Dear Rt Hon Maria Miller MP,

Thank you for your letter dated 31 July 2018 regarding the Women and Equalities Committee report, *Sexual harassment in the workplace*. As you may know, we issued a Press Release welcoming the Committee’s report when it was published, and I should like to reiterate our determination to continue working to eliminate sexual harassment at the Bar of England and Wales.

Your letter requests that I outline actions the Bar Standards Board (BSB) is taking, planning or considering, to tackle workplace sexual harassment; set expectations about the high standards that regulated professionals must meet; and fulfil our responsibilities under the Public Sector Equality Duty to have due regard to the need to eliminate sexual harassment. I therefore thought it would be helpful to let you know how we are working to implement the report’s recommendations that are specific to us, and then provide an overview of the actions we are taking more broadly to eliminate workplace sexual harassment and promote professional standards in the sector we regulate.

Guidance on reporting sexual harassment

The Select Committee’s report calls on the BSB to issue guidance on reporting sexual harassment and on the use of Non-Disclosure Agreements (NDAs) in cases where sexual harassment is alleged. At the time of receiving your letter, we were already considering refreshing our guidance on reporting sexual and other harassment. The BSB Handbook makes clear that such behavior would amount to serious misconduct if proved. As such it is subject to a duty on all barristers to report the matter to the BSB so that we may investigate. We invited representatives from across the profession to a roundtable event in July on reducing bullying and harassment, where we received feedback from the profession that such a duty may prevent the Bar from offering support to those affected, which we are
responding to (see below). In the meantime, we have always treated any report of discrimination, harassment or victimisation by barristers as sensitively as possible and have never acted without first consulting the person who may have been the subject of such behaviour. Given the sensitivity of the issue, we have a policy of not taking disciplinary action against a person we regulate for failing to comply with their duty to report harassment if that person may have been subject to the misconduct in question. To ensure that our approach is clear, we updated our guidance on reporting sexual harassment yesterday, a copy of which I attach.

Pilot schemes relating to the duty to report harassment

In addition to issuing updated guidance on reporting sexual harassment, we are also considering allowing pilot schemes under which groups of properly trained barristers can seek permission for the requirement to report harassment directly to the BSB to be waived in certain clearly defined situations. This is in response to concerns from the Bar that the reporting requirement may be obstructive to the provision of support and guidance to those who may have experienced harassment. We envisage that the pilot schemes would exempt individual barristers only to the extent that they are properly trained and participate in identified support programmes, enabling them to provide advice and support to a person who may have experienced harassment. Organisations whose individual advisers have been granted the waiver would then have to put in place anonymised records collection, to be shared with us at regular intervals to inform our understanding of the risks and outcomes of these pilots. We intend to inform the profession of our proposed framework for agreeing such schemes in the next few weeks and I will be pleased to send you a copy of this information upon publication.

Guidance on the use of Non-Disclosure Agreements

The committee’s report also calls for the BSB to issue guidance on the use of non-disclosure agreements (NDAs) in cases of alleged sexual harassment and we are currently working on this guidance. Broadly, the guidance will state that the use of NDAs is inappropriate if they seek to prevent the reporting of matters that are disclosable to regulatory or law enforcement bodies or under the Public Interest Disclosure Act. Further, NDAs should not be used to threaten, intimidate or deter someone from making a proper disclosure. The guidance will make clear that barristers engaging in such activities or failing to advise their clients appropriately may risk breaching core duties relating to honesty and integrity, public confidence in the profession, delivering a competent standard of work, and being open and co-operative with regulators. We expect the guidance to be issued by the end of October and I will again of course send you a copy upon its publication.
Our wider work in this area

Tackling harassment at the Bar is a priority for us and featured prominently in our report, *Women at the Bar*, published in 2016, a copy of which I attach. The report contained the results of a survey of over a thousand practising female barristers and, while it did not differentiate between sexual and other forms of harassment, two in five respondents said they had suffered harassment. In response to the report, the BSB held five workshops with over fifty female barristers and produced the attached *Women at the Bar Action Plan May 2018 – Dec 2019*, which includes a number of planned actions to expand monitoring, improve transparency, introduce or improve policies, expand Equality and Diversity training, and promote cultural change. The objective of the Action Plan is to improve the experience of women at the Bar, including working towards changing behaviours within the Bar through developing a zero-tolerance approach towards discrimination and harassment. The BSB Handbook includes a number of obligations on barristers’ chambers to have Equality and Diversity Officers and related policies, including anti-harassment policies, and the collection, monitoring and publication of diversity data. In addition, our proposals to promote equality and diversity at the Bar more broadly are contained within the *BSB Equality and Diversity Strategy*, a copy of which I attach.

Although we are an independent body, we work closely with the Bar Council - the representative body for barristers – and with the profession and other regulators in seeking to address sexual harassment. Several Bar Council initiatives also complement our work: they provide a confidential helpline for individuals and chambers, an online guide for managing harassment issues, and a sample harassment policy for chambers to adopt. They offer a range of training courses on sexual harassment for barristers, clerks and chambers staff that includes information on BSB rules and compliance, as well as scenario-based learning and practical advice on challenging inappropriate behaviour. The Bar Council’s wellbeing resources and support, as well as their efforts to raise awareness of issues relating to harassment, are valuable, and we will continue to work in partnership with the Bar Council and others to eliminate sexual harassment at the Bar.

You will note that the timeline for our Women at the Bar Action Plan runs to December 2019 and that our Equality and Diversity Strategy is for the period 2017-2019. We would be pleased to update you on the progress we have made in reducing sexual harassment and promoting professional standards at the Bar during or after this period if you wish, and we will be glad to send you a copy of our next Equality and Diversity Strategy, which will cover 2019-2021, upon its publication next year.
Please do let me know if you would like any further detail about any of the actions described in this letter and, of course, we would be delighted to provide written or oral evidence to the Select Committee to discuss these matters if you wish.

Yours sincerely,

Dr Vanessa Davies  
Director General