



# Shared Insights

## Sexual safety in the workplace: How leaders can help to create a sexual safety culture

Bron Biddle, Programme Lead – Association of Ambulance Chief Executives and Founder of Ambulance Voices.

Jacqui Atkinson, Head of Employment Healthcare – Browne Jacobson

Helen Rideout, Partner – Browne Jacobson

Carl May-Smith, Partner (Barrister) – Browne Jacobson

Chair Helen Badger, Partner – Browne Jacobson

5 March 2024

**Browne  
Jacobson**

### Introduction

We were delighted to welcome our panel of speakers:

Bron Biddle, Programme Lead – Association of Ambulance Chief Executives and Founder of Ambulance Voices

Jacqui Atkinson, Head of Employment Healthcare – Browne Jacobson

Helen Rideout, Partner – Browne Jacobson

Carl May-Smith, Partner (Barrister) – Browne Jacobson

The session was chaired by Helen Badger – Browne Jacobson

Helen is a Partner in the Healthcare Employment team, advising clients in public and independent health and care.

She explained that with harrowing stories of workplace abuse and harassment continuing to rise, the panel would discuss:

- The journey towards a change in culture
- Responding to complaints of sexual harassment
- Managing overlapping police investigations
- Civil claims and vicarious liability



**Helen Badger**  
Partner

+44 (0)121 237 4554  
helen.badger  
@brownejacobson.com

# How leaders can help to create a sexual safety culture

**Bron Biddle,  
Programme Lead  
– Association of  
Ambulance Chief  
Executives and  
Founder of  
Ambulance  
Voices**

## Introduction

Bron talked about her work with the Association of Ambulance Chief Executives as well with the Welsh Ambulance Service and a campaign called Ambulance Voices.

The AACE is to lead a programme of work aimed at reducing misogyny and improving sexual safety in the ambulance service. The programme

1. Is evidence based looking at literature and what is happening elsewhere in this context e.g. in Australia
2. Includes a consensus statement from all Chief Executives and Chairs of ambulance services committing to long term approach to address these issues and
3. Considers 'what next?', suggesting interventions and making evidence based recommendations for steps organisations can take to effectively reduce these problems.

A number of years ago the CQC asked questions of the ambulance service addressing sexual misconduct themes and escalating behaviours in emergency services. This was scrutinised at a parliamentary level. In February 2023 the National Guardians Office published a report reviewing England's speak up culture in ambulance trusts ([click here to read](#)). This was a collaborative process with many stakeholders, and the publications [Reducing Misogyny and Improving Sexual Safety in the Ambulance Service - aace.org.uk](#) were launched in October 2023.

## Commitment to long term culture transformation

Bron described that she continues to come across quite a lot of resistance to even having the conversation around sexual safety. The language used to discuss these issues can be problematic, with phrases like "stamping it out" and "zero tolerance" being masculine in tone and potentially eroding trust and shutting down space for learning and change.

An objective to "stamp out" misogyny, sexual harassment and misconduct doesn't work. Instead, an organisation should look behind those phrases and ask themselves how they intend to stamp it out. There is then a realisation that this starts with responding appropriately to concerns that are raised and organisations should ask themselves why they aren't doing that anyway. This is likely because of systemic barriers and ingrained attitudes. This sort of language ignores the nuances and the fact violent behaviour sits on the same continuum of accepted norms, including humour.

Bron emphasised the importance of empowering staff to feel safe to talk about these issues and noted that culture change does not happen overnight.

# How leaders can help to create a sexual safety culture

**Bron Biddle,  
Programme Lead  
– Association of  
Ambulance Chief  
Executives and  
Founder of  
Ambulance  
Voices**

## Understanding resistance

In recent years, language surrounding culture change, particularly around themes of gender equality, has been absorbed into the political weather.

The growth of tech companies and social media in particular has been unprecedented so all of a sudden we find ourselves in a new age of communication and sadly an angle of this is online polarisation. Ideas are filtered through algorithms, and we become isolated with like minded others which creates a powerful echo chamber of consistent messaging and validation.

