
- h) removal of voting rights in chambers'
- i) Consideration of termination of membership

In the event that a panel consider that termination of membership may be a proportionate action after a disciplinary investigation, policies can include an automatic referral to an independent, external expert, to consider the evidence and the appropriate remedy.

The process must include an appeal process which enables the member to appeal a finding and or remedy/sanction arrived at following an investigation, including the establishment of an appeal panel which can review the process followed.

A confidential record should be kept of all complaints and of any meetings or investigations in connection with them.

External arbitration or mediation

It should be acknowledged that many chambers are small organisations where members may have known each other for long periods of time. Therefore, the process should include the option of an independent mediator, arbitrator or expert (as appropriate).

Points to remember:

- There will be a spectrum of conduct that falls within the definition of harassment. Under the EqA (s.26) determining whether unlawful 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 the victim's perception of that event.
- What may to an investigator 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 is in some other way vulnerable.
- Chambers will also need to deal carefully with situations in which a complainant has had an unreasonably sensitive reaction to objectively less offensive or low-level behaviour from an alleged harasser and circumstances in which the act complained of took place. It is important not to encourage a culture of hypersensitivity or the imposition of legal liability in respect of every and any comment that might be deemed out of turn.

TIP 1

It is helpful if Chambers' policy does not restrict itself to a strict legal definition of harassment as it is not only acts of unlawful harassment that can form the basis of legitimate complaints. The aim should be to create, or perpetuate, a comfortable and respectful working environment. It is not going to be helpful to get over involved in consideration of whether any particular incident does or does not fall within the legal definition of "harassment".

TIP 2

It can also be helpful if chambers has good conduct policies/a code of conduct in place and referenced in such circumstances

- The appointed investigating officer should consider all the evidence and decide whether the allegation is proven. If proven the seriousness of the conduct must be

considered. Reporting the incident to the BSB may be deemed necessary. Again, the sanction may involve anything from a reprimand to expulsion from Chambers.

COMMON ISSUES THAT ARISE

The nature of barristers' chambers is such that if a pupil, more junior tenant or member of staff makes a complaint against a tenant, they may fear that their own position will be jeopardised. As such, where there is a complaint that spans the hierarchy within chambers, procedures should make provision for arrangements to be made to minimise or eliminate contact between the complainant and alleged perpetrator so far as is reasonable or proportionate in the circumstances. If the allegation is one of harassment of a pupil by a pupil supervisor, consideration should immediately be given as to whether the pupil should be moved from the harasser to another supervisor. In either situation it should be made clear that this does not affect the junior tenant or pupil's position in Chambers and that the reason for their move will be kept confidential.

Chambers should make every effort to ensure a complainant doesn't suffer any detriment as a result of making a complaint or raising a concern. All complainants are protected from victimisation under Section 27 of the Equality Act.

Where the allegation is against a staff member it is important that it is dealt with in accordance with applicable employment law and internal staff policies and procedures.

Where the alleged perpetrator is a barrister and there is already, or is likely to be, a BSB investigation it is important for the EDO/NP handling the process and the investigator to bear in mind how the process and any sanction imposed internally impacts upon the BSB investigation. However, care should be taken to ensure that this does not affect the decision made, which should be based on the information that is presented in the internal investigation process only.

The range of sanctions should not be limited to reprimand or expulsion (or dismissal if the alleged perpetrator is an employee). There are more creative options that may well have a more lasting impact on chambers' culture in relation to harassment going forward, which should be considered.

If the harassment took place at a chambers event, it may be appropriate to bar the harasser from such events for a period so that the victim does not avoid attending them and become isolated within chambers.

If the act of harassment involved intoxication, it may be appropriate to consider whether alcohol or other substance misuse was involved and whether those involved could benefit from support.

It may be necessary to manage the diaries of the two parties such that they do not, for example, find themselves clerked into the same case.

It is important to look beyond sanctions to the whole picture, to manage the situation in a holistic and practical way. A further option, for example, may be rehabilitation training, either for the individual or chambers as a whole.

DEALING WITH VULNERABLE GROUPS

MINI-PUPILS

Like pupils below, mini pupils, are an exceptionally vulnerable group and may fear a complaint will jeopardise a future career at the Bar. Much of the advice below (re pupils) is applicable to mini pupils.

PUPILS

Particularly careful measures are required in relation to pupils. On the one hand there is anecdotal evidence that pupils may be specifically targeted and on the other hand there are additional deterrents to them raising a concern – firstly the fear that doing so may harm their tenancy prospects and secondly the fact that they do not yet have the well-established relationships of trust and confidence, which are often an essential pre-cursor to feeling comfortable talking to someone about these sensitive, personal issues.

