

From: Minh Alexander <*****>
Subject: Unfit NHS disciplinary process and misuse of suspension
Date: 9 January 2018 at 10:43:27 GMT
To:

BY EMAIL

Public Accounts Committee

9 January 2017[sic – 2018]

Dear Ms Hillier and colleagues,

Unfit NHS disciplinary process and misuse of suspension

Further to my letter of 3 December 2017 submitting evidence of continuing inefficiency and abuse of NHS disciplinary process, sometimes to exert control and unfairly rid organisations of unwanted staff, I write to forward the response below from the National Clinical Assessment Service (NCAS).

In the case in question, Dr Bestley a senior consultant was found to have been unfairly dismissed by Humber NHS Foundation Trust. The Employment Tribunal also found that he was unfairly suspended for far too long, with very serious damage to his health as an employee with a known disability, such that he has now left Medicine.

Humber had to pay Dr Bestley the best part of £300K compensation for its detrimental actions.

NCAS was responsible for scrutinising the trust's use of suspension. I was concerned from the case correspondence that NCAS failed to do so effectively.

The Director of NCAS now advises that she has reviewed the

correspondence and is satisfied that NCAS appropriately questioned the trust's use of suspension procedures. But she points out that NCAS has no powers to compel.

Whether it is correct or not that NCAS was adequately challenging (and many report that it is not), the current system badly failed a much needed and expensively trained doctor and his family, at a steep cost to the public purse.

Without reform, it will continue failing NHS staff on a large scale. Vitally, this will include whistleblowers.

As I previously asked, I would be most grateful if NAO and PAC could give consideration to re-visiting the 2003 work on management of NHS suspensions.

I copy this to Health Committee with reference to a request that I understand the Committee received to review NHS disciplinary processes.

Yours sincerely,

Dr Minh Alexander
Cc Sir Amyas Morse NAO
Bcc Dr John Bestley and Mrs Helen Bestley

From: Vicky Voller <*****>
Subject: RE: Audit of NCAS' scrutiny and approval of NHS suspensions
Date: 9 January 2018 at 09:09:47 GMT
To: 'Minh Alexander' <*****>
Cc: Karen Wadman <*****>, Helen Vernon <*****>

Dear Minh

Audit of NCAS' scrutiny and approval of NHS suspensions

Thank you for your email of 3rd December 2017 and I am pleased to be able to respond prior to my planned leave which commences shortly.

You will appreciate I am unable to make any comment about the

particular circumstances of any individual case, but I can assure you that having reviewed the relevant documentation I am satisfied that in regard to the comments you make that the grounds for exclusion were questioned appropriately by NCAS.

It should also be noted that whilst the Department of Health directions of Disciplinary procedures placed an obligation on all NHS bodies to implement the *Maintaining High Professional Standards in the Modern NHS* (MHPS) framework within their local procedures it is open to NHS Foundation Trusts to consider this in the context of advice rather than being compelled to adopt the framework in its entirety.

As part of its programme of support, NCAS has developed a strengthened approach to making contact with Trusts to review all exclusion cases as a minimum at the 4 week, 3 month and 6 month intervals to clarify whether the grounds for exclusion remain valid and to provide advice on alternatives as well as also helping to facilitate the resolution of the concerns. This approach is monitored centrally each month as part of NCAS' framework of key performance indicators. The NCAS role is to review with the employer their implementation of MHPS or its equivalent and to remind them of their obligations to ensure that the actions they take are consistent with the national framework or local adaptation of this. Whilst NCAS cannot direct or require organisations to follow a particular course of action it can request clarity on the rationale for a Trust response which does not appear in keeping with national guidance or local policy. That being said, NCAS cannot assume the role of the employer and therefore any decision about the management of a case ultimately and quite rightly rests with the Trust.

You have referred to the experiences of whistleblowers and you may be interested to know that NCAS has been promoting the opportunity of practitioners to discuss their case with us which we believe has increased contact. NCAS has also produced *A guide for healthcare practitioners* on the role of NCAS and services we provide which can be found on [here](#). NCAS has an interface with a number of national agencies to ensure we keep abreast of current thinking and initiatives designed to promote greater transparency in the work place.

This is clearly an important area of work which I will ensure is kept under regular review and in my absence Karen Wadman, Lead Adviser and Acting Director of NCAS will be providing oversight to this.

