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Bullying, harassment and the challenges facing the Bar [answers to the Talk to Spot submission questions]

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Incident #1: Bullying, harassment and the challenges facing the Bar [answers to the Talk to Spot submission questions]

In your view, why is bullying, harassment and sexual harassment a persistent problem at the Bar?

(1) Part of the problem is that everyone is self-employed. There is no person designated to review or keep an eye on this issue - everyone is a free agent. It is too easy to think it is someone else's problem. Similarly, when it happens to you, you are (physically) alone at court or wherever you are and there is no line manager or designated supporter to report it to. (2) Another problem is that the structure of the profession is very seniority-oriented. This has its benefits but it also means that it is easy to identify people who are "junior" to you. This is particularly acute with the judiciary, who are plainly "senior" to everyone else in the court room. (3) Judges have no oversight and are usually untouchable. There is a direct conflict of interest between wishing to upbraid or report a judge and trying to do the best for your client. If you annoy a judge then there is a fear he or she will rule against you -

or, more accurately, that if you lose your client will THINK that is why he or she ruled against you. Some judges are truly appalling. It is a small number but there are a handful of names that fill you with dread when you see them on your published list for tomorrow. In 15 years of practice I can think of the worst 3 or 4 days in court and all but one of them was because of a horrible, bullying, power-hungry judge. Even where criticism is merited, there are appropriate and inappropriate ways of dealing with it.

Are there particular dynamics or working practices at the Bar which allow for bullying, harassment and sexual harassment to persist?

Yes. Self employment mean no-one is accountable. It means there has to be a formal complaint before anything is done. This is a real problem but the solution is not as easy as it might appear. Having a policy on complaints or harassment, or training everyone, is not going to be an answer. It needs to be taken out of the chambers structure in terms of being run by barristers. The Bar needs to be told they have to engage external professional HR services. This could be a central resource provided or run by the Bar Council (eg out of PCF fees) or a mandate on individual chambers to employ someone or have an external contract. It is not that barristers are incompetent or don't care: it is that (i) they are not experts or qualified in this area (and crucially they should not be - it isn't their job); and (ii) they are busy and have all sorts of legitimate professional obligations that mean it is not reasonable for this to lie with them. Externalise and professionalise it. Mandate a formalised system or process.

Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment known, clear, accessible, and sufficiently robust?

Yes. The obligations are obvious. The problem is (i) it still happens and (ii) how to police it.

Are the relevant standards of behaviour relating to bullying, harassment and sexual harassment sufficiently mainstreamed within barristers' professional obligations?

Should they, for example, be included within the Core Duties set out in the <a href="https://www.barstandardsboard.org.uk/the-bsb-handbook.html?part=E3FF76D3-9538-4B97-94C02111664E5709&audience=&csrfToken=&q="

target="_blank">BSB Code of Conduct?

"Sufficiently mainstreamed" is a very weird turn of phrase, but assuming I have understood the question, the answer is yes. The problem is not that people don't know they shouldn't be shouting at people or assaulting them. The problem is that there is a reticence, or perhaps an inability (a reasonable inability, given expertise and time availability), to do anything about it.

What is the impact of bullying, harassment and sexual harassment on those subject

to such misconduct?

Low level bullying, over a long period, can be demoralising and belittling, leading to health concerns and insecurity or lack of confidence in one's abilities. An acute episode, e.g. being screamed at by a judge or humiliated in court (or out of court by an opponent) can ruin a day or week, and cause huge anxiety about appearing before that judge again. My worst experience in court was before a part-time judge who was angry at having to cover the case at short notice and he spent the whole three-day hearing bullying everyone (including e.g. by critiquing cross examination styles mid-evidence, giving "advocacy feedback" of the professional advocates appearing in the case, testing memories about page numbers in a 1,000-page bundle [where it was clear this particular judge had a photographic memory]). It put the fear of God into me ever appearing before him again (it happened a few years later and the anticipation was almost intolerable) - I spoke to my clerks and said the experience (only a three-day trial) brought me to the edge of completely giving up that area of law, then about half of my practice, essentially to avoid every risking appearing before him again. (He did it to everyone in the case, not just me.)

