



Mental Health & Wellbeing at the Bar

Bullying



We..being
at the Bar

Bullying

What is bullying and harassment?

Bullying and harassment are closely related and they are often dealt with together.

Harassment is a technical term defined in the Equality Act 2010¹ as being:

“...unwanted conduct, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.”

Bullying is not defined in legislation but ACAS describe it as:

“...offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient’

Of course, person A might consider that their treatment by B is bullying where the other B might consider that they are merely exercising firm management of A. So, it is important to ask if there is objective justification for treatment in question both as to the reason for it and the way in which the treatment is delivered.

A bullying website describes bullying as:

“... conduct that cannot be objectively justified by a reasonable code of conduct, and whose likely or actual cumulative effect is to threaten, undermine, constrain, humiliate or harm another person or their property, reputation, self-esteem, self-confidence or ability to perform.”

www.bullyonline.org

Barristers are expected to be fearless and robust in defence of their client’s interests, while maintaining their duty to the court and the administration of justice². This is not an easy line to tow, and at times, barristers have to observe these duties before difficult Judges and with difficult clients.

¹ The Prevention of Harassment Act 1997 does not have a single definition of harassment.

² See for instance Part III - Fundamental principles in the BSB old Code of Conduct (<https://www.barstandardsboard.org.uk/regulatory-requirements/the-old-code-of-conduct/the-old-code-of-conduct/part-iii-fundamental-principles/>), and CD1 https://www.barstandardsboard.org.uk/media/1918141/bsb_handbook_1_february_2018.pdf

So bullying could involve:

- An unreasonable exchange outside court
- unreasonable pressure to concede a point or accept an offer during negotiations
- unwanted physical contact
- unwelcome remarks about a person's age, dress, appearance, race or marital status, jokes at personal expense, offensive language, gossip, slander
- isolation or non-cooperation and exclusion from social activities
- improper pressure to take on work you cannot accommodate
- improper pressure to reduce fees
- personal intrusion from pestering, spying and stalking
- failure to safeguard confidential information
- shouting and/or directed angry outbursts either in front of others or one to one
- setting unrealistic deadlines
- persistent unwarranted criticism
- personal insults

If a barrister has been bullied by a judge, the behaviour may include

- shouting at them;
- deliberately saying things to embarrass or humiliate them;
- asking them to justify themselves in circumstances that are unfair;
- calling them names;
- calling into question their professionalism in circumstances that are unfair;
- accusing them of incompetence in circumstances that are unfair;
- using various facial expressions to demean or intimidate them;
- setting unrealistic time frames;
- making them work through lunch breaks;
- refusing to give them time to formulate an argument or response in circumstances where it is unfair to do so.

Context is important; justified and well evidenced performance management, making official complaints or reporting malpractice (when done so in good faith and with relevant evidence) is not bullying.

However, it is important to be clear; bullying cannot be passed off as 'strict' management practice. Many people find may try and justify bullying because it is by someone at a more senior level than them, for example a judge bullying a barrister, or a clerk being bullied by their Head of chambers, or a Pupil being bullied by their Pupil Supervisor. Inadequate 'people managers' may resort to bullying tactics due to their inability to motivate and understand the people they work with. They may even seek positions of authority which enable them to bully without question or consequence. They may use the

excuse that they are doing it for the person's own good and/or it is simply 'strong/robust people management style'.

Tim Field was a UK anti-bullying activist and expert in the understanding and tackling of bullying in the workplace. His personal experience of being bullied and becoming physically and mentally unwell as a result led him to create the excellent resources on www.bullyonline.org.

This expert site about workplace bullying notes that in hierarchical work environments bullying may arise when people project their own inadequacies onto others;

- to avoid facing up to and doing something about their own shortcomings;
- to avoid accepting responsibility for their behaviour and its effects;
- to dilute their fear of being seen as weak, inadequate and possibly incompetent;
- and
- to divert attention away from the same

However, bullies are not always in a position of hierarchical authority. Power is multi-faceted and the bully may be a subordinate. In this instance bullying may be about the subordinate making false claims against their senior, spreading rumours or encouraging others who may have an unsubstantiated grievance against the person.

