Peer learning event: Sexual safety in the workplace

Plenary presentation, sexual harassment – the new legal protections, Andrew Davison

Andrew outlined the current legal definitions of sexual harassment, emphasising that the law establishes this as the minimum standard of behaviour. He explained that sexual harassment occurs when:

1. Person A engages in unwanted conduct of a sexual nature; and
2. Conduct has the purpose or effect of violating person B's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for person B.

Key points for trust leaders to note included:

- As of 26 October 2024, employers have a duty to take "reasonable steps" to prevent sexual harassment towards their employees under the Worker Protection (Amendment of Equality Act 2010) Act 2023 (the Act).
- The government have also indicted that this will be extended further to stipulate the need for employers to take all reasonable steps to prevent sexual harassment towards employees, however there is not yet clarity on what this means in practice.
- Whilst the Act does not include third liability itself, the Equality and Human Rights Commission (EHRC), who will be enforcing the new duty, have said they will be extending to third parties. For trust leaders, this means there is an obligation to ensure your staff are not only protected from other employees but also third parties, including patients, visitors and contractors.

Andrew advised further amendments are anticipated as part of the Employment Rights Bill, but the current legal duties require a greater focus on the need to take preventative action and as a minimum these actions should include:

- Ensuring policies are up to date and fit for purpose with clear accountabilities and alignment with the NHS Sexual Safety Charter.

- Mandatory training which focuses on power imbalances and NHS-specific challenges (e.g. patients).
    - This training should be tailored to the diverse and intersectional experiences of staff, including women, ethnic minority, and LGBQ+ employees.
- Completion of risk assessments to help address the risk of third-party harassment.
- Establishment of effective reporting systems and support mechanisms.
- Fostering a safe culture with a focus on leadership role-modelling and regular monitoring.

The risk of inaction was stressed, alongside the recognition of the complex operating environment for many trusts. Trust leaders should be aware of the risk of financial penalties as a result of employment tribunals, reputational damage and staff dissatisfaction.

Reducing misogyny and improving sexual safety in the ambulance sector, Bron Biddle

Bron spoke to the work happening across the ambulance sector (11 organisations across the UK), drawing delegates' attention to three key publications developed as part of their Reducing Misogyny and Improving Sexual Safety in the Ambulance Service workstream, which launched in October 2023:

- What We Know (revised May 2024)
- A National Consensus Statement
- Next Steps

The ambulance sector has had several reviews that have highlighted the scale of the challenge in terms of addressing organisational culture within ambulance services and addressing sexual safety including the Melia Culture review of ambulance trusts and the National Guardian's Listening to workers review. Key reflections from these reviews include the interprofessional experiences of sexual safety and the relative infancy of Freedom to Speak Up within ambulance services due to its later adoption.

Alongside this has been the impact of media scrutiny related to sexual safety within the sector. However, whilst this has been challenging for the staff and difficult to navigate for organisations, it has shone a light on the scale of the issue, providing impetus and drive to move the sector to a more progressive and safer space.

Contact: Person name, Job title name.person@nhsproviders.org

Bron discussed the sector's shift in approach to measuring improvement, moving away from 'arbitrary' metrics, such as the number of cases and suspensions, and instead focussing on questions that promote reflection on barriers and enablers of improvement. Examples of the metrics being used include:

- How do you currently assess progress in the implementation of sexual safety initiatives within your organisation?
- Is the student voice actively involved in any working groups or initiatives focused on sexual safety? If so, how?
- How would you measure the effectiveness of partnership work with The University Partnership (TUP) in enhancing sexual safety within your organisation?
- How is sexual safety being addressed at board level, including in learning sessions and collective oversight of sexual safety as an identified risk?

