



ibex gale

Investigating allegations of
sexual misconduct in the workplace

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Our Brand Promises

**We combine professional rigour
with compassion**

**We are invested in your culture
and people**

**We enable progress and positive
change**

ibex gale: workplace investigations & organisational transformation



- A team 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



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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





Quick Quiz

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

71%

81%

91%

91%





Quick Quiz

- 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%





Quick Quiz

- 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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#MeToo in 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



England hospitals under-reporting sexual misconduct, say experts

May 2023



Composite: Guardian Design/Getty Images

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

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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.
- <https://survivinginscrubsorg.wordpress.com/the-campaign/>





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/publication-download/sexual-harassment-and-harassment-work-technical-guidance>

- ACAS Guide to Conducting Workplace Investigations

<https://www.acas.org.uk/acas-guide-to-conducting-workplace-investigations>

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

https://assets.publishing.service.gov.uk/media/61dc4a41e90e070374304d81/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't assume 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

- 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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