**ALBA round table discussion on judicial bullying – 30 April 2019, 6.00-7.40pm, Brick Court Chambers, London**

The Chair opened the discussion by explaining its purpose, in accordance with the email sent to participants beforehand: first, to provide a forum for practitioners to talk about an issue that is difficult to talk about, but that has the potential seriously to affect their wellbeing; second, to gather general evidence about the extent of the problem; and third, to consider ways in which ALBA can help to address it. The meeting would be held under the Chatham House Rule. A record would be kept but it would not identify any individual complainant or individual judge.

Attendees shared their experiences of bullying behaviour:

* The Chair indicated that two experienced male QCs had written to her since the discussion was advertised with accounts of judicial bullying which they wished to keep confidential.

* A senior and experienced QC, who described herself as “robust”, recalled an instance in the Divisional Court. The presiding lord justice was intemperate right from the start, calling her skeleton “unreadable”, and continued all day to direct personal criticism at her, which she felt undermined her credibility with her client and called into question the fairness of the hearing. The junior member of the Court did nothing to attempt to rein in this behaviour and indeed smirked throughout. A member of her legal team came up to her afterwards and said: “He’s a misogynist.” A member of the public approached the QC after the hearing, unsolicited, and said the same. The QC left court feeling useless and hoping she would be run over by a bus on the way home. Consideration was given to raising a complaint about the fairness of the proceedings as a ground of appeal or by way of formal complaint. The QC decided not to take the former course because she did not want the court to lose sight of the substantive grounds of appeal. She did not feel able to make a formal complaint.

* A senior and experienced QC described an experience of appearing before a judge before whom she had never previously appeared. The judge was hostile and personally unpleasant to her throughout. She was left wondering why. Had she done something to offend the judge? Was there something about the way she presented the case that annoyed the judge? Was it gender-related?

* A senior and experienced QC said that a judge had acquired such a reputation for unpleasantness to counsel, and unreasonable demands on them, that members of the Bar considered it necessary to advise the judge about this. This worked for a period but the problem re-emerged and is widely commented upon at the Bar. Other participants confirmed this.

* A junior practitioner experienced an instance of bullying last year. The behaviour consisted of impatience to the point of irascibility and rudeness. The other counsel in the case noticed the behaviour and, unsolicited, asked whether there was a history of animosity between the practitioner and the judge (which there was not). The practitioner’s solicitor described the judge as having “shouted down” the practitioner.

* A junior practitioner expressed the view that bullying was a particular problem in direct access cases, which were often poorly prepared by litigants themselves. Direct access clients were likely to be more suspicious of the legal system and had no-one other than the barrister to explain what was happening to them. Intemperate or aggressive behaviour by the judge could make the client think, often wrongly, that they had cause for complaint about the barrister.

* A junior practitioner recounted an example of a case in the Court of Appeal in which they had been led by a QC. The case was a novel and difficult one. One member of the panel (no longer sitting) had shouted on many occasions, become red in the face, constantly interrupted the practitioner’s leader and made more than one comment on the professionalism of the leader in relation to the arguments advanced. The other judges did nothing to intervene or ameliorate the situation. The practitioner said that, even though led, the case left them with a lasting sense of shame, as they felt responsible for the way the case had been framed.

* An experienced junior practitioner recounted a case lasting several days in the Administrative Court (before a judge who still sits in that court). They described it as the most intensely shaming experience they had ever had in court. The judge was immediately angry, aggressive and dismissive of their arguments. The judge’s comments started to become personal. The practitioner did not feel they were being given the opportunity to present their arguments fairly. At one point, they had to ask for a pause in the proceedings. A member of the public came up to the practitioner unsolicited after the first day of the hearing and said: “I don’t know how you got through that”. The practitioner described the experience as “really, deeply affecting”. They did not think they would be able to get through the reply. They sought advice afterwards from a senior practitioner, who strongly advised them to make a formal complaint. They did not feel they could do so. They felt that judges have “unchecked power” and that it is ridiculous that we tolerate this kind of behaviour.

