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SEXUAL HARASSMENT AT THE BAR

PROFESSOR JO DELAHUNTY QC

In this lecture I ask if we are too complacent about the existence and prevalence of sexual harassment at the Bar & whether our processes are fit for purpose when seeking to tackle it.

To address those points I will consider

- 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

These notes are not a substitute for watching the lecture. Whilst they may be of use in signposting useful data and support services, they do not describe the incidents of harassment that I will speak of tonight. Some confidences were spontaneous, volunteered to me because the time and place and mood made it right to do so, others' accounts came to me by way of email, twitter or telephone calls. Some stories were about 'a friend', others were direct reports of experiences. Those stories I have referenced in my talk have been approved for use by the people they apply to. I have signposted confidential support services to those young women who spoke to me but few have felt willing to use them: and therein lies a significant problem. Harassment is more likely to be the problem of the young and most junior members of our profession, and they are precisely the people who fear to speak out because of their concern that it may blight their career prospects. The young do not speak of what they experience. It is an under reported problem That's not just my view, it is that of the Bar Council arising from the 2017 research work it has carried out, reinforced by the 2018 survey conducted by the International Bar Association.

The fact that sexual harassment is not reported, for example to the Bar Standards Board, does not indicate there is not a problem with harassment. The lack of reporting illustrates the problem that the Bar has in confronting harassment.

This lecture has been researched and delivered not to present the Bar as a toxic profession. It is not. It is a challenging, vibrant, intellectually stimulating and highly rewarding sector to work in. it is precisely because it is such an incredible profession to work in, which can and should welcome men and women from all ethnicities, classes and stations of life, that we owe it to them and the reputation of the Bar to confront the areas where improvement is warranted: doing so makes us stronger as a profession, not weaker.

I have written this lecture because, as a senior woman at the Bar, I am in the position where I can speak out about sexual harassment without fear that by doing so I am harming my career.

The reality of sexual harassment is that it describes, more often than not, behaviour by senior members of the Bar targeted at the most junior recruits to it. Barristers at the beginning of their career do not have confidence to raise it because they fear it may affect their chances of getting a tenancy or rising up the ranks in chambers. As women become more senior, older, and looks fade, we are less likely to be subjected to unwelcome attention and comment, and even if we were, we have acquired the maturity, status and confidence to deal with it robustly. The further up



the profession we go, the more senior we become, the more remote we appear to aspiring pupils, tenants and the less likely it is that we will be told if they have a problem with a particular member of the Bar. I suffered sexual harassment as a pupil and junior barrister, I had thought that was a sign of the times and a problem of the past because it was not something I had been made aware of in recent times.

I was wrong. It still goes on, much in the same way as I experienced it and it is now, as it was then, dealt with alone or with the support of friends and family. It might be raised by a member of the Bar but only once trust is established. It is not reported. Through the interviews I have carried out and the research I have read I have formed the view that what I had previously thought were the problems of the past, are very much the problems of our present: and if we don't speak out about them they will continue to blight the healthy development of our profession and the young who aspire to join it. That is not acceptable. Which is why I raise the issue of sexual harassment for public attention and professional debate. As the phrase goes "sunlight is the best disinfectant".

I begin the lecture by talking of the harassment I suffered as a newcomer to the Bar. It's not pleasant to talk about but it sends out the message to the young of today that you are not alone if you have experienced this nor should you feel alone. Sexual harassment is not acceptable. The silence of the profession about it runs the risk of condemning it by inaction.

The self-employed Bar is a collection of individuals who band together in a place called chambers which used to stand as an alternative home from home: a gentlemen's club. For some it still got those overtones but not for most of us. We are a vibrant and modern profession which has a work ethic like no other. It is a conversational and professional hub but the link with the past to our future is that we have a system of apprenticeship called a pupillage, split into 6-month periods for a minimum of 12 months. In the first 6 months an intense training process begins where the pupil shadows a senior member of the Bar: they become a unit. The pupil follows the pupil supervisor. Where one goes the other follows the pupil sees how the Bar works, not just in court but as a social and cultural network. The influence the pupil supervisor holds over the pupil's professional development is significant: not just for the world it opens up and experience it passes on but for the reference that will be given to determine a potential permanent place in chambers or a reference for another set if rejected.

