

## People

### Why conduct and culture at work matters more than ever

**Marian Bloodworth, an employment partner at law firm Kemp Little LLP, offers some tips for gambling firms to “get their houses in order”**

Contributor | 15 February 2019



For sectors like financial services, conduct and culture has been under the spotlight for some time, given the FCA's drive to improve and increase individual accountability and better alignment of risk and reward. However, it has become very clear in the last 12-18 months that other sectors have just as many issues to contend with, as the Miramax/Harvey Weinstein and now Arcadia/ Sir Philip Green situations bear witness. It is safe to say these will not be the only businesses forced to take a close look at their internal values and cultures and the way in which they deal with complaints of harassment and discrimination.

The gambling industry is increasingly realising the importance of diversity – welcome changes at this year's ICE 2019 Totally Gaming expo included both a Diversity & Inclusion Day run by The All-in Diversity Project, Women in Gaming & Global Gaming Women, and an absence of pole-dancers. But this is just a start. Diversity is not just about gender, though gender pay gap reporting makes this easier to measure. It's also about age, ethnicity, background, opinions and so on. And critically, diversity alone is not enough: there must also be inclusion, and equality.

Getting it right can only help improve the industry's reputation – and certainly getting it wrong will damage the industry at a time when it is working hard to regain public trust and confidence. It also makes commercial sense: diversity and inclusion can help with staff retention, improve commitment, and enhance innovation – and the Commission believes it leads to a better understanding of consumer behaviour, greater openness to new ideas, and a safer consumer environment.

### **Government and political interest in culture and conduct**

Employers should take heed of steps being taken at government and cross-political party level to address workplace conduct and inequalities, which will impact the gambling industry like any other. The Women and Equalities Committee (WESC) enquiry into sexual harassment in the workplace in 2018 brought into public debate the use of confidentiality clauses in settlement agreements (NDAs for short) to resolve disputes involving allegations of sexual harassment. The Committee subsequently made a number of recommendations regarding the use of NDAs, and the Government has committed to reviewing their use given the concern that they facilitate the covering up of unacceptable behaviour. Separately the Gambling Commission has already issued a warning notice to the industry about using customer NDAs to prevent disclosure to the Commission or other regulators: similar principles may be expected to apply to NDAs with staff.

In the meantime, the WESC has launched another enquiry into the use of NDAs generally in settling complaints of discrimination and harassment and is currently taking evidence with its report and recommendations expected later this year. In a separate step, the Government is consulting on proposals to extend redundancy protections for women who are pregnant or returning from maternity leave. It has also committed to reviewing the potential extension of time periods for bringing tribunal claims for maternity and sex discrimination from 3 months to 6 months, given the difficulties the current time limit can present to those looking to bring such claims.

There have been calls on some fronts for NDAs to be banned altogether when businesses settle discrimination and harassment claims. Various organisations representing employees have suggested this could be counter-productive, and accept that in some cases a degree of confidentiality about the settlement may be desirable for both parties. However, employers should consider what any kind of

limitation on the use of NDAs would mean for their business, given that this is likely to result in allegations being more widely discussed amongst the workforce, with all the associated issues this would present.

### **What should the gambling sector be doing now?**

Employees, their representatives and potential job recruits will be looking to employers to ensure that their houses are in order. Businesses and their Boards now need to be more aware of the issues that poor workplace culture and present, from both a reputational and financial risk perspective.

Some steps to take could include:

- an audit of recent internal grievances/complaints of discrimination and harassment, including a review of how these were handled and resolved, why the issues in dispute arose, and any pattern of serial offending by certain individuals
- an audit of recent settlement agreements, including the terms
- an honest look at the internal culture – how confident is the firm that good workplace practices are being encouraged and supported?
- training for all staff – including those in line management positions, and separately, those tasked with internal grievance investigations
- ensuring the risk of discrimination and harassment allegations is included as a standing item on internal risk registers and Board agendas

Prevention is always better than cure, and the more that businesses can do now to avoid conduct issues arising in the first place, the less likely they are to be adversely impacted by any legislative changes that may arise in future.

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