Assumptions are made that the implication is that all men are bad, but this is not true. Misogyny harms men as well, but the data shows that sexual misconduct is an issue which disproportionately affects women in the context of safety. The protection of “banter” and the use of words like “woke” and snowflake” can make it difficult to have the conversation, meaning it is sometimes felt easier not to have it at all.

Instead, managers and organisations should lean into those voices and focus on what this work has set out to do in the first place, which is reducing misogyny and improving public safety. Policies and guiding principles regarding new language and frameworks are important, but they won't change behaviour or how people think.

To address these issues:

- Ask questions if you want to find some of the answers.
- Start to grow related data - what gets measured gets done.
- Ensure there is a bypass to line management for reporting - in different reports, this has been seen as an intervention that works.
- Question disciplinary panels' fitness for purpose.
- Nourish engagement with anyone who is speaking up and give them a voice around the table.
- Don't assume boards don't need development.
- Think broadly about what is happening beyond our control, including online and externally.

## Key take away

Stop stamping it out and start listening.

# The employment law perspective - practical steps when a concern arises

Jacqui Atkinson,  
Head of  
Employment  
Healthcare –  
Browne  
Jacobson

Since NHS England published the [Sexual Safety Charter](#) in September 2023, we have seen an increase of issues being raised. They are complex and require sensitivity and focus.

## When a concern arises

- Think about what you are going to do to deal with it
- Ensure that people understand the policy framework including Freedom to Speak Up (FS2U)/Raising Concerns and Dignity at Work policies
- [National Guardians' office best practice guidelines](#) are helpful to undertake that journey
- Ensure individuals know what they are getting into before starting a formal process
- Informal resolution may work in some cases

For serious matters, you will need to think about:

- a) Is it a police matter? If not:
- b) who is going to investigate; and
- c) how will it be investigated?

Whilst it might be tempting to investigate in house, consider:

- The sensitivity of the subject to the person raising the concern and the subject of the concern and whether you have the right person to deal with the issues – not just a person;
- Do you have the experience, skill and capacity internally to deal with it?
- If not:
  - Should you invest in some training for the individuals.
  - Consider investing upfront in training/learning that you can carry forward into any subsequent investigations.
  - Who do you need to involve internally, who is in your network
- Do you need to talk to an external authority?

## What happens during the process

Give some thought to what you will do if an individual resigns before the investigation is complete, taking into account:

- Your regulatory duty. The FS2U duty is to investigate thoroughly
- Is it your duty to continue the investigation?
- Should the matter be heard in someone's absence?
- If this is a senior individual, consider the impact of the FPPR regulations (click [here](#) for more information on this).

If staff have long since left, under the spirit of FS2U and FPPR it is better to listen and do your very best to respond. There is no limitation period for reporting concerns under FS2U or FPPR. It's more likely than not that you will want to respond even if an individual has left.

The GMC Guidance [Good medical practice - professional standards](#) was updated in January 2024 and there's a new 'must' paragraph for doctors with formal leadership or management roles - they must 'take active steps to create an environment in which people can talk about errors and concerns safely' (paragraph 76). [Creating respectful fair and compassionate workplaces - GMC \(gmc-uk.org\)](#)

## Key take aways

- Be ready to respond to sensitive concerns in a timely way
- Be ready to investigate formally
- Have internal/external resources to train your staff or investigate
- Think about policies and procedures
- Consider your stance if individuals resign during the investigation and how to conclude if they resign with immediate effect.



**Jacqui Atkinson**  
Head of Employment Healthcare

+44 (0)330 045 2547  
jacqui.atkinson  
@brownejacobson.com

# The civil claims perspective

Helen Rideout,  
Partner –  
Browne  
Jacobson

Helen is a Partner and has over 20 years experience defending high worth civil liability claims for her clients. Helen specialises in claims which have a care and health crossover and supports her clients through their most complex and sensitive claims.

## Civil claims

Starting with the figures

- nearly 1/5<sup>th</sup> of English Trusts have recorded a rise in reports of sexual harassment within their service since 2017.
- Compensation payments totalled more than £45M for physical and sexual assaults and violence on NHS premises in England for between 2017 to 2022– this includes staff and patients as the perpetrators.
- The legal costs associated were £83M.
- These include assaults which do not involve a sexual element, but it does show these incidents are increasing in number and at a huge cost to the victim and the service.

