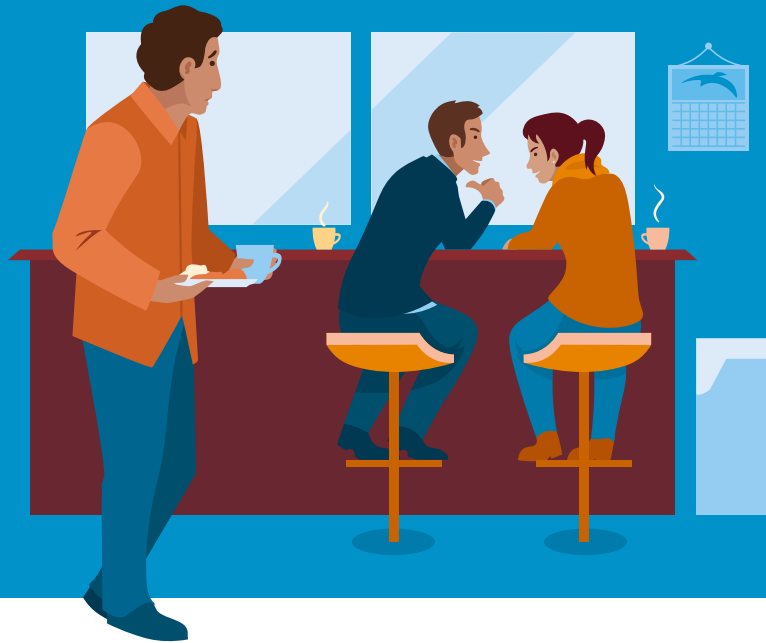


Defined behaviours



Lawyers have always been prohibited from engaging in behaviour that tends to bring the profession into disrepute, but from 1 July 2021 this behaviour is better defined.

Definitions and clear expectations

There are specific definitions for prohibited behaviour such as bullying, harassment, and discrimination in Rule 1.2.

Bullying means repeated and unreasonable behaviour directed towards a person or people that is likely to lead to physical or psychological harm.

Discrimination means discrimination that is unlawful under the Human Rights Act 1993 or any other enactment.

Harassment –

1. Means intimidating, threatening or degrading behaviour directed towards a person or group that is likely to have a harmful effect on the recipient; and
2. Includes repeated behaviour but may be a serious single incident.

Racial harassment means behaviour that –

1. Expresses hostility against, or contempt or ridicule towards, another person on the ground of race, ethnicity, or national origin; and
2. Is likely to be unwelcome or offensive to that person (whether or not it was conveyed directly to that person).

Sexual harassment means –

1. Subjecting another person to unreasonable behaviour of a sexual nature that is likely to be unwelcome or offensive to that person (whether or not it was

conveyed directly to that person); or

2. A request made by a person of any other person for sexual intercourse, sexual contact, or any other form of sexual activity, that contains an implied or overt promise of preferential treatment or an implied or overt threat of detrimental treatment.

Violence includes the following:

1. Physical violence
2. Psychological violence
3. Sexual abuse
4. Sexual assault

What does “likely” mean in this context?

The definitions of bullying, harassment, and racial and sexual harassment do not require that there must have been actual harm caused, or that the lawyer’s behaviour must have been unwelcome or offensive to the affected person as a matter of fact, but rather that the relevant consequence was “likely”.

This is consistent with the focus of disciplinary proceedings being on the conduct of the lawyer rather than on proof of actual harm or loss.

It is generally accepted that “likely” does not mean “more likely than not” and instead imposes a test of “real and substantial risk”. The test is ultimately objective, but the standard would be necessarily adjusted where there is knowledge about the particular vulnerability of an individual.

Reporting requirements for all lawyers

All lawyers are required to report to the Law Society if

they have reasonable grounds to suspect that another lawyer may have engaged in misconduct. Under Rules 2.8 and 2.9:

- you must report misconduct, and
- you have a discretion to report unsatisfactory conduct.

How to report prohibited behaviour

- use the forms on the [Law Society website](#), or
- email the Lawyers Complaints Service complaints@lawsociety.org.nz, or
- phone the Lawyers Complaints Service on 0800 261 801.

Further information

- Read the guidance for lawyers to support the implementation of the new rules on our [website](#)
- [Factsheet on Mandatory reporting obligations](#)
- [Factsheet on support for victims and those affected by prohibited behaviour](#)

For more information please email our Regulatory team regulatory@lawsociety.org.nz