That intimacy can be the basis of a lifelong supportive professional and personal friendship. It can also be the recipe for unwanted and inappropriate attention or comment. Once a tenant, a junior member can thrive and advance with the patronage of a more senior member. But when things go wrong, who does one turn to? Another member of chambers? More likely a friend.

As Brie Stevens-Hoare QC said to me, when reflecting on her experiences,

'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'

What is clear is that the least likely thing a victim would do is to report the sexual harassment to the Bar Standards Board (BSB).

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.'

Elizabeth Prochaska, Barrister, was interviewed by COUNSEL magazine to explain why she and others had formed 'Behind the Gown': as she said

'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.'



I agree.

Elizabeth Garcia, barrister:

Woolwich Crown Court in my first six on a multi-handed armed robbery trial: the Prosecutor had made several tasteless jokes in the robing room over the course of a week, he 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.

Then later he made a fairly unreasonable point about women and how they are useless witnesses in sex cases because "women are rubbish with cars and can't remember the make, model etc." and I said that comment was a bit offensive. I was severely reprimanded by the person from my chambers I was following at the time, for saying anything. Being told I have 'a great pair of legs' by a significantly older man in the robing room at Wolverhampton Crown Court as a second six pupil, someone I had never met before.

'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.

What are we talking about when we describe harassment?

Unlawful harassment is defined by the Equality Act 2010:

'Unwanted conduct of a sexual nature or related to gender, sexual orientation, gender re-assignment, race, religion/ belief, age or disability, which has the purpose or effect of violating another's dignity or creating a degrading, offensive, humiliating, intimidating or hostile environment for them.'

Unlawful harassment does not require a course of conduct – an isolated incident can amount to unlawful harassment. That a person may not have intended their conduct to be offensive does not preclude it from amounting to unlawful harassment. Harassment and bullying can include physical, verbal and non-verbal conduct.

Bullying is 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, but can include both personal strength and the power to coerce through fear of intimidation.

Examples of harassment may include:

- Overly personal comments or over-familiar behaviour, including questions about someone's relationships, sex life or gender identity
- Continued suggestions for social activity after it has been made clear that such suggestions are unwelcome
- Racist, sexist, anti-LGBT+ or ageist jokes,
- Derogatory or stereotypical remarks about an ethnic/religious group, gender identity or sexual orientation
- Offensive or intimidating comments or gestures
- Insensitive jokes or pranks
- Staring or inappropriate/suggestive looks
- Invading someone's personal space
- Sexual or offensive gestures
- Inappropriate sexual advances or repeated unwelcome sexual advances
- Inappropriate or unwelcome physical contact



- Displaying/sending sexually suggestive pictures or written material ¹

Having described harassment in theory: what do we know about its prevalence in practice?

The Bar Council Barristers Working Lives Survey conducted in 2017, led to the publication of a 3rd report in June 2018 entitled 'Barristers' experience of harassment, bullying & discrimination'. As the foreword to the report explains

'Over the last 12 months a spotlight has been shone on harassment (and abuse of power), not just through international campaigns such as #MeToo, but also through those specific to our own profession, such as @behindthegown – a campaign launched recently by barristers committed to tackling harassment at the Bar. We believe this survey will help inform this work and contribute to its success.'