## So what happens if a sexual assault has occurred? Getting involved in an investigation

- For colleagues who are in your organisation's legal team and for anyone who might be the manager of a team or responsible for people – why might you be asked to contribute to an investigation into a civil claim for compensation when the perpetrator has admitted they assaulted a work colleague – there might even be a criminal conviction or a guilty pleading.
- An organisation might still be held responsible for the wrongdoing of an individual.
- This comes down to the principle of vicarious liability (VL). It's odd in many respects as it has no relation to the organisation being at fault – it's a form of strict liability on the employer.
- However, the first question for any claim will be **did the assault happen and did it happen as alleged?**

- If there is an admission or a criminal conviction against the perpetrator then for liability, there is really no need to revisit the happening of the incident and we make this decision as early as we can to signal to the victim that their account will not be questioned.
- We have taken this approach all the way to trial and the decision was commended by the trial Judge.

## Vicarious liability

After that, we turn to vicarious liability, which can hold an employer responsible for the wrongdoing of an employee. This has 2 limbs:

- The relationship has to be **akin to employment** – this relationship must be present, so we have to consider independent enterprises vs a relationship akin to employment – 'akin to employment' has developed to reflect the 21<sup>st</sup> Century and there does not have to be a traditional 'paid for' employment role

### [Cox v Ministry of Justice \[2016\] – leading decision](#)

- Perpetrator worked in prison kitchen but not employed – was an inmate and injured a member of the kitchen staff
  - Doesn't need to be a commercial enterprise – activities that further the 'employer's' interests will suffice;
  - 'Employee' prisoners working under direction of prison staff; and work was of benefit to prison
- Distinction is:
  - Work done for employer as part of their 'business'; or
  - Work done by independent contractor as part of business of contractor.

# The civil claims perspective (continued)

Helen Rideout,  
Partner –  
Browne  
Jacobson

The first limb is relatively easy to consider as we have a lot of guidance. The second limb is where, even with an admission or conviction, we have to look at the facts – and that's **the close connection test**.

**Was the wrongful act carried out in course of employment or so closely connected to employment that it's fair to impose VL on employer? Or were they on a frolic of their own/acting for their own ends/independent personal venture?**

- We've had lots of guidance from the courts on this and the starting point is that just being proximate in time and place to the workplace is not sufficient - Important to look at the cases of *Bazley* (link below) and [Lister and Catholic Child Welfare Society \(Christian Brothers case\)](#)

[Bazley v Curry, \[1999\] 2 SCR 534 - 03-13-2018 \(lawcasesummaries.com\)](#) – Canadian case and the origin of the second sufficiently close connection limb (sexual abuse of children in a residential care setting)

- *The employment must 'materially enhance' the risk*

See also [Trustees of the Barry Congregation of Jehovah's Witnesses \(Appellant\) v BXB \(Respondent\) - The Supreme Court](#)

With the question whether the role/roles materially enhance the risk – consider

- The dynamics of the people involved – positions of trust
- The need for interaction and on what basis do they interact
- Inequality of seniority
- Vulnerability – positions of power

We have had a number of successful outcomes where there has been a conviction/guilty pleading but where a claimant has not been able to satisfy the close connection test.

## What does this mean for the victim of the assault?

There is an alternative route to compensation - a victim of a crime can be supported to apply for compensation through the Criminal Injuries compensation scheme which compensates victims of crimes of violence.

<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>

<https://www.gov.uk/claim-compensation-criminal-injury>

They can also pursue the perpetrator directly. This is more likely if there is a conviction and the perpetrator has means to pay.

## Key take away

By its nature, a claim from a victim of a sexual assault is challenging and we put that at the heart of the handling of the case, but a defence can be maintained whilst dealing with the claim sensitively and with empathy.



**Helen Rideout**  
Partner

+44 (0)115 976 6291  
helen.rideout  
@brownejacobson.com

# The regulatory perspective

**Carl May-Smith,  
Partner  
(Barrister) –  
Browne  
Jacobson**

---

Carl is a Partner in our Criminal, Compliance and Regulatory team and specialises in criminal and regulatory matters affecting health and care providers

## The importance of staff welfare to the CQC

Staff welfare is crucial generally but its importance to CQC in assessing how likely care is to be good cannot be overemphasised. A direct line is drawn between the two.

