

US TOO?

Bullying and Sexual Harassment in the Legal Profession

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Speech by Dame Laura Cox QC

Just over 25 years ago, in March 1994, the first woman judge to be appointed to the US Supreme Court, Sandra Day O'Connor, gave a speech in Miami to about 500 lawyers. *"I have watched with great sadness the decline in esteem held by our society of lawyers"* she said, *"And the public's unfavourable perception of lawyers has some merit. There must be a rediscovery of civility in the profession. We need a fundamental change."*

She was talking in her speech about what she regarded as declining standards of professionalism in the legal profession generally. But there was more to it than that. I had the good fortune to meet her at a conference some years later, in 2003, and I asked her what in particular she had in mind when she talked about the loss of civility. She was referring to the loss of respect for others. The moral authority of a professional person comes from treating people with dignity and respect. She felt, as long ago as 1994, that many in the legal profession had lost sight of this, essential aspect of professional conduct.

I refer to that bit of history this morning for three reasons. First, because it is the failure to treat people with dignity and respect that lies at the heart of misconduct of the kind identified in this powerful and compelling report.

Secondly, because that failure and the harm it causes to individuals and to the legal profession as a whole are clearly global problems, requiring efforts to tackle them at a global level, as recognised in this report. Significantly, 2019 sees the arrival of a strong, practical international instrument covering violence and harassment at work. Convention 190 adopted by the International Labour Organisation, together with its accompanying Recommendation, recognises that such misbehaviour can constitute a human rights violation or abuse and its protection extends to everyone who works, in all areas and sectors irrespective of contractual status.

Thirdly, I refer to events in 1994 because, sadly, when reading the IBA report I experienced a strong sense of déjà vu. In the early 1990s, this failure to treat people with respect and dignity lay at the heart of the work that I was doing with the Bar Council, when the problems of bullying and sexual harassment in the legal profession were very much centre stage.

I stay with history for a moment because it serves to emphasise the need to avoid complacency in this area. In 1992 a devastating report into sex discrimination at the Bar, by independent researchers TMS Consultants, had led

to the setting up of the Bar Council's Sex Discrimination Committee, which I chaired for many years. The TMS survey had revealed substantial evidence of early and continuing unequal treatment between the sexes at many levels, including significant problems of sexual harassment, together with a marked tendency to fail even to recognise this as a problem by those who occupied the senior levels of the profession. Further research for the Bar carried out in 1994 by academics at Sheffield University (the Shapland Report) revealed that over 40% of female junior tenants reported that they had experienced sexual harassment in chambers, but that they had not reported it.

In 1995, speaking at the first Woman Lawyer Conference, the then Chairman of the Bar testified to his commitment to tackling what he regarded as the three main areas of concern. These were: (i) fairness in recruitment procedures; (ii) the fair distribution of work in chambers; and (iii) the elimination of sexual harassment, which he described as "*the scourge of the legal profession*" and as "*wholly unacceptable.*" Speakers from the Law Society that day made the same points, as did many women barristers and solicitors in practice, or working in industry, the government service or the public sector. All of them described experiencing the same problems of both bullying and sexual harassment, and if it all sounds familiar, that's because it is. I still have these reports. They made for compelling reading then and they remain depressingly powerful reminders of the persistence and prevalence of such misconduct.

So what on earth has happened? Why, in 2019, are we still experiencing serious problems of this kind, involving serious misbehaviour acknowledged to be wholly unacceptable and which has been the subject of so much attention over so many years?

The phrase "zero tolerance" was not in use in the mid 1990s, but the then leaders of the legal profession in this country certainly oversaw the creation of procedures which were meant to tackle this scourge once and for all. At the Bar a confidential telephone hotline, direct to the two equal opportunities officers employed at the Bar Council (EEOs), was established and well publicised. And it was used, frequently, the EEOs providing clear advice on options for redress and offering support, assistance and access to counselling. A panel of members of the Bar, including myself, was set up and we were all trained to provide advice and support and, where requested and appropriate, to mediate in sets of chambers in disputes involving the target of such behaviour and the alleged perpetrator. This allowed for a speedy and satisfactory resolution in a number of cases, and I know that because I conducted a number of such mediations myself. It meant that complaints were not dragged out over many months, to the obvious detriment of everyone, with those involved becoming entrenched in their positions and with careers and reputations being damaged, perhaps irreparably. Where mediation could not resolve the problem, or where the complaint was too serious for that course of action, some sets of chambers agreed to act as "safe havens" for pupils or tenants who felt unable to stay in their own chambers while the matter was formally investigated.

The need for sets of chambers to have clear, streamlined, informal and formal procedures for handling complaints of bullying and harassment was recognised and emphasised. I was involved on many occasions in the drafting of such procedures and in training programmes on their meaning and use for those members of chambers responsible for applying them. The Law Society undertook similar initiatives and there were joint committees and working groups set up for this purpose to monitor their use and to keep up the pressure.

