

Consultant surgeon wins whistleblowing case against the Care Quality Commission

BMJ 2022; 378 doi: <https://doi.org/10.1136/bmj.o2187> (Published 07 September 2022) Cite this as: *BMJ*2022;378:o2187

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1. [Clare Dyer](#)
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A consultant orthopaedic surgeon has won a whistleblowing case against the Care Quality Commission (CQC), which sacked him as a part time specialist adviser in surgery after he raised patient safety concerns.

Shyam Kumar, who held a secondment contract with the health regulator from 2014 until he was “disengaged” in February 2019, was supported by the BMA in bringing the claim.

The Manchester employment tribunal¹ held that Kumar, who has worked as a surgeon with University Hospitals of Morecambe Bay NHS Foundation Trust since 2011, was sacked from the CQC as a result of whistleblowing disclosures he made to it. These were mainly made to Mike Zeiderman, the CQC’s national professional adviser for surgical services, and raised a range of problems, including the regulator’s failure to tackle whistleblowers’ concerns and unsafe methodology including a lack of specialisms among inspectors.

Other matters raised included the use of some non-consultant grade doctors at the Morecambe Bay trust without supervision.

Several disclosures related to clinical concerns about “Dr X,” an associate specialist at the trust, which Kumar feared the trust was trying to “sweep under the carpet.” A number of consultants had met and decided that the matter should be raised with the trust’s medical director. The matters were later investigated both internally and externally, with findings that supported the concerns. Employment judge Mark Butler wrote in the judgment, “Kumar’s concerns and those of the other consultants were found to be justified.” A Royal College of Surgeons review highlighted concerns in 26 out of 46 cases investigated.

In November 2018 a CQC inspection took place at the Morecambe Bay trust. During a focus group meeting, a non-consultant grade doctor, who had previously been an outspoken critic of Kumar, made allegations about his probity. After Kumar wrote to

him setting out his concerns and proposing steps for resolution, the doctor told Kim Wood, a local CQC inspector, that he felt bullied and intimidated.

Following a telephone conversation between Wood and Zeiderman, in which she said she was concerned that Kumar was using his position to bully and intimidate colleagues, Zeiderman decided to terminate his contract. Asked for further information on the reasons for termination, he wrote, "Apparently Mr Kumar has been using his position with CQC to manipulate colleagues. In addition, he has been involved with a group of consultants trying to get their trust to stop using associate specialists as independent practitioners and has been using his position with CQC inappropriately."

After Kumar objected that the decision had been reached without taking account of his reply, he was told it was now based on only one allegation, obtaining information from the focus group and challenging a colleague in relation to his focus group contribution. This was "not in line with the expected behaviours and values of a CQC specialist adviser," he was told.

The tribunal found, however, that the emails to Zeiderman where Kumar raised concerns about associate specialists were part of the decision making process and the reasons underpinning the decision. Kumar's whistleblowing disclosures had a material influence on the decision to sack him, the tribunal held.

Kumar made no claim for pecuniary losses but sought a declaration in his favour and damages for injury to feelings, for which he was awarded £23 000. Butler said Kumar's loss was the damage to his reputation, against the backdrop of an untarnished reputation with both the trust and the CQC at the time the decision was taken to sack him.

Kumar told *The BMJ* that he was "a happy employee" of the trust and that its orthopaedic services were highly regarded. He added, "The callousness by which the CQC officials disengaged me made me feel morally wronged. I took the decision to challenge the CQC to be vindicated and also to hold the high and mighty to account." Philip Banfield, the BMA council's chair, said, "It is paramount that doctors are able to raise safety concerns without fear of recriminations or backlash from employers. This judgment clearly underlines the fundamental need to protect whistleblowers and is a significant legal victory that the BMA is proud to have supported."

The CQC's chief executive, Ian Trenholm, said the regulator accepted the tribunal's findings and recognised that the process was handled poorly. "Since 2019, we have strengthened our processes around the use of specialist advisers and, in line with the findings of the tribunal, will further be improving procedures for disengagement, including adding a right of appeal process."

References

1. [↩](https://www.gov.uk/employment-tribunal-decisions/dr-s-kumar-v-the-care-quality-commission-2410174-2019)
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