There is clear value in pupil (and mini pupillage) supervisors undergoing training regarding sexual harassment, discrimination and inappropriate behaviour so that they know how to handle any concerns raised by their pupil appropriately and sensitively, are familiar with chambers' policy and procedures. They will also need to know who to seek further advice from themselves should they require it, gain a greater understanding as to what conduct is inappropriate, and so that their pupils can have confidence in their pupil supervisor's ability to provide appropriate advice and support.

There is also clear value in showing pupils that Chambers takes this issue seriously and wants them to speak up if they have any concerns rather than worrying about it impacting upon their tenancy prospects. This involves more than simply handing them the written

policy and advising them to read it, but a discussion about who to go to with any concerns and reassurance that they will be taken seriously and supported.

New pupils¹ should have any policy/chambers' approach explained to them, preferably by the appropriate person in chambers (e.g., Head of Pupillage or EDO) in an informal and confidential meeting, before or at the start of their pupillage. It is also good practice for the Head of Pupillage or EDO to contact them from time to time generally throughout their pupillage so that if a pupil has concerns, they will feel comfortable raising them.

Recognising that the insecurity of being a pupil will, for some, remain a barrier to raising concerns this process should continue until after they have taken tenancy, providing an opportunity to raise concerns at that stage about anything that happened during their pupillage year which they felt unable to come forward about at the time.

STAFF

Every chambers should already have a comprehensive and well-drafted harassment policy/system set out in their Staff Handbook, and a grievance procedure. Any policy for members should complement it. It is important that the same behavioural standards apply to both staff and members of chambers, and it is important that the same ethos underlies how concerns are dealt with, whether they involve staff or members of chambers².

In summary, chambers must ensure:

- ✓ Members of Chambers are aware of relevant policy;
- ✓ Policy is translated into practice;
- ✓ All allegations are dealt with promptly, fairly and proportionately;
- ✓ Those reporting are not victimised for so doing; and
- ✓ All allegations and investigations are kept confidential.

FAQs

What do I do if a complainant is unwilling to make a formal complaint?

You should consider ways to deal with the complaint informally, at the very least you should make a note of the incident and any action taken (even if 'no action' was taken).

¹ Mini pupils should also be given appropriate information as part of any pack they receive with information about their mini pupillage.

² A draft policy for members is available at the end of the Bar Council's [Sexual Harassment Guide: Information for Chambers](#)

If you have received other reports/complaints about the subject of the complaint, it may be appropriate to sensitively and confidentially inform a complainant that they are not the only one who has experienced this behaviour to see whether this affects their view as to how they would like the matter dealt with.

[How do I obtain accounts from witnesses which a complainant has named/or who have come forward?](#)

It is important to contact witnesses as soon as possible (after they have been named/you become aware of them). The longer a witness is left without contact about an incident the more likely they are to withdraw/becoming reluctant to come forward.

Ideally a statement should be taken/a conversation should be had with a witness as close as possible to the incident in question when the events are fresh in their mind, and they feel more confident to give an account.

[What should I do when new allegations arise during an investigation?](#)

New allegations should be brought into the investigation as soon as they arise. You do not need to restart the investigation (if the allegations are related to the same individual and same or similar behaviour). The key is that you make sure all allegations are put to the subject of the complaint so they can respond to all allegations made against them, even if this means having a further meeting with them.

[How do I effectively support complainants, the subject of the complaint, and witnesses as an EDO?](#)

You might also find it useful to refer to more general guidance in relation to good practice in dealing with vulnerable complainants/witnesses. Although guidance was designed for criminal proceedings there are some useful principles. You may have more than one EDO in chambers, in which case it can be useful to assign particular named EDOs, or NPs to support the complainant, the person against whom the complaint is made, and witnesses.

Useful reference materials

- [The Role of Independent Sexual Violence Advisor \(ISVAs\)](#)
- [Victims Code](#)

[How many people need to be privy to a complaint; if I have an E&D Committee in chambers should the complaint be shared with all on the committee?](#)

To retain confidentiality, it is preferable that the number of people involved in investigation is kept to the minimum necessary. This is to ensure that the welfare of complainants is prioritised and that the process is also fair for those who are the subject of a complaint. Depending on how formally a complaint is dealt with, and whether an appeal

is brought, the numbers who are privy will necessarily increase, but it is important that as EDO leading the investigation you impress upon all involved the need for confidence.

How do I ensure the process is fair for a person who is the subject of a complaint?

At the initial stages:

- Ensure the person accused is aware of the allegations made against them and is given adequate opportunity to respond.
- Ensure the person leading the investigation is able to maintain independence/ impartiality in so far as possible; if the EDO for example was closely involved with relevant events you may need to consider appointing someone else/ an additional person to lead on the investigation (if they have had adequate training- see above).
- Ensure the person accused is aware of the possible outcomes of a complaint being upheld.