The survey² responses exposed significant cause for concern:

*'The findings explore the prevalence and nature of reports of harassment, bullying and discrimination in the profession, including who was reported as responsible for such behaviour. The results are a cause for concern. As a profession, we must do much better. We do not and will not tolerate harassment, bullying or discrimination at the Bar.**

Andrew Walker QC, Chair of the Bar, 2018
Robin Allen QC, Chair, Equality, Diversity,
Social Mobility Committee

Key statistics re the Prevalence of harassment, bullying

- Overall, 21% of employed and 12% of self-employed respondents reported that they had personally experienced harassment or bullying at work in the two years prior to the survey.
- Reports of harassment or bullying and discrimination were more prevalent at the employed bar than at the self-employed Bar.
- Reports of harassment or bullying and discrimination vary between practice areas.
- 18% of criminal practitioners and 17% of family barristers reported personal experience of harassment or bullying, compared to 8% of those in PN/PI10 and commercial & chancery practice.
- Women were more likely to report personal experience of harassment/bullying and/or discrimination than men (33% vs. 12%).

Key Findings

- Overall there was a significant increase in 2017 of the number of respondents reporting both 'personal experience of' harassment or bullying or discrimination when compared with responses from 2013 and 2011.
- There was a significant increase in the number of respondents reporting in 2017 that they had 'observed' harassment or bullying or discrimination when compared with responses from 2013 and 2011.
- Barristers in different practice areas report different experiences.
- 18% of those in criminal practice report 'personal experience of' harassment or bullying when compared to 8% of commercial and chancery barristers.
- At the self-employed Bar, the person most commonly cited as responsible for harassment or bullying, or discrimination, is another barrister in chambers.
- 47% of those who reported personal experience of harassment or bullying and/or discrimination cited another barrister as responsible.

As the report says,

'This last finding emphasises that this is a problem within the profession, which the Bar Council cannot ignore.'

¹ Bar Council Harassment & Inappropriate Behaviour Policy Template 2018 Page 5

² *4,092 usable responses.



There are three strands to the Bar Council's approach to harassment - 'Identify', 'Report' and 'Support'. We aim to identify all contexts in which inappropriate behaviours occur. We aim to enable and empower all those affected to report in the way they see as most appropriate so that bullies are brought under control. We are determined to provide the support necessary to ensure victims and witnesses are looked after and suffer no career detriment. We also aim to support chambers and others in all three respects, and to assist and advise them in preventing and managing inappropriate behaviours, in protecting the careers of those who are the victims of, or who witness, inappropriate behaviour.'

The Bar Council has sent out a message to our profession and it must be heard: change is required; as Andrew Walker QC, its Chair, and Robin Allen QC (Chair Equality, Diversity & Social Mobility Committee) say

'We must get much tougher on this, and support each other better.'

The Bar Council is serious about this. It has set up a confidential helpline (details at the end of this handout) and put together an ongoing work programme with respect to sexual harassment, other forms of harassment and bullying based on three pillars:

Identify i.e. ensure inappropriate behaviours including sexual harassment and other forms of harassment and bullying are recognised;

Report i.e. ensure inappropriate behaviours (sexual harassment and other forms of harassment and bullying, are challenged, and/or reported appropriately either in chambers or in the Inn of Court, and if necessary to the Bar Standards Board (BSB). Also, that processes (in chambers, the Inns and within the BSB) are in place, fit for purpose and effectively implemented to do this; and

Support i.e. ensure victims/witnesses are looked after and suffer no career detriment, and that chambers are advised on how to prevent and manage inappropriate behaviours and protect the careers of those who are victim of or witness inappropriate behaviours.

With these objectives in mind it aims to increase:

- Awareness of unacceptable behaviours across the Bar
- Confidence in challenging unacceptable behaviours across the profession
- Clarity of reporting arrangements in chambers and about when (if) the BSB must be informed
- Good practice in managing complaints adopted
- Confidence in reporting
- Reduce incidence / experience of unacceptable behaviour across the Bar

The Bar Council survey did not stand alone. Its research was reinforced by work carried out by the International Bar Association.

The IBA conducted a global survey on bullying and sexual harassment in the legal profession and produced a summary of it in October 2018³.

