Sexual Harassment at the Bar?

#callitout

Professor Jo Delahunty QC
Are we too complacent about the existence and prevalence of sexual harassment at the Bar

&

are our processes fit for purpose when seeking to tackle it?
US elections

**Hillary Clinton says Bill's affair with Monica Lewinsky was not an abuse of power**

In an interview with CBS Sunday Morning, the former Democratic presidential candidate spoke about her husband's 1998 affair with his then-22-year-old intern Monica Lewinsky. Clinton said she did not think the affair was an abuse of power because Lewinsky was "an adult" at the time.

Lindsey Barrett @LAM_Barrett · 5h
She was a 22-year-old intern and he was the president of the United States. It's honestly hard to think of a dynamic that is *more* clearly an egregious abuse of power.

Hillary Clinton: Bill's affair with Monica Lewinsky wasn't an abuse of power b... nydailynews.com

Adam Serwer 🍆 🌐 @AdamSerwer · 4h
If this was the standard in workplaces then nothing would count as sexual harassment
Saudi Arabia to admit ‘Khashoggi died under interrogation’

Bercow told to quit over report into sex pest MPs

May makes last-ditch plea on Brexit
• Is there a problem?
• Is there adequate support for those that need it?
• Have our professional bodies got the balance right?
• If not, why not?
• The way forward and why it matters
In discussion with Brie Stevens Hoare QC …

- Chambers culture: Banter
- Physical Proximity: shared rooms
- Knowledge of Life and The Bar: an imbalance
- Influence: seniority
- Confidence: seniority
- Income
- Access: diary, personal life info, mobile access
- Power: over movements, experiences....references
‘from a position of agency you can see that other members of chambers would have wanted to help me, but at the time I questioned whether they would ’
...the phrase ‘me too’ was coined by Tarana Burke, American social activist ‘as part of a campaign to promote empowerment through empathy’
2017; 31 YEARS ON: Actress Alyssa Milano used #metoo to demonstrate the widespread prevalence of sexual harassment and assault, especially in the workplace.
A Freedom of Information Act request was made in 2018 by Behind The Gown to the Bar Standards Board (BSB).

This asked about the number of complaints it had received of sexual harassment.

The BSB responded as follows:
Over the past five years, we have received two complaints of sexual harassment or inappropriate behaviour towards female barristers by male barristers.

Of these complaints, one was proved at a disciplinary tribunal and the other was proved at tribunal but overturned by the High Court on appeal. It would be inappropriate for us to comment about any ongoing complaints.
nothing to see here ....
Elizabeth Prochaska, Barrister, to COUNSEL magazine when explaining why she and others had formed ‘Behind the Gown’:

“It is very difficult for individuals to raise their concerns at the Bar due to a culture of patronage. Of course, it’s almost impossible to call out individuals who you rely on for work when they behave inappropriately or bully you. While we are all in theory equal members of chambers, the Bar hierarchy does not help.’
Female pupil, male supervisor: Nice, friendly, divorced, lots of ‘naughty’ jokes, he wanted my company in the evenings: *if working ‘I shouldn't do that’, if going out ‘I shouldn't do that’*

Texts at 11 pm: *‘I’m outside your home’*

Made me come in at 07.30 am for no reason

Come to a gin tasting with me, at my home: *‘so much more relaxed’, one to one, wouldn’t let it go, pinned down a date with diary out between us. I pulled others in, he was very displeased. Contacted Bar Helpline who advised to report to Head of Chambers*

*I couldn’t: Well respected, liked, what if he denied it? Downloaded lots of texts in case, ‘kept quiet’. Kept my head down.*
‘the moment I got on, I made sure I went onto the pupillage committee and blocked it every time a pupil was to be allocated. When that became obvious, I went to Head of Chambers and told him why: not for me, but for others…’

10 years on- so is there still a problem?
Elizabeth Garcia, barrister, on her year as a pupil:

- **At Woolwich Crown Court, the Prosecutor on a multi-handed armed robbery trial:**
  - made *tasteless jokes in the robing room*
  - referred to me as "the bird at the back" when trying to get the attention of one of the defence counsel when we were having a chat.
  - said women are useless witnesses in sex cases because "women are rubbish with cars and can't remember the make, model etc." [reprimanded by lead barrister for saying that comment was a bit offensive]

- **At Wolverhampton Crown Court:**
  - in the robing room a *significantly older man, who I had never met before, told me I have 'a great pair of legs'
'At lot comes down to tone of voice or a lecherous look that accompanies an ambiguous comment, which is difficult to convey.'

