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## Investigating allegations of sexual misconduct in the workplace

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We enable progress and positive change

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### ibex gale: workplace investigations & organisational transformation



- Ateam of 40 highly accomplished investigators
- We undertake in the region of 200 workplace investigations each year
- 50% of our investigations carried out for NHS organisations
- The majority of the investigations we undertake are highly sensitive and complex
- We have particular expertise and experience of investigating sexual misconduct





#### Content of the session



- The current climate around sexual misconduct in healthcare
- Setting up the investigation
- Police involvement
- Dealing with historic complaints
- The importance of culture and context
- Collecting the evidence
- Assessing the evidence
- Multiple allegations or complainants
- Q&A







 In a 2021 BMA report, what percentage of women doctors had experienced sexism in the workplace?

#### 71% 81% 91%

91%



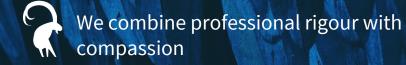




• What percentage of women in the report said they had been treated less favourably because of their gender?

#### 37% 47% 57%

47%



#### Quick Quiz



 How many said that they had experienced unwanted physical conduct?

#### 15% 27% 31%

31%







• The Royal College of Surgeons stated what percentage of female surgeons had reported harassment or sexist abuse?

#### 25% 30% 50%

50%



#### NHS Staff Survey



- The 2023 NHS Staff survey reports that 9% of people have personally experienced discrimination at work (in the last 12 months)
- It currently does not differentiate between types of discrimination
- This figure was 9% in 2021, 8.4% in 2020, 7.7% in 2019





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#### #MeTooin the NHS

Media reports of a #MeToo moment for the NHS with headlines such as:

- 'Boys club mentality in surgery' (The Times)
- 'Sexist culture on wards' (The Daily Mail)
- 'The NHS is not immune to sexual harassment' (The Guardian)
- 'Six NHS workers reported every week for sexually harassing patient or colleague' (The Telegraph)

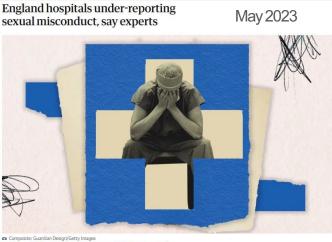
TIMES HEALTH COMMISSION

#### Sexist surgeons face their MeToo moment



Challenge prejudice and harassment, says royal college after 'boys' club' exposé





Exclusive: Guardian/BMJ investigation finds 35,600 incidents of violence and harassment, but researchers say 100,000 more are missing



#### Surviving in Scrubs

- A campaign launched to give a voice to those in healthcare to 'raise awareness and end sexism, sexual harassment, and sexual assault in healthcare'.
- It encourages people to submit their stories anonymously and they are published to create a narrative of shared experiences to push for change in healthcare.
- <u>https://survivinginscrubsorg.wordpress.com/the-</u> <u>campaign/</u>





SURVIVING IN SCRUBS Tackling misogyny in healthcare



#### Good Medical Practice (GMC Guide)

- April July 2022 the GMC ran a public consultation on proposed updates to Good Medical Practice (due in 2023).
- It proposed changes to four main areas one of which being 'Tackling discrimination and promoting fairness and inclusion', including:

'a duty not to abuse, discriminate against, bully, exploit, or harass anyone, or condone such behaviour by others'

• It is also strengthening its guidance on inappropriate sexual behaviour between colleagues.







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#### Other useful guidance



• Equality and Human Rights Commission (EHRC) Technical Guidance on Sexual Harassment and Harassment at Work

https://www.equalityhumanrights.com/en/publicationdownload/sexual-harassment-and-harassment-work-technicalguidance

• ACAS Guide to Conducting Workplace Investigations

https://www.acas.org.uk/acas-guide-to-conducting-workplaceinvestigations

• Sellers v The British Council [Employment Tribunal, November 2021]

https://assets.publishing.service.gov.uk/media/61dc4a41e90e070374304d 81/Mr P Sellers vs The British Council.pdf



#### Sexual Harassment – some key points



- Unwanted conduct of a sexual nature which has the purpose or effect of violating the complainant's dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
- When considering effect of unwanted conduct, take into account:
  - Complainant's perception (subjective)
  - Other circumstances of the case
  - Whether reasonable for the conduct to have that effect (objective)



#### Setting up the investigation



- Decide on appropriate policy / draft terms of reference
- Who is most appropriate to investigate?
- What do you tell the respondent?
- What if the complainant does not want an investigation?
- Consider suspension and alternatives
- Set/communicate target timescales
- Put in place support measures



#### **Police involvement**



- Consider possibility of Police involvement/ criminal offence
- Don'tassume you can't take action if Police involved
- Consider whether reasonable to proceed with investigation pending outcome of Police investigation or trial
- Review after the outcome of Police investigation / trial



#### Confidentiality and anonymity



- Confidentiality of particular importance in sexual misconduct cases
- Anonymity in exceptional cases only
- Consider measures to reassure/protect



The importance of culture and context



- Take account of the prevailing culture and previous behaviour
- Consider existence of power imbalances
- Has the alleged sexual misconduct occurred in the context of a personal friendship or intimate relationship?



#### Dealing with historic complaints



- Don't assume you won't be able to investigate but likely to be challenging
- Things to consider:
  - Try to nail down dates and times link with other events
  - Contemporaneous communications
  - Documentary evidence diary, messages like to be important
  - Consider speaking to former employees
  - Consider previous track record
- Be open to the possibility that you can't make a reliable finding



#### Conducting witness interviews

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- Think in advance about logistics of interviews
  - Face-to-face or remote
  - Multiple sessions
  - Right to be accompanied
  - Order of interviews
- Detailed preparation and interview notes of vital importance
- Be aware of the sensitivity of the subject matter



#### **Collecting evidence**



- Obtain detailed accounts of
  - Timeline of events
  - Behaviour / dialogue / movement
  - Atmosphere / emotions
- Be proactive in identifying potential witnesses and other evidence
- Establish details around the scene of the incident
- CCTV and audio/video recordings
- Evidence from criminal proceedings



#### Assessing the evidence



- 'Balance of probabilities' test
- Often one person's word against the other no obvious corroborating evidence
- Plausibility -- 'the quality of seeming reasonable or probable'
  - Is there anything to suggest that the person's account is not reasonable or probable?
- Credibility 'the quality of being believed or trusted'
  - Is there anything to indicate that the person's account is not worthy of trust or belief?



#### Assessing the evidence (cont.)



- Things you might want to consider:
  - The complainant's reaction (Fight / Flight / Freeze)
  - How did the parties behave immediately after the alleged incident?
  - Was the complainant distressed? (Did anyone see it?)
  - Did either party speak to anyone immediately after?
  - How did the parties interact / behave in the hours, days, weeks after the event?



Assessing the evidence (cont.)



- Things you might want to consider:
  - To what extent have recollections been affected?
  - Is there evidence of an ulterior motive for the allegation?
  - Is there any indication of past similar behaviour or complaints?
- Can you make a reliable finding?





#### Dealing with multiple allegations / complainants

- Consider each on its merits can you make reliable findings?
- If not, consider similarities in alleged behaviour
- Consider similarities / patterns of behaviour inc conclusions



#### Summary of key points



- Read the available guidance
- Be prepared to vary your approach
- Consider Police involvement
- Take account of the wider culture / context / circumstances
- Detail is crucial
- Think proactively about corroborating evidence
- Make sure you have a clear and objective rationale for findings



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