

BY EMAIL

Dr Nick Crombie  
Associate Medical Director  
University Hospitals Birmingham NHS Foundation Trust

4 December 2022

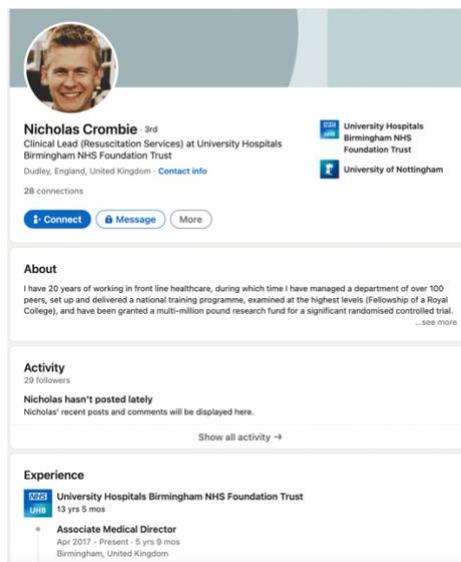
Dear Dr Crombie,

**Information relevant to your tweeted observations of 2 December 2022 about whistleblowing governance at UHB**

I write to you in your capacity as UHB Associate Medical Director since 2017, regarding your tweeted observations of 2 December 2022 arising from media reports about your trust:



Although your twitter profile and the above tweets did not clearly identify you as a UHB trust manager, I see from your LinkedIn entry that you describe yourself as an Associate Medical Director. I will assume that this is still the case.



Turning to your tweets, I of course accept your broad points that the whole NHS is suffering and many staff are doing a dedicated job under intolerable stress. I am sure there are many such staff at UHB.

In the same spirit of balance in which you imply you have written your tweets, may I clarify whether you accept that:

1. UHB has some poorer clinical outcomes than comparator NHS trusts
2. Serious cultural issues are raised by the following findings of fact by the GMC and the Employment Tribunal:
  - a. The 2021 General Medical Council finding that your recently departed CEO, a doctor, misled the GMC in a referral about a whistleblower.

This is the GMC decision document:

[David Rosser Minutes of GMC Investigation Committee published July 2021](#)

I think it is important to stress that this was a most unusual matter.

The GMC has rarely sanctioned any senior doctors for whistleblower reprisal, despite a multiplicity of Employment Tribunal findings of mistreatment of medical whistleblowers.

It is arguably a reflection on the seriousness of the matters at UHB.

- b. The Employment Tribunal's comments about the reliability of the evidence given by your recently departed CEO in a whistleblower case.
- c. The Employment Tribunal's criticism of the whistleblower's exclusion, which senior doctors knew or ought to have known was based on a false allegation, and of related information supplied by the trust to NCAS.

It may help to quote some specific passages from the ET judgments:

*"24.3 It became clear that both Dr Ryder and Dr Rosser knew, or ought to have known, that it was unfounded before the exclusion was even put in place. That only came to light from documents which had not been disclosed but which were obtained by Mr Reuser through a subject access request (SAR)."*

*"25.2 It appears that Dr Ryder gave NCAS seriously misleading and inaccurate information as identified earlier in my findings. This further supports my view on apparent bias and/or incompetence at a senior management level."*

*"47. The information provided to NCAS was beyond inaccurate and, as mentioned, this had not been provided by the respondent in disclosure or via the subject access request."*

*"23.8 Dr Rosser initially suggested that he must have overlooked the claimant's whistleblowing letter when writing to the regulator. That appears surprising given that the letter was included with, and referred to in, the Claimant's Statement of Case and emailed separately to the disciplinary panel before the hearing. It was also referred to at the hearing just 4 days before Dr Rosser wrote to the GMC."*

*23.10. In response to this challenge, Dr Rosser's second, somewhat contradictory, explanation was that he misunderstood the legal terminology and did not consider that the letter should be treated as a protected disclosure."*

