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BMJ INVESTIGATION

Harassment in the NHS: could the solution be the problem?

Settlement agreements were designed to resolve cases of harassment and misconduct, but their confidentiality means they might be inadvertently sustaining the problem, writes **Hina Belitz**

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Harassment and discrimination have been my daily work for over two decades as a partner and employment law solicitor. I advise on it, lead cases at court, and even train employers on how to manage and prevent harassment in the workplace.

Most sexual harassment complaints end in a settlement. This is both good and bad. Settlements resolve complaints but also sweep them under the proverbial carpet. In my career, I have reached two unsettling realisations. First, with every case I settle, the wider problem may continue unabated. Second, settlement not only makes the problem disappear but also hides it from the world. The result is that we are unaware of the real extent of the problem. Is the law rendered impotent by use of this resolution device? Are we unable to truly tackle and eradicate the problem?

These concerns were thrown into sharp relief when I was presented with *The BMJ*'s recent findings that there were over 35 000 sexual safety incidents at 212 NHS trusts in England between 2017 and 2022.¹ It became apparent that my fears might be founded and that the problem of sexual harassment and misconduct in the NHS and elsewhere is being sustained by the very tool designed to resolve it.

In my view, this alarming and widespread problem could be caused by a little known tool for resolving disputes in employment law—the settlement agreement. A settlement agreement is a statutory document designed to allow a person to give up their right to bring a claim against an employer in return for a settlement or pay-off. Anyone presented with a settlement agreement must obtain independent legal advice for it to be legally binding.

Settlement agreements are common but are somewhat secret in employment law, due to their confidential nature. They allow employers to present an offer (usually with a monetary incentive) that leads to the employee giving up claims, often also leaving employment and entering non-disclosure terms as part of the settlement agreement. Some claims, including criminal claims, cannot be waived, but others are settled and “hushed up” in a binding agreement.

The number of misconduct claims reported in healthcare indicates that claims are being settled before they become public. Settlements might therefore create a veil of secrecy that hides the true extent of the problem and hinders the scrutiny that should rightfully be applied to this serious and seemingly endemic problem in the NHS.

I am not anti-settlement agreement. They are a valuable tool that enables the resolution of otherwise corrosive, time-consuming disputes and avoids costly public hearings. Many victims of harassment think that their complaint is adequately dealt with through a financial settlement and want to avoid being hauled through a distressing employment tribunal process. But if the inadvertent effect of these settlements is a complete failure in our awareness of and ability to tackle incidents of harassment, this is unacceptable, and something must be done.

Settlement agreements are here to stay, so the urgent issue is how we can ensure that sexual misconduct in the medical profession is not hidden and enabled because of them. There are various solutions to this. Medicine seems to have found its own #MeToo movement in the form of Surviving in Scrubs—an online campaign by female doctors that raises awareness of and draws people's attention to sexual misconduct in the healthcare sector.² This is an area where work can be done, by ensuring that policies enable healthcare staff, especially those who are female or junior, to have constructive, open conversations with their managers.

Sexual harassment policies are essential but won't change behaviour on their own. They must be accompanied by strong leadership, training, and a clear awareness of the effects of harassment and misconduct. Workplace cultures can be a major contributor to positive change. Building a culture of zero tolerance of any form of sexual harassment or discrimination is the aim, but culture change is hard to achieve without a multifaceted approach that promotes support at all levels of an organisation.

Training, in my experience, is key to tackling these issues. NHS trusts should implement training for staff at all levels to ensure that they understand what constitutes workplace sexual harassment. The training courses I run result in measurable improvements in complaints by ensuring a clear understanding of unacceptable standards of behaviour ranging from “banter” to sexually aggressive conduct. The courses also highlight the potentially extreme negative ramifications of any failure to comply with these standards.

A further step would be the active discipline and mentoring of harassers even when the allegations are resolved under a settlement agreement. Legally, in a similar vein, we are seeing a movement away from non-disclosure clauses in settlement agreements in connection with sexual misconduct. Although

these agreements provide finality to the parties involved, their confidential nature has clearly allowed perpetrators to avoid accountability for too long.

Competing interests: HB is an employment law solicitor who provides independent advice to employees who are presented with settlement agreements and advises companies and employers about drafting settlement agreements for employees.

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- 1 Torjesen I, Waters A. Medical colleges and unions call for inquiry over “shocking” levels of sexual assault in the NHS. *BMJ* 2023;381:. doi: 10.1136/bmj.p1105 pmid: 37220947
- 2 Surviving in Scrubs. The campaign. <https://survivinginscrubs.org.wordpress.com/the-campaign/>