

‘Derisory’ penalties for sex offences

A review of sanctions for sexual misconduct by barristers is long overdue.

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Claims that barristers who have been found to have committed sexual misconduct are treated too leniently have prompted regulators to announce a review of sanction guidance.



However, critics complain that the “misguided” sanctions are out of step with other professional bodies and acceptable behaviour in modern society. They also fear that the guidance belittles victims.

In particular, they state that “derisory” penalties relating to such misconduct within the profession prevent victims from reporting incidents and fail to deter offenders. More broadly, the guidance is dismissed as failing to address sexual harassment at the Bar.

The sanctions guidance issued by the Bar Tribunal and Adjudication Service, the body that disciplines barristers, was revised only 12 months ago.

The starting point for “minor offences of inappropriate sexual conduct in a professional context” is a reprimand and medium-level fine. Where there is a criminal conviction for a sexual offence the starting point is a medium-level suspension. In stark contrast, the starting point for misconduct involving dishonesty is disbarment.

A spokesman for the regulator, the Bar Standards Board (BSB), was unable to point to any case of a barrister being disbarred for sexual misconduct without being convicted of a criminal offence. He confirmed that even where a barrister is convicted in a criminal court of a sexual offence and ordered to be put on the sex offenders register, it would not automatically lead to disbarment.

In a recent case the tribunal heard of a 36-year-old male barrister who slapped the bottom of a 22-year-old pupil at a Christmas party, causing her physical pain, held her round the neck and pulled her on to his lap. He was given a reprimand and a £6,000 fine.

Another male barrister who was found to have “touched two individuals sexually without their consent” was suspended from practice for three months. And last year a male barrister who was convicted of “upskirting” was suspended for six months.

Inner Temple, one of the four Inns of Court, has faced criticism for awarding an £18,500 scholarship to a mature student, a former doctor, who was struck off the medical register in 2001 for having sex with a suicidal teenage patient. By contrast, a barrister who failed to be open and co-operative with his regulator and failed to comply in due time with an administrative sanction imposed on him by regulators in 2016 was suspended for three years.

The criminal law barrister who tweets as CrimeGirl, but who prefers to remain anonymous, criticises the regime, which deems misconduct committed in a “professional context”, for example by a supervisor against their pupil, to be at the lowest level.

CrimeGirl says: “This is patently misguided, as the fact that it occurs at work should be treated as a significant aggravating fact.” The barrister calls for the sanctions framework to be “rewritten from scratch”, with disbarment as the starting point for all sexual misconduct, rather than reserved for those who have committed serious sexual offences and been sent to prison.

Agreeing that the guidance needs revising, John Gould, a senior partner at the law firm Russell-Cooke, says that tribunals in sexual misconduct cases appear to be limiting themselves to the individual circumstances and giving too little weight to general deterrence.

“A barrister who has not pre-planned the misconduct, is remorseful, has not been caught before, is said to have acted out of character, has co-operated with the investigation and has been lucky to choose a resilient victim who isn’t harmed too badly has a pretty full deck of cards to play in mitigation,” he says.

The professional structure in which most barristers operate — being selfemployed in the traditional chambers system — makes it “more important for regulatory sanctions to be tough enough to make a difference”, says Gould, arguing that there are not the same controls and dis-

ciplinary structures in place as there are for employees. “Any appearance that the Bar is out of line with other legal professions may play into old and unfavourable stereotypes of barristers,” Gould adds.

The sanctions for other professions appear to be more severe. For example, doctors found guilty of sexual misconduct before the Medical Practitioners Tribunal Service can expect “erasure” from the medical register.

The guidance for the Solicitors Disciplinary Tribunal is based on the specific facts of a case and whether the allegations are found proved or admitted — and it does not address specific offences. But two of the most recent highprofile hearings involving sexual misconduct have resulted in large fines.

Lynne Townley, the chairwoman of the Association of Women Barristers, says: “Members of the profession and the general public alike need to have confidence that the surrounding processes, sanctions and enforcement measures are both fit for purpose and proportionately applied.”

Katy Thorne, QC, the chairwoman of the group Women in Criminal Law, says: “Low-level sanctions for men who would be summarily dismissed if they behaved in a similar way in an employed setting underlines the impression that women have: you are not welcome or valued at the Bar.”

Thorne adds: “Such low punishment belittles unacceptable and sometimes criminal behaviour, and undermines the confidence women barristers have in complaining to the BSB.”

In a joint statement issued last week the Bar tribunal and the BSB said that the sanctions regime for all professional misconduct has been under review since last year and that updated guidance would be in place in the summer.

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