

LETTER TO HELEN VERNON, CEO NHS RESOLUTION, 27 MARCH 2022

Dear Helen,

Introduction of NCAS safeguards against medical managers supplying NCAS with false referral information

I write to raise two serious examples of NHS employers harming whistleblowers by means of supplying misleading information to NCAS to justify exclusion.

There are many more examples.

The NHS was supposed to have carried out NAO recommendations from 2003 to introduce safeguards for all staff against arbitrary and wasteful suspension and disciplinary action:

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

To my knowledge it has never done so,

Case of Dr Jasna Macanovic

Dr Jasna Macanovic was found by the Employment Tribunal to have been unfairly dismissed and to have been subjected to other detriments for whistleblowing by her trust, Portsmouth Hospitals University NHS Trust.

The ET noted that NCAS gave her employer advice which made provision for the fact that Dr Macanovic had made public interest disclosures.

For example:

"The issue is, as you are aware, complicated by Dr 19339 whistle blowing status and it will be important to document carefully the preliminary information which has been received so that this is available for future scrutiny if required. Potentially it may be necessary for the Trust to be able to demonstrate that Dr 19339 is not being victimised for having raised concerns. I advised that to avoid any allegations of bias, it may also be useful for the role of Case Manager, to be delegated so that the person making any decision about how to proceed is free of any real or perceived conflict of interest. Likewise the Case Investigator should be suitably senior, experienced and independent."

https://minhalexander.files.wordpress.com/2022/03/jasna-macanovic-et-judgment-dr_j_macanovic_v_portsmouth_nhs_hospitals_trust_-_1400232.2018_-_amended_judgment.pdf

It is good that NCAS recognised that the trust had an obligation to demonstrate fair

treatment of a whistleblower.

NCAS could perhaps have been firmer about the actual duty to protect a whistleblower. Instead it jarringly referred to Dr Macanovic's whistleblowing as a "complication" (it was in fact the central issue) and NCAS' emphasis was only on *demonstrating* protection rather than a positive statement about the trust's duty to protect.

Notwithstanding, the trust did not follow NCAS' advice to handle the matter as impartially as possible.

The Employment Tribunal also noted that the trust made this claim to NCAS:

"There appeared to be an absolute breakdown in trust between Dr 19339 and the rest of the department and the result of this led you to be concerned for the health of all in the department."

This was clearly factually inaccurate, very unfair and harmful to Dr Macanovic. This was because the ET noted that a "substantial" number of Dr Macanovic's colleagues shared her concerns and supported her and even appealed to the chief executive to prevent her unfair dismissal, thus risking reprisal against themselves.

However, the trust's false claim that Dr Macanovic was an isolated, problem doctor who severely damaged her department's wellbeing would have manufactured a case for exclusion.

Case of Mr Tristan Reuser

In another recent whistleblowing case in the Employment Tribunal, that of Mr Tristan Reuser, University Hospitals Birmingham NHS Foundation Trust the employing NHS trust was seriously criticised for misleading NCAS with information, supplied by the deputy medical director, that was damaging to Mr Reuser.

Moreover, University Hospitals Birmingham NHS Foundation Trust withheld its correspondence both from Mr Reuser during the original process of exclusion and then later from the Employment Tribunal, adding to its impropriety.

The ET judge noted:

"..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."

[https://minhalexander.files.wordpress.com/2018/12/Tristan-Reuser-v-HEFT-ET-Judgment-Mr T Reuser v University Hospitals Birmingham NHS Foundation Trust - 1303554 2017 - Full.pdf](https://minhalexander.files.wordpress.com/2018/12/Tristan-Reuser-v-HEFT-ET-Judgment-Mr-T-Reuser-v-University-Hospitals-Birmingham-NHS-Foundation-Trust-1303554-2017-Full.pdf)

Request

It seems to me that unscrupulous employers continue to misuse MPHS and NCAS to harm whistleblowers.

The pattern is that they typically supply NCAS with false and misleading information in order to manufacture the advice that they seek from NCAS, as a governance fig leaf, to justify excluding unwanted whistleblowers.

I appreciate NCAS is an advisory body and not an enforcement agency.

However, I wonder if it could do more to deter medical managers who abuse the MHPS process to unjustly harm staff, whether or not they are whistleblowers.

Would NCAS consider introducing a procedure by which managers, who are GMC registered doctors, who refer other doctors to NCAS must make:

- 1) A declaration about whether or not the referred doctor has made public interest disclosures
- 2) A statement of truth regarding their referral as is currently required under GMC procedures, following the review by Sir Anthony Hooper in 2015?

It is not that I expect NCAS to take enforcement action outwith its remit, but that introducing such written undertakings formalise the process of referral.

Such undertakings would increase jeopardy for any medical managers seeking to abuse MHPS to treat staff unfairly.

The written undertakings, if falsely given, could be taken into consideration by the GMC if any issues of whistleblower reprisal by medical managers are referred to the GMC as matters of impaired Fitness To Practice.

I look forward to hearing from you.

With best wishes,

Minh

Dr Minh Alexander

CC Charlie Massey CEO General Medical Council