Executive Summary

Of the 6,980 respondents from 135 countries, 715 British legal professionals completed the survey.

'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, including barristers' chambers.'

³ With thanks to **Kieran Pender** *Legal Advisor*, Legal Policy & Research Unit, International Bar Association for his assistance in providing me with this material and discussing it with me



Bullying

- In UK legal workplaces, bullying is commonplace and its consequences are alarming.
- Over half (56%) of respondents reported being bullied.
- 42% of these cases occurred in the last year.
- However, in 54% of cases, the bullying was not reported because of:
 - fear of repercussions (71%; 89% for barristers),
 - Profile of the perpetrator (65%),
 - The bullying was endemic to the workplace (52%),
 - A lack of confidence in protocols and reporting procedures (48%).
- Notably, 53% of barristers who have been bullied are considering leaving the workplace.
- Over a quarter (28%) are considering leaving the profession altogether.

Sexual Harassment

- Harassment remains a contemporary issue — of those who were sexually harassed, 32% of cases occurred within the last year.
- Sexual harassment is routinely ‘never’ reported (74%), for reasons similar to the underreporting of bullying.
- Of those who reported incidents of harassment, a notable proportion indicated that their employers’ responses were insufficient (34%) or negligible (37%).
- In 71% of reported incidences, the perpetrator was not sanctioned.
- As a result, 40% of harassed respondents expressed an intention to leave their workplace.
- Female legal professionals in the United Kingdom experience sexual harassment at a far greater rate — 38% of women reported being sexually harassed, compared with 6% of men. This equates to almost one in three women and one in 17 men

The most common types of sexual harassment in the UK include:

- Sexual or sexually suggestive comments, remarks or sounds (68%);
- Sexist comments, including inappropriate humour or jokes about sex or gender (65%);
- Being looked at in an inappropriate manner which made the respondent feel uncomfortable (53%);
- Inappropriate physical contact (53%);
- Sexual propositions, invitations or other pressure for sex (27%).

And do not assume that sexual harassment only happens to women. It doesn’t; 6% of men working in law in the UK revealed experiences of sexual harassment in the IBA survey (I have had two described to me).

These surveys more than amply demonstrate the reality faced by members of the Bar.

I’ve already referenced Elizabeth Prochaska’s Interview with Counsel Magazine earlier this year⁴ on the rationale for credit the ‘Behind the Gown’ movement.

‘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.’

Equally important was this comment:

‘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.’

⁴ <https://www.counselmagazine.co.uk/articles/interview-behind-the-gown>



What do our processes tell you to do in a situation when you have been the subject of harassment amounting to serious misconduct?

For victims

You may seek advice from the Bar Council's Ethical Enquiries Service. It's confidential, and advisers giving advice through this service are also exempt **from the requirement to report serious misconduct. (See further below)**. It avoids running the risk that any barrister who may advise you will be obliged to make a report. However, you can still expect an adviser to encourage you to report misconduct if the adviser considers it to be serious.

You can seek advice from other barristers, including your Head of Chambers, **but** they will all be under a duty to report any serious misconduct that you draw to their attention.

The BSB's Guidance on Reporting Serious Misconduct of Others states (at paragraph 16) that

“The BSB will treat any report of discrimination, harassment (whether or a sexual nature or otherwise), or victimisation as sensitively as possible and will not act without first consulting with any alleged victim”.

For the confidante: What if you, as a barrister, are told or see something that amounts to serious misconduct?

If you are a BSB Regulated Person and you have knowledge and/or information which gives you **reasonable grounds** to believe that another BSB Regulated Person has **committed serious misconduct**, then **you must** promptly report this to the BSB.

It is an absolute duty: A failure to comply with it will itself be misconduct. You have no alternative - even if the person who has told you doesn't want it to go further.

If told, you must promptly report it. If you don't report it, you have to self-report yourself for not complying with your duty to report it

What is the effect of this rule one asks? We remind ourselves of this statistic provided by the BSB in June of this year

‘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.’