What is the difference between bullying and harassment?

Harassment on the grounds of specific characteristics is recognised in the Equality Act 2010. These protected characteristics are age, disability, gender reassignment, race, religion or belief, sex and sexual orientation (CIPD, 2016). Bullying is not defined in employment law and this can make it more difficult to define, especially as it is often a slow process of undermining or belittling behaviour which may go unnoticed by others.

The health impacts of bullying

Being on the receiving end of bullying behaviour has long-term negative consequences to physical and mental wellbeing. Bullying can cause acute distress in the recipient, irrespective of their age or level of seniority. It may also provoke unusual responses in the bullied individual, particularly if they were bullied as children.

A state of 'high alert' is often experienced by bullied individuals, where they feel they can never let their guard down around others and are in fear of the next comment or action towards them. This hyper-arousal means the body is in a permanent state of distress – with elevated cortisol and adrenalin levels. People experiencing bullying may find they have constant tightness in their muscles and frequently feel aches and pains. Headaches, migraines, gastrointestinal problem and frequent colds and flu (due to reduced

immunity) are not uncommon symptoms. This mental and physical state is directly linked to long-term negative impacts to our health and wellbeing. [[see here for further information on typical signs and symptoms of stress](#)]

How can I be sure I am being bullied?

As adults, bullying is often insidious, particularly in the workplace. It is possible for the person being bullied not to realise what is going on for some time. They may ignore the signs because they are convinced they cannot possibly be a victim of this destructive behaviour. Feeling shame and guilt about being bullied is perfectly natural and understandable. It is not unusual for those experiencing bullying to blame themselves and justify the bullying with some personal flaw; *'I've never been assertive. If I was better able to stand up for myself this wouldn't happen', 'I need to be stronger', 'I didn't do a very good job at that cross-examination today. No wonder the judge lost her temper with me'*

How to deal with Judicial bullying?

Many barristers will have experienced, at some point in their careers, coming before a Judge who has been unreasonable or even aggressive, who may have undermined them in front of colleagues and/or clients. They may have been left feeling humiliated by the experience. Unfortunately, whilst this may occur as a 'one off', which is itself not acceptable, there are instances in which individual barristers have experienced sustained behaviour of this kind either throughout a trial or on a repeated basis involving more than one trial. Bullying by judges can and does occur.

In such a situation, you will undoubtedly feel disempowered and possibly even unable to respond whilst you are in the midst of the experience. It is hoped that these pages can provide some overview and initial advice, together with signposting if it is necessary to take the issue further.

Judicial Conduct Investigations Office

Conduct of this kind can be reported to the Judicial Conduct Investigations Office (JCIO). However, not all barristers are confident this would be the right approach and may therefore not feel comfortable doing so. It is important to acquaint yourself with the JCIO's approach to complaints which can be found [[here](#)] before you make your decision, including the time limit on reporting a complaint which is 3 months from the date of the incident.

Bullying of any kind can be injurious to health as set out above. Judicial bullying can have the same consequences, which may range from feeling disempowered and humiliated to a more profound effect on your mental and emotional health. It is also

disruptive to the delivery of justice itself. You are bound to have considered that your lay clients with little or no experience of the justice system may not be able to objectively divorce the Judge's comments and treatment of their barrister and may take it as a condemnation of the merits of their case. Judicial bullying can and does run the risk of interfering, undermining and inevitably, damaging a barrister's relationship with his/her client. These considerations are some that you may want to take into account when thinking about what to do next, if anything.

