

BY EMAIL

Kwasi Kwarteng
Secretary of State for Business, Energy and Industrial Strategy

6 September 2022

Dear Mr Kwarteng,

Re: Serious failure of the Prescribed Person model under UK whistleblowing law

The Prescribed Person system has never worked well since its introduction. The disparate assortment of organisations with and without regulatory power who were designated as Prescribed Persons [do not carry out the role in a uniform way and some even seem unaware that they were Prescribed Persons.](#)

The legal duties of Prescribed Persons are still minimal despite a revision of the law. All Prescribed Persons do is record whistleblowing disclosures received and latterly they have published summary data on this activity. They are not even under any legal duty to protect whistleblowers.

Regulators who are Prescribed Persons are sometimes part of failures of whistleblowing governance.

NHS regulators are notorious for fobbing off whistleblowers and failing to ensure that their concerns are safely handled. NHS regulators also sometimes actively harm whistleblowers - both those from provider organisations who seek their help and protection, and their own internal whistleblowers.

A comprehensively proven case has recently been decided by the Employment Tribunal. The Care Quality Commission (CQC) failed in every possible way in the case of Mr Shyam Kumar, senior surgeon who was seconded to CQC as a CQC Specialist Advisor. The [CQC unfairly dismissed, defamed him and most shockingly tried to dig for dirt retrospectively to find post hoc excuses for its behaviour towards him](#)

I forward below correspondence to the DHSC summarising the matter.

At present, FOI data also shows that NHS England is facing whistleblowing Employment Tribunal claims. This is in the context of expenditure in recent years on [external whistleblowing investigations](#) and well publicised [failures of whistleblowing governance.](#)

Regulators should be answerable to a specific whistleblowing regulator, as is the case in the US model of the [Office of Special Counsel \(OSC\).](#)

OSC protects US public sector, federal whistleblowers and it regulates the whistleblowing governance of all federal bodies, including regulators. It can direct remedy, including non-financial remedy such as the wiping of unfair disciplinary records and restoration of lost seniority.

Our current UK whistleblowing law and the Heath Robinson arrangement of Prescribed Persons need to be replaced to ensure much better infrastructure and leaner process. A central body akin to the OSC is needed, which has the power to direct the resolution of cases without wasteful and destructive litigation.

In urging the government to consider establishing a central whistleblowing body, I should make it clear that I am strongly opposed to the Office of the Whistleblower, proposed by Mary Robinson, Susan Kramer and the Whistleblowing APPG. That project [shows every sign of commercialising whistleblowing.](#) when whistleblowing is a matter of profound public interest.

Several Whistleblowing APPG members have indicated that they are in favour of US style bounty hunting, and the APPG has accepted money from US bounty hunting lawyers. But the US bounty hunting model sets up perverse incentives and is about the extraction by private law firms of vast amounts of public cash. It is an iniquitous model which only helps a tiny number of whistleblowers, mostly from the financial sector or those who whistleblow on financial matters elsewhere. [Kansas](#)

[University research has shown that the US bounty hunting system, unsurprisingly, attracts improper practices.](#) Please accept this research as evidence relevant to BEIS' ongoing deliberations about UK whistleblowing law.

We should not import this malfeasance to the UK.

I would also be grateful to ask if the government's current published list of Prescribed Persons is correct. I could not find the Human Tissue Authority on the list. Is this correct and are there any other UK regulators who are not on the Prescribed Person's list? If so, why are they not on the list?

I ask as Dr Rajai Al-Jehani another NHS whistleblower who was shockingly treated and recently proven to have been unfairly dismissed by the Royal Free NHS Foundation Trust, [raised very serious concerns about alleged breaches of Human Tissue law.](#)

If the Human Tissue Authority is not a Prescribed Person, is there any other body which is currently designated as a Prescribed Person for people whistleblowing about breaches of the Human Tissue Act?

If there is not, will the government close the gap?