Enablers in progressing sexual safety to date have been:

- For every ambulance board to undertake a challenging development session focused on sexual safety and cultural maturity, with all 11 ambulance trusts having undertaken this by August 2024. These sessions have enabled trust boards to take ownership of and lead the sexual safety workstream.
- Embedding Freedom to Speak Up / reporting processes that include options to eliminate hierarchy as a barrier and the option of anonymity.
- Professional standards and multidisciplinary team working groups.
- Strengthening partnership working through initiatives such as conversation cafes, though noting that partnership working with trade unions has also been challenging due to existing tensions within some relationships.
- The development of a, National Ambulance Sexual Safety Community of Practice and People Profession Programme that supports case-based learning, lived experience and risk management.
- Utilistation of external investigation services and using legal advice for complex cases.

In reflecting on the barriers to progress, common pitfalls not unique to ambulance services were highlighted, including:

- A disconnect between the board room and staff room.

Contact: Person name, Job title name.person@nhsproviders.org

- Introducing educational approaches that are not evidenced based, and the impact of the current societal narrative on equality, diversity, and inclusion.
- Poor leadership role modelling which is then mirrored by more junior staff, including middle and first line managers. This behaviour can create a cascading effect throughout the organisation, where the negative practices of senior leaders are mirrored by more junior staff. As a result, there is risk of perpetuation of detrimental behaviours such as lack of accountability, poor communication, and resistance to change.
- Failing to take the time to listen and understand concerns, leading to disproportionate responses that often result in silencing or dismissing those affected.
- Lack of nuance in thinking, focusing on perpetrators as 'bad apples' to be identified and removed, rather than more complex cultural issues that enable poor attitudes, behaviours, and beliefs (with reference to Angiolini sexual harassment pyramid).
- Overreliance on people teams, rather than fostering shared responsibility for sexual safety across the entire organisation.

Within the Q&A session, further guidance was sought on the following points:

- Whether there is a need for independent expertise when investigating allegations.
- How to manage counter claims and workplace resolution.
- Operational challenges to rolling out mandatory training to a dispersed workforce.
- The suitability of Datix for sexual harassment reporting.

Breakout discussion key themes

Delegates were invited to join breakout groups to discuss: 'What actions have you taken to address the changes in legal duties on employers within your organisation? and 'What would be most beneficial to you in terms of support?'

Leadership and accountability

Delegates discussed the critical role that the leadership plays in role modelling the desired values and behaviours, and in being an active bystander - calling out and challenging inappropriate behaviours as and when they happen, including from other senior leaders. There was recognition of the power imbalances inherent in medical roles, which can deter junior staff from raising complaints against senior colleagues. Emphasis was placed on the importance of leadership in role-modelling the right behaviours.

Contact: Person name, Job title name.person@nhsproviders.org

Board led actions included: commitment to the sexual safety charter; leadership of multi-professional and cross organisational working and steering groups; and participation in behaviour and values leadership groups. One trust shared they were refreshing their in-house leadership offer, with a strengthened focus on equality, diversity and inclusion, and inclusive leadership development, with bespoke content for executives and senior leadership.

Examples were provided of executive directors leading reviews within their own directorates to ensure local ownership and accountability, alongside trust-wide plans. Multiple organisations have established working groups, some of which incorporate the patient and public voice. These groups have taken a proactive role in conducting risk assessments.

The role of board members in governance and assurance processes was a common theme across trusts. In most cases, People and Culture Committees were responsible for oversight, though some examples showed the Quality and Safety Committee taking on this role. The frequency of board reporting varied: ambulance trusts tended to have more frequent discussions, while others were still in the process of establishing reporting structures, with some reporting only every six months.

One trust leader reflected on not being aware of the actions being taken by their board to address sexual safety and initially feeling exposed as an organisation. However, they reflected that as a leader, staff wellbeing should have been their primary concern.

The need for cross organisational collaboration

The role of Freedom to Speak Up (FTSU) was highlighted as crucial in supporting staff through the process of reporting sexual safety incidents. Many emphasised the role of the guardian in facilitating anonymised reporting and collaborating with them to update trust policies. However, there was also a clear call for consistency in how unacceptable behaviours are approached, irrespective of job title or status. Delegates shared their approaches to implementing the Sexual Safety Charter requirements in collaboration with safeguarding, people services, organisational development, and FTSU. This work involved adapting NHS England's template policy or reviewing existing policies, as well as aligning with ongoing workplans on bullying and harassment, Just Culture, and Civility Saves Lives, acknowledging the interconnectedness of these topics.