Is there a wider impact upon barristers' staff, clients, or the justice system more broadly?

Yes. Barristers who cannot perform in court do their clients a disservice. There is a public interest in the efficient discharge of justice. Plainly, any sexual assault visited on anyone has a major societal impact.

What are the barriers to reporting incidents of bullying, harassment and sexual harassment?

It is all or nothing. Either do nothing or formally report a judge. Talk to Spot exists (and I think is widely known about) but it gives the impression it is tantamount to doing nothing.

What mechanisms could be put in place to mitigate any repercussions against a complainant who has reported bullying, harassment or sexual harassment

This is a very difficult question to answer and I don't think I know what to say.

The Bar Standards Board (BSB) rules place a duty on barristers to report to the BSB in circumstances where there are reasonable grounds to believe there has been serious misconduct (with an exception set out in

Yes, it is well known. I think it is increasingly followed and implemented. I think the use of

"serious" misconduct gives a get-out in some circumstances - HOWEVER, there should not be an obligation to report absolutely everything; there should be discretion for matters with lesser impact (particularly where the person who would be under a duty to report is the victim) or that can be dealt with by other methods. To be clear, serious misconduct should always be reported. My definition would include e.g. sexual assault and other serious behaviour.

Is there sufficient support in place both for complainants and persons accused of bullying, harassment, or sexual harassment? Do the existing mechanisms appropriately balance the need for confidentiality and transparency?

I don't know what the support is, which in itself might be an answer to this question

Should there be interim measures which permit a person accused of bullying, harassment, or sexual harassment to be subject to a precautionary exclusion from Chambers, their employer, or from practice during the adjudication of a complaint?

Yes. I would be surprised if these did not already exist within chambers constitutions.

Are investigations into complaints (by the BSB, Chambers or any other relevant body) concerning bullying, harassment or sexual harassment sufficiently independent, prompt, robust, and fair?

They are not prompt. The BSB needs to sort itself out. Hiring more people to help undertake a grossly inefficient process is not the answer. It needs to work more efficiently and prioritise things properly. Contracting out to a law firm at huge cost is also not an answer. Also people complained about need to be told about it and not just sent a letter six months later saying there was nothing to the complaint - they should have the right to know what is happening.

Following an upheld complaint of bullying, harassment or sexual harassment, are the sanctions imposed appropriate and fair? Is enforcement action sufficiently robust to act as a deterrent?

Yes

Are there any preventative steps which can be taken to tackle bullying, harassment, and sexual harassment? In particular, what could be done in the court room, in Chambers, at the Bar more widely to assist in preventing such misconduct?

More training or professional obligations are not the answer. The current obligations (which, let's be honest, are also enshrined e.g. in criminal law) are obvious and well-known. There needs to be greater deterrent by making it clear certain behaviour is not acceptable and will lead to consequences.

What improvements could be made to existing reporting mechanisms and support services?

I don't know

In what ways could the judiciary, clerks, and chambers professionals work together with the Bar to bring about change?

Stop bullying people? I don't really understand this question. More committees, working groups, policy papers, etc are not the answer. They allow everyone to congratulate themselves on taking it seriously and write nice things on their silk applications but they don't in themselves achieve the result desired.

Are there any other comparable professions which can offer examples of best practice in tackling bullying, harassment, and sexual harassment?

I suspect not given the unusual self-employment, solo-working nature of the Bar. A good illustration of this is that the Equality Act required a specific section to ensure the duties applied to barristers. This shows that the Bar in many ways stands alone and needs its own distinct approach.

Other details

No.

Stay anonymous?

No

Your details

No response provided

Consent for evidence downloaded and submission

Yes

Consent for publishing

Yes