Yours sincerely,

Dr Minh Alexander

Cc Sarah Munby Permanent Secretary BEIS

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From: Minh Alexander [REDACTED]

To: [REDACTED]

Sent: Mon, 5 Sep 2022 5:21

Subject: Case of Care Quality Commission whistleblower Mr Shyam Kumar, senior surgeon
BY EMAIL

Steve Barclay
Secretary of State for Health and Social Care

5 September 2022

Dear Mr Barclay,

Case of Care Quality Commission whistleblower Mr Shyam Kumar, senior surgeon

I write to seek your help in protecting Mr Kumar and his family from any further detriment and harm by the CQC, and to ensure that CQC addresses his whistleblowing disclosures about poor CQC culture, suppression and unsafe inspection process.

An Employment Tribunal has comprehensively found in favour of Mr Kumar and determined that he suffered serious reputational loss because the CQC sacked him as a seconded CQC Specialist Advisor after he whistleblow about CQC inspection failures and about very serious patient safety problems at his own NHS trust:

[Mr Shyam Kumar, Surgeon and vindicated NHS whistleblower's case: CQC sacked a whistleblower for disclosures about its poor regulatory performance, and dug for dirt on the whistleblower](#)

The Employment Tribunal has set out how Mr Kumar was affected by the CQC's assault on his previously "untarnished" reputation:

"152. The claimant does not pursue damages for any pecuniary losses in this claim. And limited his claim to an award for injury to feelings and a declaration only.

153. The claimant describes in his witness statement, and was not challenged on, how the detriments above affected him.

a. He describes that he was “shocked” when he received the email from Ms Mallaburn placing him on hold in light of allegations made about him following the Focus Group Meeting. And was further shocked when he understood that Mr Zeiderman had made the decision to disengage him before Ms Mallaburn’s communications with him.

b. He was “confused and concerned” about the allegations made against him that led to disengagement and being placed on hold.

c. The claimant was “extremely concerned” when he considered that his protected disclosures were the reason behind his disengagement.

d. The claimant became concerned about what he describes as “snide remarks and falsehoods” said about him by officials of the Respondent in emails.

e. That he considered that he was being subject to some form of “character assassination” behind his back

154. Under cross-examination the claimant explained that the damage to his reputation was his loss. This was a clear concern to the claimant. This is against the backdrop of the claimant having an untarnished reputation with either his employing Trust or the respondent at the time the decision to disengage him was made."

Mr Kumar has been fully vindicated by several investigations, internal and external, which have confirmed the serious patient harm about which he whistleblow, and the fact that he endured serious whistleblower reprisal for standing up for patients and the public interest.

The CQC not only failed to protect Mr Kumar as a whistleblower, but it sacked him, sought to vilify him and it tarnished his reputation with a number of false allegations. It seized on counter allegations from an individual who contributed to the whistleblower reprisal, as means of dismissing Mr Kumar. CQC even suggested that Mr Kumar was not genuinely whistleblowing but on a vendetta that was most likely driven by financial interest and the manipulation of waiting lists for personal gain. This was a false narrative and it was ultimately rejected by the Employment Tribunal, who ruled that his disclosures were genuine.

Mr Kumar has suffered greatly for the last four years after whistleblowing about CQC's inspection failures. During this time, when he has had a lonely battle to defend his reputation, his wife Sangeetha (another senior doctor) became gravely ill during the first COVID wave. She spent over three months in ITU, so severe was her COVID disease. The family have been through a terrible ordeal.

Please see this BBC clip which revealed how Mr Kumar was called at least three times to ITU to say goodbye to his wife:

<https://twitter.com/BBCNewsnight/status/1356601743212216320>

The CQC has claimed to the BBC that it accepts the Employment Tribunal's findings. CQC implausibly claims that it has learned from this matter. This is only nine months after CQC branded his claim of whistleblower reprisal as "fanciful", a sentiment repeated in June this year at the last hearing of Mr Kumar's case.

The CQC implies that it will not appeal against the ET judgment, but I would be most grateful if you could ensure beyond doubt that this is the case, and that no more public money will be wasted.

Instead, the CQC should apologise to Mr Kumar and his family. And the CQC should put its own house in order, to address the very dysfunctional culture which has already swallowed up four years of Mr Kumar's life and harmed his family. There should be robust proof that Mr Kumar's concerns

have been genuinely addressed, as opposed to the superficial claims that the CQC has so far made to the DHSC.

It is incredibly dangerous that a quality regulator would act in such a way.

Yours sincerely,

Dr Minh Alexander