



# Department of Health & Social Care

Freedom of Information Team  
Department of Health and Social Care  
39 Victoria Street  
London SW1H 0EU

[www.gov.uk/dhsc](http://www.gov.uk/dhsc)

Dr Minh Alexander

By email to: [REDACTED]

10 July 2023

Dear Dr Alexander,

## **Freedom of Information Request Reference FOI-1459895**

Thank you for your request dated 21 June to the Department of Health and Social Care (DHSC), a copy of which can be found in the accompanying annex.

Your request has been handled under the Freedom of Information Act 2000 (FOIA).

DHSC holds some information relevant to your request. We will address each of the matters you raise in turn.

### **1. As of now, which of the Kark review recommendations does the DHSC accept and which does the DHSC reject?**

The review made seven recommendations. DHSC has wholly accepted recommendations 1 to 4 and 6. Recommendation 5 is not being progressed at this time; however, it is our intention that these arrangements will be reviewed to assess their effectiveness and to consider whether further steps, including a power to disbar managers, are required. Regarding recommendation 7, the fit and proper person test already applies to directors of adult social care providers in England and the Government will continue to keep arrangements for adult social care providers under review as the additional steps in relation to NHS organisations are implemented.

### **2. Is it correct that there is no ministerial support for Tom Kark's recommendation of a disbarring mechanism for unfit NHS managers?**

Recommendation 5 ('the power to disbar for serious misconduct') is not being progressed at this time.

### **3. Why did the DHSC decide not to pursue a disbarring mechanism? What directions/ instructions has the DHSC given to NHS England on this matter?**

The Government agrees with NHS England that effective safeguards are currently in place by ensuring an exit fit and proper person test is completed when directors leave employment and that any conduct issues which arise after their employment remain on the national register. These safeguards, together with a robust referencing process, will prevent unsuitable leaders being re-employed in the NHS and also act as a deterrent to misconduct itself.

#### **4. What is the DHSC's timetable, if any, for implementing any of the Kark review recommendations that it has accepted?**

With regard to recommendations 1 to 4, DHSC does not hold the information you have requested. However, you may wish to contact NHS England, which may be able to provide an update on the timetable for recommendations 1 to 4. Contact details for NHS England can be found at [www.england.nhs.uk/contact-us/foi](http://www.england.nhs.uk/contact-us/foi).

Regarding recommendation 6, DHSC and the Care Quality Commission are jointly leading on this recommendation (remove the words 'been privy to' from Regulation 5(3)(d) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014) and an amendment to the Regulations will be made in due course, subject to parliamentary time.

If you are not satisfied with the handling of your request, you have the right to appeal by asking for an internal review. This should be sent to [freedomofinformation@dhsc.gov.uk](mailto:freedomofinformation@dhsc.gov.uk) or to the address at the top of this letter and be submitted within two months of the date of this letter.

Please remember to quote the reference number above in any future communication.

If you are not content with the outcome of your internal review, you may complain directly to the Information Commissioner's Office (ICO). Generally, the ICO cannot make a decision unless you have already appealed our original response and received our internal review decision. You should raise your concerns with the ICO within three months of your last meaningful contact with us.

Guidance on contacting the ICO can be found at <https://ico.org.uk/global/contact-us> and information about making a complaint can be found at <https://ico.org.uk/make-a-complaint>.

Yours sincerely,

Freedom of Information Team  
[freedomofinformation@dhsc.gov.uk](mailto:freedomofinformation@dhsc.gov.uk)

## Annex

From: minh alexander <[REDACTED]>  
Sent: 21 June 2023 02:43  
To: [REDACTED]  
Cc: Chris.Wormald; rachael.maskell; [REDACTED]  
steve.brine; pubaccom; [REDACTED]; meghillie  
hsccom  
Subject: SENSITIVE Kark review implementation and disbaring unfit NHS senior managers

BY EMAIL  
Steve Barclay  
Secretary of State for Health and Social Care  
21 June 2023

Dear Mr Barclay,

### **Kark review implementation and disbaring unfit NHS senior managers**

I watched your oral evidence to Health and Social Care Committee yesterday, and in particular your answers to concerns that the government's Freedom To Speak Up model has failed to deliver.