So by the late 1990s and early 2000s, when I was appointed as a judge, there had been a great deal of activity dedicated to tackling bullying and harassment in the legal profession. All this serves to demonstrate two important points.

First, that it is just so easy to become complacent. The legal profession is by no means the only profession or occupation in which bullying and sexual harassment have proved unyielding and endemic, but at some point I think that we lawyers took our eye off the ball. I think that we lost sight of the lessons we thought had been learned in the 1990s and we thought that the problem had been dealt with. The findings of this important IBA report demonstrate, with clarity and force, just how wrong we were and how easy it is for this pervasive and corrosive form of misbehavior to return and to be even more persistent and problematic and, like the Hydra, to take new and sinister forms.

Secondly, it shows that the particular problems surrounding this form of misconduct still beset the legal profession today. Many, in fact most of those who are the targets of bullying or harassment do not report it, often through fear of the consequences or of being disbelieved, or due to a lack of confidence in the procedures to be followed. Further, the treatment meted out by the perpetrators involves, usually, an abuse of the power that is held by someone in a position of authority over a person junior in age and experience. And, in terms of the impact of such misconduct, its effects are now well researched, understood and documented. The effects on the individual target can be devastating, with serious and long-lasting physical or mental illness, often resulting in a loss of self confidence, robbing people of their dignity and self-esteem. The effects on organisations where it occurs can also be devastating. It sours working environments and working relationships, stifles individuals' potential and blights careers; and it results too often in the loss to the legal profession of skilled, talented and dedicated lawyers. The profession can ill afford such losses, or the reputational harm that follows from such misconduct and from the failure to prevent it, or to deal with it properly when it occurs.

It is against this background that I therefore welcome this timely report as a hugely important step in tackling this continuing and unacceptable state of affairs, and in pressing the reset button, which is what must now happen.

The report's importance has, in my view, two main features.

First, the comprehensive research and rigorous methodology adopted render its findings unchallengeable and its recommendations logical, persuasive and authoritative. Too often, without empirical data of this kind, the response to

concerns about bullying and harassment is to describe it as a problem of the past, or to suggest that reports of its prevalence are exaggerated. That could not be further from the truth. This is happening now and on a truly shocking scale, as the report makes clear.

Secondly, it is clearly understood in this report that following up its findings will be just as important as the report itself, ensuring implementation of its recommendations, monitoring their progress and ensuring that there is genuine and committed engagement with, and ownership of the report and that implementation take place at both local and regional level.

I agree with all the recommendations made. Each one of them is important and each one, if properly implemented, has the potential to effect radical change in the culture and in the prevalence of this form of professional misconduct. But I would single out the following three factors as the real game-changers.

The first factor is the necessity to challenge this misconduct. All of us, and I mean every one of us, must call it out whenever we see it. Too often, when we witness bullying or harassment, we look away. We stay silent, we don't want to get involved, we keep our heads down and we thereby enable, if not passively encourage its continuance. This has to change. And while the evidence shows that women are disproportionately targeted for such treatment, I emphasise that this is not a women's issue. It affects men too. It is everyone's problem, and both men and women should call it out whenever they see it and whatever the gender of the target.

The second factor relates to leadership. It is impossible to overestimate the importance of senior leaders in the profession stepping up and really committing to this. And that means not just turning up at conferences and saying the right things, but actually taking the practical steps necessary to demonstrate that commitment and then actively monitoring their progress.

The third factor concerns training programmes. And I do not mean a couple of hours spent once a year talking about it in a one-size fits all module that can be fitted into the working week without too much inconvenience, and attendance at which is encouraged but not mandatory. I refer to effective, sophisticated, dedicated, customised, challenging and intensive training, in both induction and regular refresher courses. It is time-consuming and expensive, in terms of both cost and human resources, but it works. I have seen this for myself. And it should be mandatory for everyone in the profession.

Policies and procedures addressing such misconduct are important, obviously, but they need to be constantly used, enforced and regularly revisited so as to ensure their continued relevance and application. So many procedures of this kind are drafted and then gradually forgotten about. I would hazard a guess that there are still copies of good anti-harassment policies that we drafted in the 1990s still lying in cupboards somewhere in some sets of chambers or solicitors' firms, unutilized and probably completely unknown to a new generation of lawyers.

The success of this report will be measured by the extent to which all of its recommendations are both actioned and then regularly monitored. So I end with this plea. Do not let this report join the fate of all those earlier reports and lie on a shelf to be rediscovered in 20 years' time. In her powerful foreword, Julia Gillard, the 27th Prime Minister of Australia, describes this report as "*a clarion call for urgent action.*" She is right. Everyone in the legal profession has a role to play in making a difference. Lawyers should be setting the standard and leading the way. I hope that this report marks the first step of many towards recovering that necessary "civility" in the legal profession and ensuring the dignity and respect of all its members, wherever they work in the world.

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