

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?



Photo via @NewstalkZB

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](https://www.nydailynews.com)

73

569

1,959



Adam Serwer 🍌🔵 @AdamSerwer · 4h

If this was the standard in workplaces then nothing would count as sexual harassment

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Sterling helps England reign in Spain

Sport Pages 64-68

Saudi Arabia to admit 'Khashoggi died under interrogation'

David Charter Washington

Saudi Arabia was preparing last night to admit that the journalist Jamal Khashoggi was killed accidentally in its custody, according to sources close to a joint inquiry with Turkey.

Such an acknowledgment would follow President Trump's suggestion yesterday after speaking with King

Salman by phone that "rogue killers" appeared to have been behind Khashoggi's disappearance on a visit to his country's consulate in Istanbul.

For two weeks Riyadh has denied any involvement in the silencing of the prominent critic who failed to re-emerge from the building after an appointment to finalise divorce proceedings so that he could marry his

Turkish fiancée. Video footage showed him arriving but not departing. The Saudis have insisted that Khashoggi, who would have been 60 on Saturday, left the building by a back exit.

A declaration that he died under interrogation in an operation that went too far or was not sanctioned by the country's leadership would be widely seen as an attempt to distance the king

or the powerful Crown Prince Mohammed bin Salman from the incident.

There has been growing suspicion that Khashoggi was targeted. Two jets carrying 15 Saudis landed at Ataturk Airport in Istanbul before dawn on the day that Khashoggi entered the consulate. The men checked into hotels and left Turkey that night.

Mr Trump said King Salman denied

any knowledge of what had happened.

"He didn't really know, maybe, I don't want to get into his mind but it sounded to me like maybe these could have been rogue killers, who knows?" Mr Trump said. "His denial to me could not have been stronger that he had no knowledge. And it sounds like he and also the crown prince had no knowledge." **Summit boycott, pages 29-29**

Bercow told to quit over report into sex pest MPs

Speaker not up to job, says standards chief

Henry Zeffman Political Correspondent

The head of the Commons standards committee is calling for John Bercow to resign as Speaker after a report found that "disturbing" allegations of sexual harassment by MPs had been "tolerated and concealed".

Sir Kevin Barron's intervention comes after the conclusions of an independent inquiry into harassment of Commons staff were published.

The report by Dame Laura Cox, 66, found that it would be "extremely difficult" for the "current senior House administration", including the Speaker, to bring about the changes required. It added that Mr Bercow was incapable of addressing a culture of "deference, subservience, acquiescence and silence" among Commons staff.

Writing in *The Times*, Sir Kevin, 71, says: "The change in culture has to come from the top, and unfortunately I no longer believe that the Speaker, John Bercow, is the correct person to provide that leadership, so he should step down."

Dame Laura, a retired High Court judge, was commissioned this year to report on the harassment of Commons staff after Mr Bercow, 55, who has been Speaker since 2009, was accused of bullying two of his former private secretaries. He strenuously denied all allegations.

"Delivering fundamental and permanent change will require a focus and a genuine commitment on the part of the leadership of the House," Dame Laura wrote. "However, the inescapable con-

clusion from the views expressed during this inquiry is that it will be extremely difficult to build confidence that there will be fundamental change when the levers of change are regarded as part of the change that is needed."

The report details alleged sexual harassment by MPs, saying that women reported being abused in "vulgar, gender-related terms". There were reports of "inappropriate touching", including men "trying to kiss them, grabbing their arms or bottoms or stroking their breasts or bottoms". Staff reported men putting their arms around women's shoulders or waists or "pulling them into corners for close personal contact".

Even when the investigation was ordered, Mr Bercow believed that he had sufficient support to stay on as Speaker, at least through the final months of the Article 50 process through which Britain is leaving the EU. Despite being a former Conservative MP he has always had the near-total support of the Labour benches.

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Baby on board The Duke and Duchess of Sussex arrived in Australia and announced she was pregnant News, page 6; Times 2

May makes last-ditch plea on Brexit

Francis Elliott Political Editor
Oliver Wright, Sam Coates

Theresa May will make a last-ditch appeal to EU leaders tomorrow in an attempt to rescue Brexit talks deadlocked over how to avoid a hard border in Ireland.

The prime minister admitted in a bruising Commons statement yesterday that Brussels had rejected her proposals for a legally binding UK-wide customs arrangement. The EU, which has stepped up no-deal preparations, continues to insist that the formal divorce deal must include a guarantee that critics say would divide Northern Ireland from Great Britain.

Dominic Raab, the Brexit secretary,

travelled to Brussels on Sunday to deliver a personal rejection to his opposite number, Michel Barnier, as Mrs May was warned that she faced a full-scale cabinet revolt if she relented.

Both sides appeared keen to nurse the fragile negotiation back to life, however. In her statement to MPs Mrs May put the best gloss she could on the impasse, insisting that significant progress had been made. She urged EU leaders not to derail an "achievable" deal.