Where a complaint has escalated/become more serious:

- Ensure the person is given and made aware of the right to be accompanied at a disciplinary meeting and given the opportunity to seek legal advice if necessary.
- Ensure there is an appeals process in place; led by someone independent from the investigation.
- Ensure the person is reminded of the need to self-report to the BSB in the event of Serious Misconduct; If they do accept misconduct has taken place it is in their interests to self-report rather than a report being made by someone else/ chambers.

What support exists for the person subject to the complaint?

Confidential advice on conduct:

Someone who is the subject to a complaint can contact the [ethical enquiries service](#) for confidential advice as to whether they may have breached the code of conduct/ whether their conduct amounts to serious misconduct/ whether they should report to the BSB.

During an investigation:

The person who is the subject of the complaint should be offered the option to bring an independent person to accompany them to any disciplinary meeting that takes place.

Wellbeing support:

The [Assistance programme](#) is a confidential service available 24/7 which provides mental health support to barristers including those who are being investigated.

If they are experiencing more severe mental health effects due to the incident/an investigation, they should be encouraged to contact their GP.

What questions can I ask of a member if I know they are going through a BTAS/BSB investigation, but I don't have any information?

If the investigation relates to the same matter as the internal investigation, the two run separately and are for different purposes: the internal investigation is to determine how the matter should be dealt with as between members of chambers in accordance with chambers' constitution; the BTAS/BSB investigation is to deal with the barrister's standing as a member of the profession. It follows that there as long as the questions relate to the incident in question and the barrister's position within chambers, there are no restrictions. Generally, members of chambers are under a duty to act with honesty and integrity and not to mislead anyone. If someone discloses that they are the subject of an investigation, whether it relates to a matter being internally investigated or not, it would be appropriate to ask for more information to establish whether the alleged conduct may adversely impact members of chambers and whether it is necessary to take any other steps within chambers.

Should I continue to investigate if I know there is a parallel investigation underway by BTAS/BSB?

Yes, this is permissible. It is worth bearing in mind that there is a possibility that findings of fact may differ, but this should not inhibit chambers from proceeding internally if it is necessary or expedient to do so, particularly because a BTAS/BSB investigation and procedure can take several months. Alternatively, the BTAS/BSB investigation outcome can be awaited, but appropriate safeguards should be put in place in the meantime to ensure that chambers is complying with its own professional and wellbeing duties towards the complainant and the person who is subject to the complaint. .

What do I do if I suspect a witness is being pressured to withdraw?

Following a statement/evidence being withdrawn you should try to meet with the witness to establish the reason for that withdrawal.

If there is evidence that the person has been coerced/ pressured to withdraw their statement, you may need to consider conducting a further investigation into this. It is inappropriate/not acceptable for any member to pressure or threaten witnesses to a complaint and this may amount to victimisation; so this may need to be investigated in itself as a form of misconduct.

What do I do if a witness/complainant withdraws from the process?

You cannot compel anyone (outside of court proceedings) to provide evidence in the investigation process. Where possible always have a meeting to establish why the complaint was withdrawn and seek to understand if any further action is necessary. Keep a record of the complaint.

What do I do if a complainant discloses to others?

You should encourage confidentiality where possible to ensure the fairness of the process, to obtain the best evidence and to assist in an outcome being reached. You should advise a complainant of the risks of sharing information in advance of a formal finding, pointing out that it may jeopardise the process. However, you cannot prevent someone from sharing information if this is what they choose to do.

Where can I get training on how to conduct an investigation?

The Bar Council does not provide training on conducting investigations but does provide training on bullying and harassment that covers the investigation process, which we recommend those leading on investigations undertake. There are a number of independent providers including some solicitor's firms and ACAS that provide general investigation training. We don't endorse any particular training provider but encourage chambers to research these if they feel that training is necessary.

We also offer a remedial training product for individuals with a finding against them ([contact us](#) for details)

What can be done if an issue arises which could jeopardise the interests of clients (e.g., a barrister makes a complaint against a leader that they are working on the same case with or a co-defendant's barrister)?

You need to take steps to avoid any investigation impacting on a barristers' ability to act in the best interests of their client. Where appropriate, clerks may need to be informed and ensure they do not instruct barristers who are on conflicting sides of an investigation in the same case. If the issues arise during a case, barristers may need to consider whether they are able to act in the best interests of the client (CD2) in these circumstances and they should consult the [ethics line](#) for advice.

For confidential advice, please contact equality@barcouncil.org.uk or T: 0207 611 1426

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