Your response on being asked about the failure of the DHSC's and Robert Francis' 2015 Freedom To Speak Up project was thus:

***“Steve Barclay MP and Steve Barclay Secretary of State for Health and Social Care: I’m keen to understand where, if there are areas where the complaints system are not working, why that is and how we learn from it. I think it is an area that has already had lots of focus so one of the issues we’ve got to understand. We have a Patient Safety Commissioner, we have er Guardians, we’ve had a number of other initiatives over many years, in this space. You touched on cases such as Birmingham which still generates significant concern. So for me it’s about understanding why when issues are known about locally, too often they’re not addressed. And how where, we’re learning from that. So that includes things like the trust Board and what visibility, what line of sight does the Board have? What accountability is there for senior managers when wrong doing is established? Are they just rotated through the system? Or are people held to account? So I think there are a number of issues. It’s an issue sadly that’s been with us for quite a while, because I’ve spent a fair bit of time on it in a previous role. But I share your absolute desire to tackle it. I think you touched on it in the context of the wider duty we have to NHS staff and things like staff absence which is why these things then often manifest themselves in falling retention, because people vote with their feet and leave. It’s a hugely important issue. It’s one that we have a number of people involved in the NHS to tackle. It is also a role for the Royal Colleges and others in the wider NHS family and I’m extremely keen to work with them on it.”***

A number of points arise from your comments to Committee:

1.

The Patient Safety Commissioner's role

The Patient Safety Commissioner's remit is restricted to medicines and medical devices.

She is not currently listed as a Prescribed Person to whom whistleblowers can make protected disclosures.

But if she is to be a Prescribed Person under UK whistleblowing law, within these narrow confines, I would be grateful if you could confirm that this is so.

2.

Local NHS Freedom To Speak Up Guardians

Local FTSU guardians are toothless and importantly, defenceless. They themselves may become victims of abusive NHS organisations which employ them, and that has happened in some cases. Alternatively, some Guardians are appointed because they are willing to abuse whistleblowers. The model is a logically flawed and wasteful. It contributes very little. Testimony from two whistleblowers who have been failed by NHS trust Guardians can be found here:

CQC allows National Guardian to make unsubstantiated claims, and ignores harmful behaviour by Freedom To Speak Up Guardians

3.

Oversight by NHS boards

Oversight by NHS Boards is not the issue. It is abusive NHS Boards that are the issue, whether by actively and directly abusing whistleblowers or knowingly soliciting and/or permitting abuse.

4.

Accountability for senior management wrongdoing

In your evidence to Committee you wondered out loud about whether there is accountability for erring senior NHS managers, or whether such individuals are recycled.

You personally commissioned the Kark review in 2018 on identifying unfit NHS managers and preventing their recirculation.

You will recall the immediate catalyst was the debacle in which failed trust managers were protected by NHS regulators after Mid Staffs style failures at Liverpool Community Health NHS Trust.

See Hansard: Capsticks Report and NHS Whistleblowing 13 July 2016

Upon reviewing the Fit and Proper Persons test in the NHS, Mr Kark KC found current systems wanting and made recommendations for improvement.

However, the implementation of the Kark review recommendations was entrusted to NHS England, an NHS regulator which has been responsible for much of the executive recycling and setting a culture of impunity.

There has been no sign yet of implementation of the Kark review.

Indeed, NHS England has claimed to me that there is no ministerial support for Tom Kark's crucial recommendation of a disbarring mechanism for the worst and most unfit NHS managers.

I have written to you twice about this (7 February and 29 May 2023, forwarded below), asking you to reconsider this reported decision, but I received no reply.

A current example of NHS executive recycling

But to answer your question on whether erring senior managers are rotated through the system, the answer is 'yes'. This is a current and topical example:

Darren Grayson resigned from a post as NHS trust CEO in 2015 after an extremely critical CQC report and allegations of management bullying and other governance failures. Mr Grayson went on to sell consultancy services to the NHS through a private company, the Good Governance Institute. This included work for a predecessor body of University Hospitals Sussex NHS Foundation trust, during Marianne Griffiths' tenure as CEO. Partly on the basis of material produced by the Good Governance Institute, the CQC took the trust out of special measures and rated it "Good" in 2019. Last year Mr Grayson took up a substantive post at this same trust as Director of Governance. Staff whistleblowing to the CQC continued and the police are now making enquiries into concerns about patient deaths 2015-2020 that may amount to gross negligence manslaughter.

The longer the implementation of the Kark review is delayed, the more examples of such recycling will accumulate.

The Kark review stopped short of recommending managerial regulation, but reserved it as an option for the future. Please note that the delay in regulating NHS managers now spans decades.

The 2002 Bristol Heart inquiry recommended regulation for NHS managers:

**I would be very grateful if under FOIA the DHSC could advise me of the following:**

1.

As of now, which of the Kark review recommendations does the DHSC accept and which does the DHSC reject?

2.

Is it correct that there is no ministerial support for Tom Kark's recommendation of a disbarring mechanism for unfit NHS managers?

3. Why did the DHSC decide not to pursue a disbarring mechanism? What directions/ instructions has the DHSC given to NHS England on this matter?

4.

What is the DHSC's timetable, if any, for implementating any of the Kark review recommendations that it has accepted?

Many thanks and best wishes,

Minh

Dr Minh Alexander