'I do worry about pupils and juniors at my level as the power imbalance is so stark that nobody feels able to say anything, let alone complain. It is depressing.'

Elizabeth is now in her second year of practice and on the committee of ‘Women in Criminal Law’. She wants change.
Where to draw the line in discussion with pupils?

Fancy a bite to eat?

I can drop you home.

Can I come in?
Application for a mini pupillage: in the last 2 years

12.30 am, WhatsApp message: “didn't realise we were in same area”

I googled the name attached: the chambers website showed up.

I withdrew.

I wanted to apply to that set for a long time, but it held me back from applying for a pupillage with them when I got to that stage.
Bar School: seeking a pupillage, in February 2018.

- Applied through Gateway (CV only)
- Private message: contacted me through ‘Linked In’
  - ‘I wondered if you wanted to meet up to discuss’. He said he was on the interviewing panel
- I accepted the invitation to be linked in.
- But I didn’t reply to the message
‘Hello, I can see you’ve read my message’

• Viewed my profile every day for two weeks
• Stopped for a while then restarted
• Scared to block him
• I didn’t get an interview
• He was still viewing my profile after I'd been rejected
• Only ended a few months ago
Is there a problem?

Damn right there is.
Unlawful harassment as defined by the Equality Act 2010

• unwanted conduct of a sexual nature or related to a protected characteristic
• the purpose or effect of violating another’s dignity or creating a hostile environment

× does not require a course of conduct
× intention is not the be all and end all
Kate Brunner QC and Rachel Goodall running Bar Council training just this Saturday:

‘is it OK to say that a top is too low when going into court?

Judge to barrister: ‘you lower the average age by a decade and increase its level of attractiveness exponentially’
Anne Clark’s ‘The Rock Test: A Hack for Men Who Don’t Want To Be Accused of Sexual Harassment’

“Treat all women like you would treat Dwayne “The Rock” Johnson.”
Bullying as defined by the Bar Standards Council Guidance

• offensive, intimidating, malicious or insulting behaviour involving the misuse of power
• that *can* make a person feel vulnerable, upset, humiliated, undermined or threatened.

× power does not always mean being in a position of authority—e.g. personal strength and the power to coerce through fear of intimidation are sufficient
Global survey on bullying and sexual harassment in the legal profession

‘The results, both globally and specific to the UK, are concerning.

Overall, bullying and sexual harassment is a pervasive and complex issue in British legal workplaces’

With thanks to Kieran Pender Legal Advisor, Legal Policy & Research Unit, International Bar Association
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<tr>
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<th>Bullying</th>
<th>Sexual Harassment</th>
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<td><strong>Prevalence?</strong></td>
<td>• Over half (56%)</td>
<td>• 38% of women, 6% of men</td>
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<td><strong>Reported?</strong></td>
<td>• 54% didn’t report</td>
<td>• routinely ‘never’ reported (74%)</td>
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<td>× fear of repercussions (71%; 89% for barristers)</td>
<td>× because the bullying was endemic to the workplace (52%)</td>
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<td>× profile of the perpetrator (65%)</td>
<td>× lack of confidence in protocols &amp; reporting procedures (48%)</td>
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<td><strong>Consequences?</strong></td>
<td>• 53% of bullied barristers are considering leaving the workplace.</td>
<td>• 71% of reported incidences, the perpetrator was not sanctioned.</td>
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<td>• Over a quarter (28%) are considering leaving the profession altogether.</td>
<td>• 40% of harassed respondents expressed an intention to leave their workplace.</td>
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- 18% of those in criminal practice report ‘personal experience of’ harassment or bullying when compared to 8% of commercial and chancery barristers.