* A senior and experienced QC recounted an occasion in which a Supreme Court justice had humiliated a senior and respected QC, by expressing serious criticism of his advocacy skills.

The experiences shared suggest that:

* Judicial bullying is a real problem at all levels of the judiciary, including in the High Court and above and in courts including more than one judge.

* The effect on the practitioners who experience it can be serious. Bullying by judges takes place in public, in front of professional and lay clients and opponents. Practitioners who have experienced it describe intense feelings of humiliation and shame. Some have been profoundly affected by their experience.

* Bullying is reported by both male and female practitioners though some female practitioners have felt that (or at least question whether) misogyny has played a part.

* Bullying has an effect not only on the practitioners concerned but also on the perceived fairness of the proceedings. Practitioners have described unsolicited adverse comments on the fairness of the proceedings from members of their own legal teams, opponents and members of the public.

* Bullying behaviour may be hard to identify from a transcript, which does not pick up tone or sarcasm or body language.

* Although practitioners are aware that they can in principle complain to the JCIO, none of the participants had felt able to do so. Discussion at the meeting suggested that there were a number of factors explaining this, including:

* + concerns about whether they would be able to prove that the behaviour they experienced was inappropriate (given that the transcript might not demonstrate it)

* + concerns about the effect on the case, or other on-going cases before the judge in which the practitioner is instructed

* + not wishing to place others in the position of having to provide formal evidence

* + a perception that a complaint would affect the way the practitioner is viewed by the judiciary.

Participants agreed that ALBA (in conjunction with the Bar Council and other specialist bar associations) should take action to address the problem. In particular:

* The response of the senior judiciary to the Bar Council’s recent initiatives on bullying has been encouraging. ALBA should seek to use this climate of opportunity to engage further with the senior judiciary.

* There is scope for addressing the issue in written guidance to judges (for example in the Equal Treatment Bench Book).

* It is important that information about bullying should be included in the training given to judges and advocates.

* + Where the court consists of two or more judges, it should be emphasised that it is the duty of each judge (whatever his/her seniority) to ensure that bullying does not take place. This can be done subtly, e.g. by suggesting that it may be appropriate to take a short break.

* + Advocates would also benefit from training in techniques to use when bullying behaviour is experienced. It will normally be possible to diffuse the situation, for example by suggesting a “time out”, by publicly asking a member of the legal team to take a careful note of what is being said or by politely inviting the judge to reflect on the conduct of the hearing. Judges should be encouraged to be aware of the import of these formulations.

* Consideration should be given to the imposition of a professional duty on counsel to act in cases where behaviour by a judge towards another counsel in the case is inappropriate. In the vast majority of cases, informal action will suffice – e.g. in an appropriate case supporting an opponent’s request for “time out” or endorsing an opponent’s invitation to the court to reflect on the conduct of the hearing. When counsel witness another practitioner being subjected to bullying behaviour by a judge, participants considered that recognising it (e.g. by sending a note to the practitioner at the time or afterwards) can help to lessen the impact of the behaviour on the person who was subjected to it.

* Consideration should be given to mechanisms for investigating complaints of bullying in court, e.g. making transcripts available at public expense and/or videoing hearings. (Experience suggests that in hearings which are filmed, instances of bullying are rarer.)

* ALBA should consider whether it can (i) monitor whether there are persistent or repeated complaints against particular judges; and (ii) send a senior practitioner (and/or lay observers) to monitor judges against whom there are persistent complaints. If that were to be done, a protocol would have to be developed, after consultation with the senior judiciary, to make clear how data would be kept and to what use it might be put.

* ALBA should explore with the senior judiciary whether a channel could be opened to address issues about individual judges informally without the need for a formal complaint.

* ALBA should also consider whether it can do more to support practitioners who have experienced bullying – in the first instance by publicising the contact details of its welfare officer and chair (who are available to discuss individual cases confidentially).

**Martin Chamberlain QC**

*1 May 2019*