Judicial conduct should demonstrate the following:

"A judge's conduct in court should uphold the status of judicial office, the commitment made in the judicial oath and the confidence of litigants in particular and the public in general. The judge should seek to be courteous, patient, tolerant and punctual and should respect the dignity of all."³

If you encounter judicial conduct which falls short of this guiding principle you will no doubt be faced with a range of reactions in yourself not limited to but possibly including a sense of injustice. If a fundamental tenet of the system you uphold is transgressed, you will probably feel that you want to put it right. However, where the behaviour has crossed the line into bullying (see the definition above and this article in Counsel magazine <https://www.counselmagazine.co.uk/articles/who-judges-the-judges>) you are also likely to be faced with the emotional and psychological effects as well.

It is likely you will be feeling disempowered and it is important first that you can recover a sense of agency for yourself, (irrespective of whether or not you take a complaint further). The following advice is not intended as a 'fix', nor is it likely to fully address the consequences you may be feeling, but is intended to provide some ways of thinking that may help you regain your sense of agency:

1. It is important to understand that bullying of this nature says more about the Judge than about your competence as an advocate.
2. You will doubtless understand your regulatory responsibility: to observe your duty to the court in the administration of justice (CD1), and your duty to act in the best interests of each client (CD2). This may include being firm, defending yourself, and correcting the position in front of your client, if the Judge permits.

³ Courts and Tribunals Judiciary: Guide to Judicial Conduct, March 2018 <https://www.judiciary.gov.uk/wp-content/uploads/2016/07/judicial-conduct-v2018-final-2.pdf>

3. You may feel that your performance is compromised in front of this particular Judge or even that you have made a mistake. Mistakes are inevitable, and we all make them at some point in our careers so it is important to try and avoid a sense of self-blame. If the Judge's conduct is such that you have been significantly undermined in your ability to conduct your case, or indeed made a mistake, this is not a reflection on your ability. It may of course influence your decision about what else you can do, but so far as you are concerned you should try not to let it affect your view of yourself.

It always helps to talk to others, because you may not be alone, and being able to share your experience and hear from others will help. Try to objectively assess what has happened, and even speak to other barristers about this.

You cannot control the Judge's behaviour, but it is important to ensure that your own standards of performance are not affected by what has happened and are maintained as far as you are able.

4. If, on reflection you conclude that the Judge's conduct needs to be addressed because it is not a one-off occurrence, then you have two options:
 - a. Make a formal complaint to the JCIO
 - b. Make an informal complaint to your Circuit Leader or The Bar Council. Circuit Leaders are accustomed to informally raising concerns either with the Judge in question, or the presiding Judge in a court so are best placed to challenge a Judge's unreasonable behaviour. Alternatively, the Chair of the Bar can provide a similar service.

It is also worth reporting such incidents to the Bar Council (Equality & Diversity line: Equality@BarCouncil.org.uk) as they can be collated, anonymised, and shared with Judicial office to support the training of Judges in this area.

5. If what you have experienced is short-lived and you are able not to dwell on it, you may feel able to move on; there are techniques out there which can assist this process such as talking about it to a trusted friend or colleague, writing it down (and this may be useful in any event in case at a later date you decide to take other steps to address the issue), or taking time off so that you can engage in whatever activities help you manage stress.

To gain perspective on what has happened and take next steps, the following advice may assist:

1. First set about applying some self-care techniques – whatever works for you - and if necessary take the time off to do so until you feel you're back on track.
2. Being bullied is **not your fault** and you have done nothing to encourage this behaviour. It will have affected your sense of self though, so in whatever way you can, make the effort to bring to mind your own positive characteristics.
3. If bullying takes place in court it is likely that a firm but polite approach will be lost on the bully, however, it will be important for your own protection to have maintained your position with courtesy. In the judge's case the exchange may be recorded. A note or record may be necessary for appellate purposes or through MOJ or Bar Council or chambers complaints procedure and can be applied for.
4. If possible, it is helpful to **consult someone else** who has witnessed the behaviour for an objective view of what went on. It is wise to then carefully consider it away from the experience, if possible, to give you the perspective that time and a bit of space affords. If after this you feel sure you are or have been bullied, consider what your next step might be. Contrary to popular belief confronting the bully might not always be the best solution and could make things worse. There are however people you can talk to signposted below and this way you can obtain some direct advice on what has happened to you.
5. If your experience relates more specifically to **chambers** it may be appropriate to report the matter to the Chambers' E&D officer or the Head of Chambers.
6. You will be asked about facts: write down everything that takes place, when, where, who witnessed it and how you felt as a result. Remember to use any written evidence you can locate – emails, notes or anything else which puts in writing what the bully has done. This can be particularly useful in cases of 'cyber' bullying (bullying using text, emails or online media). You may start to notice patterns of behaviour and this evidence may be useful if you decide to confront your bully. It is unlikely that it will be possible to collate a paper trail if the bully is a judge, but in that case a contemporaneous note of what took place in court will be your next best piece of evidence.
7. **Seek advice from a trusted source.** This might be your Head of Chambers, a colleague or your pupil supervisor or senior clerk or a friend outside the profession or through the BSB. Ask them what they think of the behaviour.
8. Consider whether there has been a **breach of professional conduct**. If there has been, you will need to then consider how to deal with this and the consequences for your client.

9. Find out the appropriate **complaints procedure**.
10. Is someone else also experiencing bullying from this person? If so there may be **safety in numbers**. Bullies tend to have more than one target. Speaking to others may help you uncover what is already known about this person.
11. Finally, some bullies may have a recognised mental health condition or personality condition that is at the root of their behaviour. Confronting the bullying behaviour of these people is usually fruitless because assertiveness and 'calling out' the bullying will be met with incredulity, flat denial and further manipulation. This is in stark contrast to the non-sociopathic bully who when confronted is genuinely surprised, shocked and upset that their behaviour has had detrimental effects. In this case, perpetrators may be motivated to change and if so may be deeply apologetic. Whilst this will not help you deal with the consequences of their behaviour in you, it may help you to consider what steps (if any) you wish to take next.

Additional advice for heads of chambers or employers of barristers:

Ensure there is a well-designed, robust and accessible policy about non-acceptable behaviour, which will include bullying and harassment. Many organisations will have a specific bullying and harassment policy which will clearly state definitions and procedures to follow if a member of chambers feels they are experiencing bullying behaviour. There must be clarity over the reporting process as well as signposting to support.

Where can I find out more and get advice?

You are not alone, you have a few options:

Call the **confidential Bar Council Helpline Telephone: 0207 611 1321; email: equality@barcouncil.org.uk**). If you call this number you will be put through to Sam Mercer or a member of the Bar Council's Equality and Diversity team, they are responsible for issues including bullying at the Bar. At no point will you be required to give your name or the name of your chambers. Whoever you speak to will be able to provide advice and support on what you should do next, but you will not be required to do anything, you can simply discuss your options. If you would like additional support, you will be put in touch with a member of the Equality, Diversity and Social Mobility Committee.

Another option would be to contact your Circuit Leader. Contact details can be found on your Circuit's website.

You can find out further information about the JCIO's process online (<https://judicialconduct.judiciary.gov.uk/>), and if you decide that this is the route to take, you can email inbox@judicialconduct.gov.uk

Further resources and reading:

<https://www.youtube.com/watch?v=YmRK1ZEXVQM>

<https://www.youtube.com/watch?v=VZAn6x3yaYE>

<https://www.youtube.com/watch?v=tlB1pFwGhA4> – for research carried out by Clive Boddy

<http://www.americanbar.org/publications/youraba/2014/november-2014/bullying-by-and-of-lawyers.html>

Psychopathy research <http://link.springer.com/article/10.1007/s10551-015-2908-6> - psychopaths are drawn to CEO roles and law!

<http://www.acas.org.uk/media/pdf/e/b/Seeking-better-solutions-tackling-bullying-and-ill-treatment-in-Britains-workplaces.pdf>

<http://www.bullying.com.au/workplace-bullying/index.php>