- 47% of those who reported personal experience of harassment or bullying and/or discrimination cited another barrister as responsible.

Andrew Walker QC, Chair of the Bar, 2018
Robin Allen QC, Chair, Equality, Diversity, Social Mobility Committee
*4,092 usable responses.
Elizabeth Prochaska, Barrister, to COUNSEL magazine when explaining why she and others had formed ‘Behind the Gown’:

“I think that the isolation and lack of support networks contribute to this. And importantly, we don’t have human resources departments, so there’s a real lack of HR expertise and process in chambers.”
Who is there to help ...?
Confidential
Exempt from the requirement to report serious misconduct.
Will encourage you to report misconduct if the adviser considers it to be serious.

Bar Council's Ethical Enquiries Service

...victims?

Other barristers inc. Head of Chambers

All under a duty to report any serious misconduct that you draw to their attention.
…third parties/confidants?

If you are a BSB Regulated Person & you have **reasonable grounds** to believe that another BSB Regulated Person has **committed** **serious misconduct**, then you **must** report this to the BSB:

- **REPORT THE ALLEGED PERPETRATOR FOR SERIOUS MISCONDUCT**
- **REPORT YOURSELF FOR NON-COMPLIANCE WITH THE REPORTING DUTY**
Over the past five years, we have received two complaints of sexual harassment or inappropriate behaviour towards female barristers by male barristers.

- The BSB
Baroness Blackstone, Chairwoman of the BSB: ‘we’ll be asking barristers whether they believe that the current rules might sometimes deter people from reporting cases of possible harassment within chambers’ (The Times 19/2/18).

The BSB has further stated plans to:
• bring in further special measures for regulatory proceedings
• change their burden of proof from beyond reasonable doubt, to the civil standard
The waiver? A trial scheme

• The BSB will accept applications for waivers from rC66 in defined circumstances and for a specified time.
• Interim basis
• In order to provide the BSB with an evidence base to determine whether a change to the rules on reporting requirements would be helpful or necessary.
We are in limbo…

• The BSB are not persuaded that mandatory reporting is a burden
• The waiver is a test scheme
• We are talking a year minimum for review
• And then what?
• And for what?
• And what happens in the meantime?
How can we help in the meantime?

And why is it important?
Whether a concern is raised formally, informally or anonymously, the

- respond promptly
- listen to and discuss the concern
- discuss what outcome the person raising the concern would ideally like
- discuss which process would be the most appropriate to achieve that outcome
- explain what support Chambers can provide to the person raising the concern,
- discuss the BSB reporting requirement
- agree a way forward that the person raising the concern is happy with, in so far as is possible.
Basic steps?

- Bar School
- Chambers
- Mentoring
- Handing a card over
- Calling it out as an issue
- Campaign the BSB to remove the mandatory reporting requirement
DON’T STAND BACK

SILENCE MAKES YOU COMPLICIT
With thanks to Sam Mercer, Equality and Diversity Officer for The Bar Council
Brie Stevens-Hoare QC
Kate Brunner QC
Rachel Goodall
Kieran Priender
Elizabeth Garcia
Georgie Woolf
Elizabeth Prochaska
Lyndsey Sambrooks-Wright
Guy Perricone, Under Treasurer of Middle Temple
The Middle Temple Young Barristers Association with particular thanks to Emma Hughes,
Maham Qureshi and Merlene Geoge
Sarah at CoCo (Clerks in Conversation)

And most importantly, thank you, to the large number of women and men who have trusted me to tell me of their experiences
A list of helpful contacts and resources are provided in the handout including the confidential Bar Council Helpline: 0207 6111 320.

*Sexual harassment is not ok, it’s not just you, you are not alone, you are valued. Stick with us. Our profession needs YOU.*