The prime minister will direct a personal appeal to the leaders of the other 27 nations before they meet at a dinner tomorrow, from which she is excluded, to discuss Brexit talks.

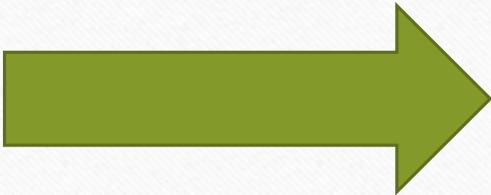
The invitation from Donald Tusk,

president of the European Council, is being interpreted as an olive branch in Downing Street. Mrs May's allies conceded that it would not have been extended or accepted without assurances that both sides were seeking to repair relations.

However, in his letter to EU leaders before this week's summit Mr Tusk cautioned that the likelihood of a disorderly Brexit had increased as talks had "proven to be more complicated than some may have expected".

"We must prepare the EU for a no-deal scenario, which is more likely than ever before," he said.

Mrs May was due last night to talk to President Macron before the **Continued on page 2, col 3**



- **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**



1986

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'



?????



2006

2017 ; 31 YEARS ON :
Actress Alyssa Milano
used *#metoo* to
demonstrate the
widespread prevalence
of sexual harassment
and assault , especially in
the work place



**BEHIND
THE GOWN**
Ending harassment at the Bar?
Drinks and panel discussion
6.30pm, 23 May 2018
Bridewell Hall, 14 Bride Lane, EC4Y 8EQ
£10 on the door

Speakers
Jess Phillips MP
Jo Delahunty QC
Schona Jolly QC
Angela Rafferty QC

Open to all.
Please let us know if you're coming:
contact@behindthegown.com

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

The image shows a simple illustration of an open cardboard box. The box is light gray with black outlines. The top flaps are open. Inside the box, the text "nothing to see here" is written in a black, sans-serif font. Below the box, a pair of brown leather shoes with buckles is visible, along with white socks with red stripes at the top. The entire scene is set against a white background, which is itself within a larger white rectangular frame. This frame is placed on a brown, textured background that resembles corkboard paper. On the left and right sides of the white frame, there are black horizontal bars that look like pushpins or clips.

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.’

A BARRISTER

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*'

‘A 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.

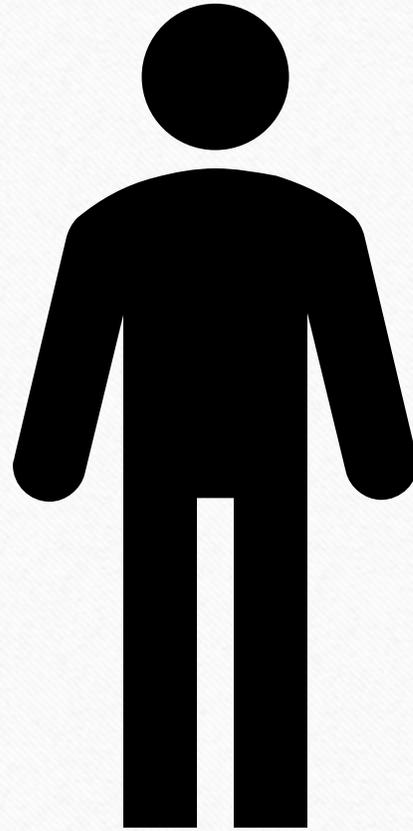
I wanted to apply to that set for a long time, but it held me back from applying for a pupillage with them when I got to that stage.

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



International Bar Association

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

Prevalence?

Bullying

- Over half (56%)

Sexual Harassment

- 38% of women, 6% of men

Reported?

- 54% didn't report
 - × fear of repercussions (71%; 89% for barristers)
 - × profile of the perpetrator (65%)
 - × because the bullying was endemic to the workplace (52%)
 - × lack of confidence in protocols & reporting procedures (48%)

- routinely 'never' reported (74%)

Consequences?

- 53% of bullied barristers are considering leaving the workplace.
- Over a quarter (28%) are considering leaving the profession altogether.

- 71% of reported incidences, the perpetrator was not sanctioned.
- 40% of harassed respondents expressed an intention to leave their workplace.

Barristers Working Lives survey* conducted 2017, published 2018 : **‘Barristers’ experience of harassment, bullying & discrimination’** .

- ❖ 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 ...?

...victims?

Bar Council's Ethical Enquiries Service



- Confidential
- Exempt from the requirement to report serious misconduct.
- Will encourage you to report misconduct if the adviser considers it to be serious

Other barristers inc. Head of Chambers



- All under a duty to report any serious misconduct that you draw to their attention.



THE INNS : MIDDLE ,
LINCOLNS INNER GRAYS



ASSOCIATION OF
WOMEN BARRISTERS



CHAMBERS



**WOMEN IN
CRIMINAL LAW**

*The Temple Women's
Forum*



...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.*