The role of comms and engagement as a key stakeholder was highlighted, both in developing trust-wide messaging on the behaviours and expectations of staff towards each other and in facilitating

Contact: Person name, Job title name.person@nhsproviders.org

engagement, to ensure staff feel interventions are fit for purpose. One example shared highlighted staff feedback that the focus on sexual harassment had been overshadowed within a broader policy. As a result, the approach was being re-evaluated following facilitated engagement.

Reporting mechanisms

There was widespread variation in approaches to reporting, with some trusts utilising FTSU for anonymised reporting, but with others feeling that this needed to go further. Multiple delegates reported concerns about being unable to act against serious allegations made through anonymised FTSU reporting and whether historical complaints should be time limited and would welcome consistency and guidance on this.

In response to an in-session poll on what delegates felt was the most practical way for a trust to ensure access to an effective anonymous reporting mechanism, 43% stated - engagement with a national system (similar to the NHS fraud reporting line), 35% of delegates stated provision of a separate mechanism by each trust, and 22% were undecided.

Data capture was identified as a key challenge, with a lack of robust mechanisms leading to assumed underreporting and poor data triangulation. This is partly due to the multiple reporting avenues available, such as HR, dignity champions, or anonymised FTSU channels. Several delegates highlighted the difficulty of reporting only thematically on anonymised FTSU reports, as well as the challenges in maintaining anonymity for the most serious cases. Datix was not considered to be an appropriate reporting tool due to the need to maintain confidentiality.

Measuring impact

Strengthening of existing bullying and harassment training appeared to be a more common approach. Delegates raised concerns that training can become an 'industry in itself', whilst others raised concerns that training felt like a tick box approach that lacked assurance of any impact. One trust reported a positive impact, measured through an increase in subsequent disclosures of sexual harassment, through enhanced safeguarding training which incorporated sexual misconduct and power imbalance and sexual exploitation.

Resourcing

Resourcing of initiatives varied widely with only a small number of organisations having a dedicated resource. Mental health and community trusts discussed having Sexual Safety Champions with

Contact: Person name, Job title name.person@nhsproviders.org

charters on bedded wards, which support messaging to patients and families on the behavioural expectations towards staff. Challenges were noted in relation to third party liability in prison services e.g. harassment of staff by prisoners due to the 'psychology of those who had already been stripped of their liberty'.

Most breakout groups discussed funding challenges related to resourcing, securing the right expertise, and developing training. A particular focus was placed on the need for independent investigators, which were seen as a valuable resource, due to a lack of internal expertise, capacity, and support. There was also recognition that some staff and students might feel more confident with external investigators. Some groups suggested partnering with other trusts within integrated care boards to support and investigate each other, aiming to reduce costs while maintaining effectiveness.

The ambulance sector's People Profession Programme also garnered interest with delegates requesting similar centralised support to assist them in making the workplace as safe as possible. There was positive feedback on the *Understanding sexual misconduct in the workplace* eLearning developed by NHS England but requests for the training support to go further in recognition of efficiencies of scale and a lack of local expertise as a barrier.

Learning from others

Delegates expressed that the ambulance sector's collaborative approach, particularly the creation of a 'community of practice,' was valuable, and they sought a similar platform to bring together resources, learning, and expertise. There were calls for greater sharing of local policies, with feedback suggesting that centrally developed template policies were often unwieldy and not easily accessible to staff.

Additionally, delegates emphasised the importance of transferring learnings from counter-fraud initiatives and embedding principles that prioritise the wellbeing of all staff involved in the process.

Summary of key priorities

Based on discussions, trust leaders would welcome support on the following areas.

- Guidance on whether historical complaints should be time limited.
- The establishment of a community of practice, with learnings taken from the ambulance sector.
- Development of further centralised resources including training, improved template policies and leadership guidance.

Contact: Person name, Job title name.person@nhsproviders.org

- Support for a national anonymised reporting line with 43% in favour and 22% undecided.

Contact: Person name, Job title name.person@nhsproviders.org