



Derek Sweeting QC
Chair,
Bar Council

26 March 2021

Dear Mr Sweeting

SANCTIONS GUIDANCE

Thank you for your letter of 12 March 2021. You wrote in the same terms to the Chair of the Tribunal Appointments Body and the Chair of the Disciplinary Tribunal. I have seen the response from Lady Justice Simler and His Honour Judge Carroll dated 18 March 2021, which addresses your concerns about the composition of BTAS panels and inconsistencies in sanctions. This letter addresses the matters you raised in your letter about the investigation process and provides the information you requested about the numbers of complaints received about sexual harassment that progress to investigation and on to adjudication.

Before turning to the specific issues, I want to emphasise that the BSB is committed to addressing bullying and harassment at the Bar and working collaboratively with stakeholders to eliminate such behaviours. To this end, the BSB set up a Bullying and Harassment Project in 2019 to look at ways we can encourage, and address barriers to, reporting of sexual misconduct as well as how we can further improve our internal handling of sexual misconduct cases. We fully recognise that the victims of sexual misconduct need to be confident that appropriate action will be taken in response to their reports.

We are, therefore, committed to working with BTAS to update Sanctions Guidance. We recognised that the Guidance needs revision and, accordingly, set in hand this work last year. As indicated in the letter from BTAS, a consultation paper is due to be issued in April on proposed changes to the Guidance. The BSB is actively engaged with this.

You then raised a number of specific issues about BSB's approach to investigating sexual misconduct.

Caseworker support available to complainants

The BSB is very conscious of the need for sensitive and supportive handling of investigations into allegations of sexual misconduct and the additional support that is required for those reporting such conduct. Accordingly, investigations of sexual misconduct allegations continue to be handled by trained senior officers or managers all of whom are legally qualified. Complainants are given a named caseworker as a contact point who, as far as possible, remains their primary point of contact for all matters throughout the investigation and any subsequent disciplinary proceedings. We also signpost complainants to the support services provided by LawCare, Victim Support and to the excellent resources provided by the Bar Council's Well-Being portal and continue to remind them of these services throughout the enforcement process.

To ensure that caseworkers are suitably equipped to provide support and handle investigations/proceedings appropriately and in a sensitive manner, we provide continuing training. All caseworkers have had vulnerable witness training tailored to the work of the BSB. This training has been run on two occasions in the last three years and will continue to be run on a regular basis.

Further, it is a requirement that counsel representing the BSB in sexual misconduct cases have undertaken vulnerable witness training, which includes how counsel can provide support to alleged victims during proceedings.

Finally, we are actively exploring with several external support organisations the possibility of the BSB funding dedicated and bespoke external support services, to run alongside and throughout the progress of our enforcement process.

Victim Impact Statements

We are satisfied that the impact on victims is fully taken into account in the Bar's disciplinary process. We obtain witness statements from alleged victims which include a section on the impact of the alleged conduct on the person. Such statements will always be included in the evidence presented to a Tribunal and the information can be used both to assist with proving charges and to support decisions on sanctions. Where a respondent admits the charges, and as a result no witness evidence is formally presented to the Tribunal, BSB counsel is instructed to bring the parts of the victim's witness statement relating to the impact of the conduct to the Tribunal's attention when considering sanction.

Progress of "sexual harassment" complaints

In the period between March 2019 to March 2021, the BSB received 21 reports of sexual misconduct by barristers associated with their work. Three of the reports are still at the initial assessment stage. 14 of the remaining 18 reports were referred for some form of regulatory action: 12 were referred for investigation with a view to taking enforcement action and 2 were referred to our Supervision Team as the issues involved were more appropriately addressed by supervisory action.

Six of the 12 investigation cases are still continuing. One is not being taken forward as sexual misconduct in the light of the particular facts of the matter and another has been combined with an existing investigation. The other four cases resulted in referrals to a Disciplinary Tribunal.

I hope that the information above addresses the issues you raised in your letter of 12 March. I would welcome the opportunity to discuss further. Please let me know if such a meeting would be helpful.

Yours sincerely



TESSA BLACKSTONE
Chair