There is good reason to conclude, as I have done, that the BSB's laudable aim of making it a compulsory duty imposed on a barrister to report serious misconduct by another has had the unintended effect of closing down the issue and hiding it from professional view. I am not alone in that view. The BSB have been made aware of these concerns.

Baroness Blackstone, Chairwoman of the BSB, explained that the regulator's intention was to have a clear rule so that all barristers know that they are obliged to report serious professional misconduct. Facing criticism about its unintended effect she volunteered up this tentative way forward

*‘we are currently reviewing the equality rules and 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 that it will bring in further special measures for regulatory proceedings. They are also planning on **changing their burden of proof from beyond reasonable doubt, to the civil standard**, as it was deemed inappropriate in a disciplinary context.

As part of a trial a waiver scheme has been introduced by the BSB.



The Waiver? Why

The BSB is aware of concerns that the reporting requirement overall may be unhelpful in relation to dealing with allegations of sexual or other harassment, as those affected may not want to involve the regulator and may be unwilling to seek help from colleagues if they know that colleagues are under an obligation to report matters to the regulator.

In order to test whether this is the case, the BSB will accept applications for waivers from rC66 in defined circumstances and for a specified time. This would be on an 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. When the BSB might act on the evidence gathered will depend on the volume of data we obtain, e.g. if numerous schemes are set up and all prove successful, then we may be able to assess the position after 6 months but if there is low take up and few schemes, the BSB might wait for at least a year to make any assessment based on the data collected.

In order for a scheme to be approved so that the BSB may grant the necessary waivers, any proposed scheme must meet the following criteria:

- Involve identified and named people (to whom the waivers will be applied);
- Those involved must be suitably trained to perform the functions of the scheme;
- The outcomes of that training must be agreed with the BSB and so should be set out in any application; as a guide, at a minimum we would expect to see outcomes consistent with those of an appropriately framed listening skills course and Bar Council advanced equality and diversity training (or equivalent);
- Access to support and wellbeing services should be provided for those involved in providing the support to service users;
- Anonymised summary records of service users must be kept, and reports sent to the BSB quarterly – this must include: date of contact; means of contact; timeframe of incident/s (if possible); nature of the issue; summary of any signposting; outcome; and any further support needed; and
- A named barrister or barristers must be responsible for the scheme and they must give the BSB undertakings to comply with these minimum criteria at all times.

For my part I think changes are urgently warranted and the trial scheme does not go far enough. It is unrealistic to think that the Bar is going to get sufficient schemes approved in 6 months. As of November 2018, only one group, to my knowledge, has submitted an application: the Western Circuit Women's Forum. People have found ways around the mandatory reporting rule, subverting it. One way is for the victim to speak not to a barrister but to a non-barrister employee. Another is for the barrister in whom the complainant confides to hesitate in categorising what is described as 'serious' misconduct, or if it is then whether there 'are reasonable grounds to believe it'.

The stark reality is that, in the main if the duty is known about, it is put to one side if to follow it would shut down the person seeking to confide in you from speaking out and seeking advice.

In my view:

- 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?

The Bar Council is forward thinking in its approach. I am grateful to Sam Mercer, Equality and Diversity officer who has been generous with her time in explaining what the BC is proposing to do. There is a draft harassment policy that will be rolled out within weeks and the draft I have seen is helpful, practical and directional. The aim is to



'promote and provide a safe environment for everyone who is associated with Chambers, or may come into contact with its members or staff, ensuring they can work without hindrance, achieve their potential, socialise with dignity and respect from others, and flourish professionally.'

There are other creative developments being planned, since they are on the drawing board, they are not up for discussion in this lecture but I can say that the steps being proposed demonstrate that the Bar Council is serious about confronting the issue soft sexual harassment and bullying at the Bar (and for that matter between Bench and Bar).