Yours sincerely,

Vicky

Vicky Voller

Director of NCAS

0207 811 2675 / 0207 811 2640 (PA)

0207 811 2600 (NCAS Advice Line)

NHS Resolution

2nd Floor, 151 Buckingham Palace Road, London, SW1W 9SZ

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resolution.nhs.uk

From: Minh Alexander [mailto:*****]

Sent: 03 December 2017 09:39

To: Vicky Voller

Cc: Helen Vernon

Subject: Audit of NCAS' scrutiny and approval of NHS suspensions

BY EMAIL

Vicky Voller

Director of National Clinical Assessment Service (NCAS)

NHS Resolution

3 December 2017

Dear Vicky,

Audit of NCAS' scrutiny and approval of NHS suspensions

I hope this finds you well. I appreciate that you may well be on planned leave by now, so copy this to Helen Vernon in case that is so.

I write to ask if NCAS would consider an audit of its scrutiny and approval of NHS employers' use of suspension.

As you are aware, whistleblowers who have been unjustly suspended quite often report that NCAS does not do enough to challenge this.

I was contacted by former consultant psychiatrist who had been suspended over other matters. An Employment Tribunal concluded that

his employer kept him suspended for far too long and that this severely damaged his health. He suffered a relapse of a major mental illness, Bipolar Disorder, and received the best part of £300K damages for unfair dismissal and personal injury.

There was also other loss to the NHS and the public purse in that this experienced and expensively trained senior consultant left Medicine as he had been made so unwell.

This is the Employment Tribunal judgment:

<https://minhalexander.files.wordpress.com/2016/09/employment-tribunal-judgment-bestley-v-humber-nhs-foundation-trust.pdf>

I have summarised this case within this paper (the case details start from page 18):

<https://minhalexander.com/2017/10/21/waste-industry-the-nhs-disciplinary-process-dr-john-bestley/>

The case documentation shows that NCAS accepted his employer's reasons for renewing suspension merely on grounds of loss of trust and confidence between him and some colleagues.

There did not appear to be any challenge or probing by NCAS about these grounds for suspension - please see NCAS' letter of 27 September 2012 Case Ref. 11009 to Dr Oade, trust Medical Director.

From my understanding of MHPS*, the grounds given by the employer for renewing suspension did not meet the very high bar for suspension set out by MHPS**. The trust's grounds were neither:

- Evidence of significant, unmanagable risk to colleagues. (It had been accepted by that point that there was no risk to patients).
- Evidence that there was a risk that this doctor would tamper with evidence

A common sense approach might have been simply to amend this doctor's duties and to temporarily redeploy him. This was particularly as his medical peers took the unusual step of writing in formal support of him.

I do not understand why the NCAS adviser in this case did not apparently point out to the trust that it was in breach of MHPS procedures by continuing the unwarranted suspension, or at the very least ask the trust to explain and document why less restrictive alternatives had been rejected.

The Employment Tribunal also found another serious breach of MHPS procedure in that the medical directors failed to keep adequate records of their reasons for renewing suspension. This raises a question of whether NCAS' method of oversight is rigorous enough to detect such failure.

I think if you ask whistleblowers, they too will have similar tales.

I would be grateful if you (or Helen) can let me know if NCAS will agree to review its process and conduct an audit of its scrutiny of suspensions, and whether NCAS might involve the workforce and whistleblowers in such an exercise.

With best wishes,

Minh

Dr Minh Alexander

Cc Helen Vernon Chief Executive NHS Resolution

*DH 2005 Maintaining High Professional Standards in the Modern NHS

http://webarchive.nationalarchives.gov.uk/20130123204228/http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4103586

**MHPS guidance on formal exclusion:

“17. Formal exclusion of one or more clinicians must only be used where

a. there is a need to protect the interests of patients or other staff pending the outcome of a full investigation of:

- allegations of misconduct,*
- concerns about serious dysfunctions in the operation of a clinical service,*

• *concerns about lack of capability or poor performance of sufficient, seriousness that it is warranted to protect patients;*

or b. the presence of the practitioner in the workplace is likely to hinder the investigation.

18. Full consideration should be given to whether the practitioner could continue in or (in cases of an immediate exclusion) return to work in a limited capacity or in an alternative, possibly non-clinical role, pending the resolution of the case.”

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