The concept of having fit and proper persons employed generally is equally important to fit and proper person director requirements, which often receive more focus..

## Dealing with allegations during an ongoing police investigation

This can be a challenge. Often, the first reaction of the police is to say that all other investigations must stop and communication must stop due to concerns about prejudicing the investigation. This can create difficulties and lengthy periods of paid suspension as well as delays in resolving matters for victims.

However, engaging with the police and keeping an open line of communication can lead to more progress being made. Often part of the reason for the police taking this stance is due to a lack of understanding of the process and the providers reasons for wanting to progress matters..

Organisations should be a little challenging with the police if it is said that nothing can be done. Your investigation doesn't have to cover every detail that a police investigation does; from a disciplinary perspective you can often move that process on significantly which is in everybody's interest.

## Second hand allegations by third parties

It can sometimes be difficult to get an eyewitness or victim to substantiate an allegation, and there was a tendency in the past to think that nothing can be done if no individual can substantiate what has been alleged.

However, with determination to progress these things, quite often, those who were unwilling to get involved at the start will become willing later on. It is difficult to have a general rule and organisations must strike a balance between confidentiality and protecting other individuals.

## Key take aways

Be robust – with the police and with difficult investigations. It can deliver results that may surprise you.



**Carl May-Smith**  
Partner (Barrister)

+44 (0)115 934 2024  
carl.may-smith  
@brownejacobson.com

# Discussion

We discussed a number of issues including:

**How to help those who might be first port of call** – how do we enable the rest of the actions to flow through the other roles?

Those people impacted by the continuum of behaviours relating to sexual safety are often quite shocked and will go over and over what has happened in their head. Speaking to someone completely objective is helpful. We should not neglect the emotional impact on individuals. There are many free resources available including:

[Understanding Resistance \(aacesite.s3.eu-west-2.amazonaws.com\)](https://aacesite.s3.eu-west-2.amazonaws.com)

[Reducing misogyny and improving sexual safety in the ambulance service - TASC's official podcast](#) | [Podcast on Spotify](#)

Bron provided a helpful list of **5 steps for managers if a concern of a sexual nature is raised**

1. Start from a place of believing, ensure colleague reporting is safe and identify if there may be a risk to others.
2. If an immediate risk is identified, notify the Safeguarding Team who will advise further.
3. Where possible, ask for a written statement of events to ensure you have an accurate description of their account.
4. Speak to your People Services Advisor for support with an initial assessment (fact finding and providing an opportunity to the alleged perpetrator to respond).
5. Offer wellbeing support to the colleague speaking up and to the alleged perpetrator.

Wellbeing support is also available to you, recognising how difficult these situations can be.

Bron also urged people to read the [Reports – The Angiolini Inquiry](#) which contains important learning in the context of how Wayne Couzens was able to do what he did and the red flags that were missed by his employers.

## Mitigating risks if an organisation wants to investigate but it breaches confidentiality

For example, where an employee reports sexual misconduct but says they do not want any action. This is always a difficult situation because you have information that you can't 'unknow' and you need to protect your employees. Skilled and sensitive conversations, where you explain what the process will look like if taken forward and how the worker will be supported may encourage an individual to take action. Being able to evidence a cultural shift in which complaints are taken seriously and handled sensitively will help. Consider cultural reviews as opposed to investigation of individual complaints – if workers know that someone has spoken up, they may be willing to come forward with their own experiences.

## What about volunteers?

To create a sexually and psychologically safe environment, treat concerns raised by volunteers as seriously as those of employees.

In terms of vicarious liability if a volunteer is the perpetrator, this will come down to the detail of the individual case and how integrated into the business they are and how the individual was furthering the organisation.

## Changing the culture

Training is key for individuals who investigate and make decisions to make sure culture does improve. Sometimes senior staff dismiss concerns because they simply cannot believe it has happened.

Where it is one person's version of events against another's, be more curious about what has happened, and the surrounding circumstances, e.g. can you find out how they were immediately afterwards.