The Bar Council does not believe that you are inevitably under a duty to make a report straight away. Much will depend on the nature and circumstances of the misconduct.

Relevant matters are likely to include the following:

- the seriousness of the misconduct;
- the impact on clients and on others within your organisation;
- any impact on the public, or on public confidence in the profession;
- any risk to the public interest;
- the degree of risk of repetition or continuation of the misconduct,
- any history of similar misconduct;
- the degree of intention involved;
- whether the barrister may yet be persuaded to comply with the duty to report him/herself
- whether the misconduct is still at the stage of being an unproven allegation of misconduct
- Which is denied, and an internal investigation is in train or going to be carried out. This does not mean that the misconduct can be kept from the BSB 'promptly'

The BC offers guidance to someone placed in the position of being told of a problem, whether a concern is raised formally, informally or anonymously. They suggest

- 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.

Possible outcomes from raising a concern informally could include (but are not limited to), by way of example

- Simply providing emotional support to any person who needs it
- an appropriate person having a private word with the person about whose behaviour the concern was raised, to advise them that their behaviour was unwelcome, to explain why it was unwelcome, and to seek their agreement that such behaviour will not happen in the future
- Arrangements being made so that the person about whom the concern was raised and the target of their alleged behaviour are not clerked into the same cases
- The person about whose behaviour concern was raised agreeing not to attend Chambers/Bar social functions for a period, or not to consume alcohol at such events
- The person about whose behaviour concern was raised agreeing to attend an anti-harassment training course
- involving Head of Chambers, head of practice group or Chief Executive, for further advice, support or action
- making a BSB report on behalf of the person raising the concern, or assisting them in making such a report



- Support in lodging a complaint with the Judicial Conduct Investigations Office, if the concern relates to the conduct of a judge
- Support in lodging a complaint with the Solicitors' Regulatory Authority, if the concern relates to the conduct of a solicitor
- Support in accessing alcohol misuse advice
- Support in accessing counselling
- Ongoing monitoring of the person whose behaviour caused concern
- Ongoing support for anyone involved who may benefit from it

The Bar council has set up a Bar Wellbeing site at the Bar website: <https://www.wellbeingatthebar.org.uk/>. It has already had over 200,000 hits since its creation. It signposts and guides you in relation to what to do about sexual harassment and judicial and other bullying. Go onto the above website and click on 'I'm a barrister' (or 'I'm a clerk/member of staff') and then click on 'support' and it will take you through to Employee Assistance Programme (EAP).

In addition, through the newly launched **Employee Assistance Programme** (EAP) funded by the Bar Mutual Indemnity Fund, the Bar Council now offers barristers and clerks/members of staff free and confidential counselling support which can be accessed through the Wellbeing at the Bar website.

What is the way forward?

I hope this lecture serves these purposes:

- 1) It sends out the unequivocal message to young aspiring members of the Bar that sexual harassment is not acceptable and has no place at the Bar
If it happens to you, you won't be the first, it's not your fault, speak to someone you trust about it. You are not alone. Make use of the confidential advice helpline number.
- 2) Know that the Bar Council is alive to the issue.
- 3) Be reassured that there is a group of senior men and women out there who want to help and are finding ways to do so: the Western Circuit Women's circuit is showing the way about what can be done. Others will follow. We are behind you.

What should we agitate for?

The mandatory reporting rule is not a support: it is hindering efforts to flush instances of harassment out and to take steps to eradicate it. It should be substantially revised if not removed.

We should send out the message that harassment is rife and that it is unacceptable. We should say that before an aspiring pupil gets put in vulnerable position: we should have a safe space for discussion at Bar School. That message should be reinforced, and safe discussion space created, by The Inns and within Chambers.

We should provide mentoring to junior members and have an open door policy on issues that are as serious as sexual harassment and bullying.

Individually you can make a difference by the simple step handing over your business cards to young men and women (as Georgina Woolfe and I do) with the message that the Bar can sometimes be a tough place and if it ever gets too much and you need someone to talk to outside of chambers then to pick up the phone or e mail.

