

Dear Bar Council,

I am happy to have the following answer published. I would not like my name attached to it anywhere in public. I am happy to be contacted if that would assist with the independent review in any way.

I fear that my submissions touches on several of the questions posed - I hope that it is still of some assistance.

Kind regards,
XXXXXX

One issue that have I experienced is that bullying of barristers by judges is often carried out under the guise of something defensible and is therefore very subjective and difficult to call out.

For example, I had a horrendous experience when I first came back to the criminal bar after maternity leave, still as a relatively junior barrister, of a misunderstanding between myself, my clerks, and the court regarding whether I would be covering a hearing via CVP or a colleague would be covering the hearing in person. I was juggling two small children and a demanding case load, and had simply not remembered that a direction had previously been made that counsel were to appear in person if Stage 2 had not yet been complied with (which was, as usual, entirely out of my hands). I was at the last minute asked if I could cover the hearing by CVP as my colleague who was there in person was otherwise detained. I was logged in by the court clerk and therefore assumed that CVP must have been approved.

The moment the hearing began, I was absolutely excoriated by the judge, at length, for appearing via CVP—for a mention, in the absence of the defendant—because I had been present on the last occasion when he had made a direction that counsel were to attend in person if stage 2 had not yet been complied with. He threatened me with contempt of court, shouted at me that I was hiding behind my clerks, and talked over me, at length, when I repeatedly tried to explain and apologise.

On the face of this interaction, he was in the right. He had made a direction, and I had not complied with it. However, the shouting, the harshness, the disrespect, the lack of interest in the impact on my life – this kind of treatment by judges being commonplace is one of the reasons I am leaving the profession. This was not an unusual or remarkable experience – there are certain judges who behave like this nearly all of the time, who seem to take any excuse to vent their frustrations at the nearest junior advocate.

However, when I went to draft a Talk to Sport report about it, it seemed impossible to say that this rose to the level of actual misconduct. The judge had not used any inappropriate language and had not taken any actions that I could point to as a clear abuse of power. It was entirely plausible that he might not have intended to humiliate me, but had merely been indifferent to how this experience would make me feel. And yet, the experience of being shouted at, threatened with contempt of court, humiliated, “told off” like a child, essentially – I came away from that interaction utterly distressed and feeling like I did not ever want to appear before that judge again. Some people might say I need a thicker skin and need to just get on with it – but I think that is one of the cultural problems with the profession. I should not have to endure that type of treatment in order to do my very difficult job with dignity and to be treated with respect.

And it is the accumulation of this type of behaviour – which is, on its face, right on the edge between actual misconduct and simply a forceful way of communicating – that makes this profession so much more stressful and demoralising than it needs to be.

I do not fully understand what it is about the culture or structure of the bar that makes judges take out their frustration on advocates, particularly junior advocates, particularly female junior advocates. I know that judges are overworked and over-stressed, just like the rest of us. And of course, there is an inherent power dynamic between a judge and an advocate, with no real oversight or consequences for the judge. I cannot realistically do anything to avoid seeing this judge again, and so the only sensible thing to do in the moment, for both myself and my client, is to hold my tongue.

And yet, it is utterly unacceptable. It is obviously humiliating, degrading, and deeply distressing to be treated in this way, to be spoken to like a child rather than a fellow professional who is working hard and is worthy of respect and civility. And it should change.