*23.11 It seems to me surprising that the Respondent's Responsible Officer would not understand what amounted to a whistle blowing episode, not least because he asserted that he had focussed on encouraging reporting of concerns. He certainly ought to have enquired about any whistle blowing episodes before making an express representation about them to the regulator."*

*“23.13 Dr Rosser has not written to the GMC to inform them that he misled them. He asserts that he told the liaison officer but there is no record of that discussion. If Dr Rosser did inform the GMC it is, at best, surprising that they did not write to Mr Reuser to inform him of the new information received, nor was there any mention of it in their findings”*

There are several other such passages in the two relevant ET judgments.

[https://assets.publishing.service.gov.uk/media/5bd0580aed915d78a4b0bd31/Mr\\_T\\_Reuser\\_v\\_University\\_Hospitals\\_Birmingham\\_NHS\\_Foundation\\_Trust\\_-\\_1303554\\_2017\\_-\\_Full.pdf](https://assets.publishing.service.gov.uk/media/5bd0580aed915d78a4b0bd31/Mr_T_Reuser_v_University_Hospitals_Birmingham_NHS_Foundation_Trust_-_1303554_2017_-_Full.pdf)

[https://assets.publishing.service.gov.uk/media/62738fd3d3bf7f0e7f9d5aff/Mr\\_T\\_Reuser\\_v\\_University\\_Hospitals\\_Birmingham\\_NHS\\_Foundation\\_Trust\\_1303554.17-Costs\\_Judgment\\_Reasons.pdf](https://assets.publishing.service.gov.uk/media/62738fd3d3bf7f0e7f9d5aff/Mr_T_Reuser_v_University_Hospitals_Birmingham_NHS_Foundation_Trust_1303554.17-Costs_Judgment_Reasons.pdf)

- d. The Employment Tribunal judge’s serious concern that the trust failed to disclose material documents to the whistleblower and the Tribunal, and his concern that there would be future failings of governance by the trust.

*“60. However, the sheer number of disclosure failings in this case and the potentially damaging nature of so many of them has, understandably, left the claimant feeling that there may have been more.*

*61. Moreover, the lack of any cogent explanation from the respondent and, against that background, the maintenance of the untenable position that nothing untoward had occurred beyond human error, without, seemingly, any meaningful investigation, is deeply troubling not only in this case but in relation to any there may be in the future.”*

Please note that the trust’s behaviour in withholding damning documents about itself from the Tribunal was considered so reprehensible that it was ordered to pay the whistleblower £20K costs.

*“79. However, to reflect the seriousness of the respondent’s failings and the inevitable additional costs and difficulties faced by the claimant as a result, my award may be more than those which could be exclusively and directly attributed to each failing.”*

You say in your tweets that you **“do not recognise the picture painted on Newsnight”** with respect to the trust’s response to concerns.

May I ask if you at least accept the above findings of fact by the GMC and the Employment Tribunal on these matters?

I feel it is important to seek some acknowledgment from you on these matters, as in my view it would be an injustice to harmed UHB whistleblowers if there is no acknowledgment.

If it of interest, a summary can be found here of general irregularities and governance issues surrounding UHB's response to the whistleblower case cited above.

[Tristan Reuser's whistleblowing case: Scandalous employer and regulatory behaviour](#)

As a medical examiner, they may be of interest to you in what they show about system learning at the trust.

An important unresolved governance issue is whether the trust has quality assured its referrals to the GMC, following the trust's disclosure that none of the 26 referrals in a ten year period have resulted in zero GMC action.

[I wrote to your Freedom To Speak Up Guardian about this in June 2022.](#)

If this interests you in roles both as Associate Medical Director and Medical Examiner, you might be good enough to let me know whether the trust has acted upon the information.

With thanks.

Yours sincerely,

Dr Minh Alexander

Cc Prof Julian Bion Freedom To Speak Up Guardian UHB  
Dr Sean O'Kelly CQC Chief Inspector of Hospital Services