You can arrange for chambers to have Bar Council anti bullying/ harassment training sessions: hold a mirror up to behaviours. Facilitated Training can make a real difference. Clear policies can make a difference. Do both.

If you are told of inappropriate behaviour or see or hear it: Don't stand back: **As a senior member of the Bar you have the power to act. Silence makes you complicit. Call it out.**



We have a duty to change the culture that permits harassment at the Bar.

With thanks to the following people for their help in constructing this lecture, I apologise for the many people I will have missed out unintentionally

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 George
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.

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

© Professor Jo Delahunty QC, 2018
Gresham Professor of Law
Barrister
4 Paper Buildings
Temple



Useful Resources

Whether or not you are comfortable raising a concern within Chambers, confidential advice in relation to harassment, bullying and inappropriate behaviour can be sought at any time from the confidential Bar Council Helpline 0207 611 1320. You will reach Sam Mercer, who is supportive, knowledgeable and helpful, or a member of her team, and they will provide you with support and advice and discuss your options. You need not give your name or the names of anyone else involved, or identify your chambers, unless you are comfortable doing so.

Bar Council Ethics helpline/ Bar Council's Ethical Enquiries Service

<https://www.barcouncil.org.uk/supporting-the-bar/ethical-enquiries-service/>

Telephone: 020 7611 1307 (09:15-17:15 Monday-Friday)

Email: Ethics@BarCouncil.org.uk (response within four working days).

Bar Council's Wellbeing at the Bar website at: <https://www.wellbeingatthebar.org.uk/>.

Lawcare (free and confidential helpline for lawyers, providing wellbeing and mental health support): 0800 2796888

Wellbeing at the Bar

(resources for Barristers' wellbeing; sources of advice and support_ <https://www.wellbeingatthebar.org.uk/>

Bar Council Guidance for chambers re sexual harassment

<https://www.barcouncilethics.co.uk/documents/serious-misconduct/>

https://www.barcouncil.org.uk/media/409759/dealing_with_sexual_harassment_in_chambers_december_2015.pdf

And for individual barristers <https://www.barcouncil.org.uk/supporting-the-bar/equality-and-diversity/sexual-harassment/>

Guidance: <https://www.barcouncilethics.co.uk/wp-content/uploads/2017/10/Serious-Misconduct-1.pdf>

BSB

BSB Information Line 0207 6111 444

BSB Guidance re reporting requirements

https://www.barstandardsboard.org.uk/media/1687156/bsb_guidance_on_reporting_serious_misconduct_of_others_-_external__produced_by_reg_pol_.pdf

BSB guidance on obligations to report serious misconduct:

<https://www.barstandardsboard.org.uk/complaints-and-professional-conduct/obligations-to-report-serious-misconduct/>

BSB serious misconduct reporting form

https://www.barstandardsboard.org.uk/media/1702477/140619_-_pg22_-_procedure_for_dealing_with_reports_of_serious_misconduct_-_annex_a_-_form_-_live_updated_october_2015_.pdf

BSB handbook: https://www.barstandardsboard.org.uk/media/1968430/bsb_handbook_version_3.4.pdf

Judicial Conduct Investigations Office <http://judicialconduct.judiciary.gov.uk/making-a-complaint/> (note: complaints should preferably be lodged within 3 months of the incident)

Other 'wellbeing' Contacts

<https://www.wellbeingatthebar.org.uk/student-pupil-support/>

Western Circuit women's forum: wconf@westerncircuit.co.uk

Confidential support line for victims of harassment has been approved by BSB, the first under new waiver scheme, and details will be publicised as soon as the required training is complete

Association of Women Barristers

<https://www.womenbarristers.com>

Associationofwomenbarristers@gmail.com

Association of Women in Crime

<https://www.womenincrime.com/>

Womenincrime.connect@gmail.com