The Bar Standards Board (BSB) regulates barristers and specialised legal services businesses in England and Wales in the public interest.

The issues on which the Committee has invited written evidence include:

1. **How widespread sexual harassment in the workplace is, and whether this has increased or decreased over time.**

BSB response:

- In 2016 the BSB conducted research with women at the practising Bar about their experience of the equality rules\(^1\) in the BSB Handbook. Almost a quarter of women at the Bar (1,333) responded to the survey. Particular questions were asked about harassment, but not about sexual harassment specifically. The resulting Women at the Bar (WatB) report\(^2\) found a number of examples of good practice and clear evidence of progress in some areas. It also found that the experiences of women at the Bar are significantly better in chambers where the workforce have been consulted on the development of policies required by the equality rules; every member of the workforce is aware of the policies, and these policies are properly implemented.

- There were however some concerning findings in the WatB report: two in every five respondents said they had suffered harassment at the Bar. The findings suggest that the percentage of women having experienced harassment is very similar for all those called to the Bar over the last 15 years, although the figure is higher for those with over 15 years since call.

- Most respondents (80%) who said they had experienced harassment did not report it. The most common reasons for not reporting included concern about the impact on their career; attitudes at the Bar towards harassment (and the reporting of harassment), or feeling that the harassment was not worth reporting. Respondents were more likely to report harassment after the BSB equality rules were introduced into the BSB Handbook in 2012.

- For those who reported harassment, half were satisfied with the response from chambers and half were dissatisfied. A failure to take the complaint seriously, and a negative impact on their career were the most common issues cited by respondents who were dissatisfied with the response.

- There were no significant differences in proportions of those stating they had experienced harassment across employed and self-employed respondents.

- The BSB Handbook contains an obligation on all barristers to report the serious misconduct of themselves or others\(^3\). Serious misconduct includes sexual harassment. Over the past five years, the BSB has received five complaints of sexual harassment or inappropriate behaviour towards female barristers by male barristers. Part of the BSB action plan detailed at (3) below is focused on making it easier for barristers to report sexual harassment to their regulator.

2. **Who experiences sexual harassment in the workplace, who perpetrates it and what the impact is on different groups.**

\(^1\) [www.barstandardsboard.org.uk/media/1921179/bsb_equality_rules_extract__feb_2018_.docx](http://www.barstandardsboard.org.uk/media/1921179/bsb_equality_rules_extract__feb_2018_.docx)

\(^2\) [www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf](http://www.barstandardsboard.org.uk/media/1773934/women_at_the_bar_-_full_report_-_final_12_07_16.pdf)

The WatB survey found that women’s experiences of any type of harassment differed significantly by ethnicity – 48% of BAME respondents reported experiencing harassment, compared to 38.4% of white respondents. There were no significant differences for any other protected characteristics in the proportions of respondents who stated they had experienced harassment at the Bar.

Where respondents gave details of the harassment they said they had experienced, slightly over half of the instances cited involved harassment by someone within their organisation (including from their Head of Chambers, their pupil supervisor, or from clerks). Slightly under half involved harassment from someone external (other barristers, judges and both lay and solicitor clients were all mentioned). Over half of those who provided details of the harassment they had experienced stated that it had occurred during pupillage.

The joint Bar Council/BSB survey ‘Barristers’ Working Lives 2013’ received responses from 3,300 practising barristers. The survey found that female barristers were significantly more likely than their male colleagues to have experienced bullying, harassment or discrimination, both overall and within different practice areas.

Actions that the Government and employers should be taking to change workplace culture to prevent sexual harassment, give people more confidence to report sexual harassment, and make this issue a higher priority for employers.

As part of the next phase of the WatB project, in 2017 the BSB held a series of workshops with over 40 stakeholders to explore potential solutions to issues of unfair treatment of women at the Bar. An action plan was agreed by the BSB Board in January 2018 containing key actions for the BSB and others to tackle harassment, discrimination and unfair treatment of women at the Bar. Actions include:

- Developing additional guidance for barristers [and everyone else working at the Bar], and producing a suite of new resources to make it easier for them to report discrimination and harassment;
- Working with others, including the Institute of Barristers’ Clerks (IBC) and the Legal Practice Management Association (LPMA) to address cultural issues at the Bar which may be contributing to various types of unfair treatment for women, and to consider future training needs;
- Measuring the overall effectiveness of the equality rules in the BSB Handbook and considering whether these need to be improved or updated;
- Reviewing the role of Equality and Diversity Officers within chambers, and considering whether we should require chambers to have a ‘work allocation officer’;
- Considering whether women returning from maternity leave should be exempt from paying fees to their chambers for a limited time; and
- Working with the Bar Tribunals and Adjudication Service (BTAS) to monitor the effectiveness of the sentencing guidelines relating to barristers who have been found to have discriminated unlawfully against women or to have acted inappropriately towards them.

How workers can be better protected from sexual harassment by clients, customers and other third parties.

---

BSB response:

- Our Handbook requirement for each chambers to have an anti-harassment policy, and our associated guidance, make reference to how chambers should deal with harassment from third parties such as solicitors, clients and judges. However, as the BSB is the regulatory body for barristers, we cannot take enforcement action in relation to harassment by third parties. We do of course have formal information sharing arrangements with other bodies who might be better placed to deal with allegations against those they regulate.

5. **The effectiveness and accessibility of tribunals and other legal means of redress.**

- Through the Bar Tribunals and Adjudication Service, we demonstrate our commitment to ensuring that disciplinary action is taken in relation to any instances of discrimination/harassment that we are aware of. Currently we have no evidence on which to draw any conclusions about the Courts/tribunals more widely.

6. **The advantages and disadvantages of using non-disclosure agreements in sexual harassment cases, including how inappropriate use of such agreements might be tackled.**

BSB response:

- The BSB recognises that non-disclosure agreements (NDAs) can legitimately be used in some circumstances to protect confidentiality. But there may be situations in which their use raises ethical issues, particularly where they seek to limit individuals’ legal rights and/or purport to include terms that would be unenforceable. The BSB has not issued regulatory guidance on this topic, but we are considering doing so.
- If a barrister is involved in drafting an NDA, they must nevertheless abide by the rules set out in the BSB Handbook. Three of the most relevant ‘Core Duties’ in this respect are:
  - Core Duty 2 – You must act in the best interests of each client;
  - Core Duty 3 – You must act with honesty and integrity; and
  - Core Duty 5 – 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.
- A complaint can be made to the BSB where there is evidence that the Handbook has been breached, and we will consider taking action under our Enforcement Strategy.

March 2018