

# BMJ raises concerns over 'outlawed' gagging clauses in NHS contracts

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Despite government outlawing of gagging clauses in NHS contracts, new evidence published in the British Medical Journal today reveals how some trusts have continued to use them.

The first case relates to a dispute between Liverpool Women's NHS Foundation Trust and Peter Bousfield, a long serving consultant, who was offered early [retirement](#) and a termination payment after he had raised a series of concerns about patient safety.

Documents have come to light showing that not only was a non-disclosure clause incorporated into the compromise agreement at the behest of the trust, contrary to NHS guidance, but the trust's solicitors also threatened Mr Bousfield with a court injunction if he tried to bring matters to the attention of local members of parliament.

The second case highlights issues surrounding doctors who leave trusts "under a cloud" with gagging clauses made in their favour, making it difficult for future employers to find out what went wrong and leaving them free to repeat their behaviour. The *BMJ* hears how a concerned medical colleague who tried to report a consultant to the General Medical Council got into trouble for breaching the gagging clause.

Gagging clauses have been specifically prohibited in NHS employment contracts since before the Public Interest Disclosure Act was passed in 1998, and this position was reinforced in August 1999 when the Department of Health issued guidance on whistleblowing. The British

Medical Association (BMA) also has whistleblowing guidance and a helpline for hospital staff.

Yet despite this, there is some suggestion that these are not isolated cases. For example, Public Concern at Work says "we are hearing anecdotally that these compromise agreements are being done with quite blatant clauses in them, whereby people are being paid a specific amount extra not to say anything."

And at a recent House of Commons debate, William Cash, MP said: "there are whistleblowers, but they are terrified to come forward. The reality is that devices are being employed by certain hospitals and hospital authorities to bypass the 1998 Act."

In an accompanying commentary, Dr Mark Porter, Chairman of the BMA Consultants' Committee says: "our fundamental responsibility is to provide care of the highest possible quality to our patients and do all we can to guarantee their safety - no matter what obligations we have to any other parties, including our employers."

According to a recent BMA survey, around 1 in 7 hospital doctors in England and Wales who reported concerns said that their trusts had indicated that by speaking up, their employment could be negatively affected.

"To say there are no circumstances in which a concern for patient safety can be raised outside the organisation, or to attempt to enforce silence through a contractual mechanism, is appalling," he writes.

Source: [British Medical Journal](#) ([news](#) : [web](#))

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