

Trust 'hiding serious harm and death' report



By Lawrence Dunhill 12 September 2022

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There was a fair bit of press coverage last week about an employment tribunal case against the Care Quality Commission – in which the regulator was found to have sacked an inspector for making a series of whistleblowing disclosures.

However, many of the key details were either skirted over, or missed altogether, in the coverage.

The disclosures made by Shyam Kumar related not just to his role as a special adviser for the CQC, but also to his full-time employer, University Hospitals of Morecambe Bay FT, and to understand the case fully, they need to be separated out.

The important context (also skirted over) was that Dr Kumar had raised a series of legitimate concerns about another orthopaedic surgeon at UHMB, both internally within the trust, and externally with the CQC, in 2018.

This caused major tensions within UHMB, to the extent that Dr Kumar started to be targeted for criticism by a different surgeon, being labelled a 'traitor' to Indian doctors in a group email.

When challenged by Dr Kumar, the colleague complained to the CQC that Dr Kumar had sought to threaten and intimidate him, along with other accusations.

Concerns over CQC inspection team

There was more to it, of course, as the tribunal drew particular attention to two whistleblowing disclosures made by Dr Kumar about the CQC itself, which it found "clearly had a material influence on the decision to dismiss".

These were emails sent in September 2018 to Mike Zeiderman, who is still the CQC's national advisor for surgery, raising concerns about an inspection which had taken place at East Lancashire Hospitals.

In the emails Dr Kumar suggested he was expected to act beyond his expertise on the inspection, by assessing the trust on a whole range of surgical specialties from a medical perspective, when he was only qualified to do this in a limited way.

He had been told by the inspection lead there were “no staff available”, he wrote, and commented on the irony of the CQC criticising the trusts it inspects, while failing to ensure it had adequate inspection teams.

In the months after those emails, the tribunal said Mr Zeiderman was informed about the issues at UHMB by a local CQC manager, Kim Wood, and they were used as an initial basis on which to terminate Dr Kumar’s contract in December 2018 (despite there being no investigation).

But crucially, the tribunal said Ms Wood had also used the September 2018 emails (relating to the East Lancs inspection) to later justify the decision internally. The unimpressed tribunal judge, meanwhile, said Mr Zeiderman’s explanation for terminating the contract “appeared to develop” in the months after his decision “and into these proceedings”.

The tribunal concluded Dr Kumar had effectively been dismissed on the grounds of having made protected disclosures, and the regulator was ordered to pay him £23,000.

In a statement, the CQC said it accepted the process of disengaging Dr Kumar was handled “poorly” and it has apologised to him. It also acknowledged there are sometimes issues with the availability of specialist advisors for inspections, and it has been developing a new approach to mitigate this.

Serious harm

The case also revealed new information about the problems in orthopaedics at UHMB, which were first revealed in an *HSJ* article in 2020.

In 2021 the trust was forced to commission an external review by the Royal College of Surgeons, but refused to release the full report, instead publishing a heavily redacted version.

Some of the unpublished findings were put before the tribunal, however, including that there had been some “unacceptable” care, “inappropriate” clinical decisions made, and “either no, or a lack of evidence of, a duty of candour”.

The tribunal also heard that of 26 patient cases where concerns were highlighted, 16 involved ‘serious harm’, and one involved a patient death. Why was that information omitted from the version published by the trust last year?

The tribunal also heard how a separate review, commissioned by the trust and carried out by Investigation by Design, looked at how medical leaders at the trust responded to Dr Kumar’s

concerns.

According to evidence read out in the hearing, the review found leaders did “not respond in the most appropriate way” and failed to recognise him and another colleague as a whistleblower. It also said a previous review had failed to cover their specific concerns or look at the relevant patient cases.

These amounted to “missed opportunities” to address the issues, the review reportedly found. Yet this report remains unpublished by the trust.

Airbrushing

Meanwhile, Lancashire and South Cumbria Foundation Trust has been keen to gloss over its messy parting with chief executive Caroline Donovan, with the key dispute over finances omitted from its public statements.

A trust governor told *NxNW* they were also given the “airbrushed version”, and said they were even told *HSJ*'s story was a “conspiracy theory”.

They added: “What surprised us was the expectation that we would believe she had just suddenly walked away as a long-agreed retirement plan and the NHSE role was a real job she wanted.”

The trust declined to comment