There is a common perception that "only bad people do bad things". Active bystander training can help disrupt this thinking.



# How we can help

## Resources

### How we can help

We can help you navigate these complex issues in a number of ways:

- Awareness training aimed at helping workers to identify inappropriate behaviour, respond in the moment and escalate as appropriate
- Training for boards and senior managers on their responsibilities as leaders to influence the culture of the organisation
- Support when concerns are raised, including investigations, development of terms of reference, managing engagement with regulators, the police and other outside agencies
- Advising on the impact of the Fit and Proper Persons Regulations when issues impact on board members, including board member references
- Advice on the duty of candour
- Advice on managing overlapping police enquiries and requests for disclosure
- Responding to critical incidents
- Understanding the CQC's expectations and preparing for scrutiny
- Challenging CQC inspection report and enforcement action
- Advice on early notification of a claim and requests for disclosure under the Civil Procedure Rules or GDPR (Subject Access Request)
- Advice on how to navigate investigations and the response to a civil claim with a criminal or CQC prosecution pending
- Supporting a joined up approach to the various strands of a criminal, safeguarding, regulatory and claims investigation and your responses
- Supporting witnesses provide evidence in response to a claim
- Liaising with your PR teams or providing you with external PR support to help with press interest and reputational concerns

### Resources

Here is a round up of the resources in this note

National Guardians Office report reviewing England's speak up culture in ambulance trusts ([click here to read](#)).

[Reducing Misogyny and Improving Sexual Safety in the Ambulance Service - aace.org.uk](#)

[Understanding Resistance \(aacesite.s3.eu-west-2.amazonaws.com\)](#)

[Written evidence from the Association of Ambulance Chief Executives for the Women & Equalities Committee with input from The Ambulance Staff Charity](#)

[Reducing misogyny and improving sexual safety in the ambulance service - TASC's official podcast | Podcast on Spotify](#)

[Reports – The Angiolini Inquiry](#)

NHS England [Sexual Safety Charter](#)

[National Guardians' office best practice guidelines](#)

More information on the impact of the FPPR regulations (click [here](#))

GMC Guidance [Good medical practice - professional standards](#) updated in January 2024

[Creating respectful fair and compassionate workplaces - GMC \(gmc-uk.org\)](#)

<https://www.gov.uk/guidance/criminal-injuries-compensation-a-guide>

<https://www.gov.uk/claim-compensation-criminal-injury>

---

# Contact us



**Lorna Hardman**

Partner

+44 (0)115 976 6228  
lorna.hardman  
@brownejacobson.com



**Simon Tait**

Partner

+44 (0)115 976 6559  
simon.tait  
@brownejacobson.com



**Nicola Evans**

Partner

+44 (0)330 045 2962  
nicola.evans  
@brownejacobson.com



**Helen Badger**

Partner

+44 (0)121 237 4554 helen.badger  
@brownejacobson.com



**Helen Rideout**

Partner

+44 (0)115 976 6291 helen.rideout  
@brownejacobson.com



**Jacqui Atkinson**

Head of Employment  
Healthcare

+44 (0)3300452547 jacqui.atkinson  
@brownejacobson.com



**Carl May-Smith**

Partner (Barrister)

+44 (0)115 934 2024  
carl.may-smith  
@brownejacobson.com

---

**brownejacobson.com**

**+44 (0)370 270 6000**

Please note:

The information contained in this document is correct as of the original date of publication.

The information and opinions expressed in this document are no substitute for full legal advice, it is for guidance only.

[2024] ©

**Browne  
Jacobson**

Browne Jacobson is the brand name under which Browne Jacobson LLP and Browne Jacobson Ireland LLP provide legal and other services to clients. The use of the name “Browne Jacobson” and words or phrases such as “firm” is for convenience only and does not imply that such entities are in partnership together or accept responsibility for acts or omissions of each other. Legal responsibility for the provision of services to clients is defined in engagement terms entered into between clients and the relevant Browne Jacobson entity. Unless the explicit agreement of both Browne Jacobson LLP and Browne Jacobson Ireland LLP has been obtained, neither Browne Jacobson entity is responsible for the acts or omissions of, nor has any authority to obligate or otherwise bind, the other entity.