BY EMAIL

Wes Streeting MP
Shadow Health and Social Care Secretary

16 September 2023,

Dear Wes,

Regulation of ALL NHS managers and your comments about regulation of NHS managers under a future Labour government

I have not received a response from you to my letter of 29 August 2023 in which I asked if you would commit in principle to regulating NHS managers as rigorously as clinicians are regulated.

In the meantime, I have noted your comments on BBC Newsnight 13 September 2023, about implementing all **existing** recommendations on the regulation of NHS managers.

Whilst welcome in many respects, I took this to mean that you will only be looking at a reactive model of disbarment recommended by Tom Kark and Jane Russell.

This will not provide the additional, important drivers of quality that full regulation would, of the standardised training, accreditation, ongoing professional development and professionalisation that full regulation would provide.

I note of course that Tom Kark was aware that a simple disbarment mechanism might fail, and he proposed that full regulation should be held in reserve:

"On the evidence currently available to us, we have not at this stage recommended that the HDSC [Health Directors' Standards Council] becomes a full 'regulator of directors', accrediting training, registering and regulating directors, and operating a form of revalidation process. ***But we do recommend that the design of the HDSC allows for a more extensive remit should that prove necessary."*** [my emphasis]

Crucially, the Kark proposals cover only NHS **directors.**

This will leave out swathes of bullying and misconduct by middle managers, who are often then rewarded with promotion for putting stick about.

Much whistleblower persecution starts with lower levels of management, with directors becoming involved in the detriment only if whistleblowers are persistent and/or escalate concerns upwards.

I provide a serious example of whistleblower detriment by NHS middle managers in the case of Jane Archibald at North Cumbria.

Jane lodged a grievance but this process was typically weaponised by middle managers who turned the process against her, and used it as a means of attacking her. During the grievance process, a middle manager Jackie Molyneux incorrectly told the grievance investigator that copies were not kept of incident forms submitted by Jane about very serious matters, such as the trust allowing an unqualified healthcare assistant to pose as a specialist epilepsy nurse.

The management claim that copies of incident forms were not kept was untrue. Such incident forms are routinely stored electronically across the NHS. But other managers also maintained this fiction by not correcting the misinformation. Management instead denigrated Jane, cast aspersions on her motives for submitting incident forms (falsely claiming that she made reports maliciously as a form of retaliation) and made a number of other untrue or exaggerated negative claims about her.

The Employment Tribunal determined that the poor handling of the grievance process was a whistleblowing detriment. It also led to Jane's unfair, constructive dismissal. These events made Jane very unwell and have affected her long term economic security.

There has been no accountability for these acts to Jane's or my knowledge, and no real evidence so far that those who allowed an unqualified person to work as senior specialist nurse have been prevented from repeating such acts.

The most relevant excerpts about poor behaviour by middle managers, from Jane's ET judgment, are attached.

I should add that the former North Cumbria CEO, to whom Jane escalated her serious patient safety concerns, is now CEO of Humber ICS. He had been party to other whistleblower matters and poor whistleblowing governance prior to Jane's case. I asked NHSE and the Humber ICS chair about whether he was a Fit and Proper Person. Despite the Humber Chair assuring me that she would consider the matters very carefully, I never heard from her or from NHS England again on this matter. The individual remains CEO of Humber ICB. I am left to assume that no meaningful action was taken.

There are, typically, smiling photos of this CEO promoting the NHS Freedom To Speak Up initiative.

For context, FOI data also shows that North Cumbria was also known to the CQC for years as a whistleblowing hotspot, with staff repeatedly contacting the CQC about concerns of management cover ups and fiddling of performance data.

If Labour only implements regulation of NHS **directors,** the above sorts of behaviour by NHS middle managers will remain unchallenged, undeterred and unpunished.

Moreover, directors who wish to avoid regulatory constraints may simply instruct those lower in the hierarchy to carry out more of the dirty work.

And as abusive middle managers are often rewarded and promoted in the NHS, the system will still be left with a number of poor quality and unfit managers ready to step into directors' shoes.

I hope you will consider regulating ALL NHS managers, in the way that all grades of clinicians are regulated.

Also that you do not wait for yet more failure before implementing full regulation of NHS managers, starting with regulated training.

Since the 2001 Bristol heart public inquiry's recommendation to a previous Labour administration to regulate NHS managers, which was not adopted, we have seen so many more NHS failures and disasters, all of which keep bringing the NHS into disrepute, quite needlessly.

Some pro management lobbyists are pointing critically to the work and expense involved in setting up NHS managerial regulation, for a small portion of the NHS workforce.

But a glance at the annual NHS negligence bill and the expense of all the endless reviews and public inquiries into many, many NHS failures should surely show that safe regulation of NHS managers is more than a worthwhile investment, set against both the financial waste and human cost of not ensuring safe management of the NHS.

With best wishes,

Minh

Dr Minh Alexander

Cc

Kirsty Wark
Victoria Derbyshire
BBC Newsnight

129. Jacquie Molyneux was interviewed on 28 May 2019. Jacquie Molyneux asserted that there had always been issues with the claimant. She asserted that the claimant was very difficult to work with, very tunnel visioned and alleged that if anyone interfered or interrupted, an incident form went in. She said there had been a lot of incident forms against the Learning Disability Nurses and patients; that most people would go and find out how to work together but the claimant just put in incident forms. She acknowledged that the claimant was skilled in epilepsy but said communication caused problems. Martin Daley asked Jacquie Molyneux whether there were copies of the incident forms. Jacquie Molyneux replied "we don't keep a copy of the incidents". When asked about this in cross examination, Jacquie Molyneux acknowledged that she could get the incident forms from the computer system. She did not volunteer this information to Martin Daley. No one subsequently corrected the misleading information given by Jacquie Molyneux to Martin Daley, so he did not obtain the relevant incident forms as part of his investigation. Jacquie Molyneux incorrectly referred to the claimant being responsible for a 9 month wait for care plan rather than a 9 weeks wait. Jacquie Molyneux did not correct this when sending her comments on the notes. Jacquie Molyneux said Graham had picked up a lot of the claimant's patients (p.474). Graham Bickerstaff's interview did not support this assertion and Fiona Dixon's evidence was of two patients transferred from the claimant to Graham Bickerstaff. Jacquie Molyneux said in cross examination that she had no reason to contradict the evidence given by

Fiona Dixon and, on the basis it was only two patients, she agreed that what she said in the interview was an exaggeration. She was not asked in cross examination why she made the exaggerated assertion.

248. The next alleged detrimental treatment is that on 11 October 2019 and 17 December 2019, the claimant was advised that grievances were not upheld and her second grievance of 22 October 2019 would not be addressed. There are three parts to this allegation. In relation to the first, about being told on 11 October 2019 her grievance was not upheld, it is correct, as a matter of fact, that the claimant received the outcome on that date. We conclude that the outcome of this grievance was flawed for the following reasons. The claimant argued, at least in part, that treatment she was complaining about was because of lodging incident forms. Her solicitor's letter, which Martin Daley received but did not read, before the meeting, made this clear. Nina Hill who made the ultimate decision on the grievance also received this letter. We assume that Martin Daley read the letter as part of his investigation although it does not appear that this letter was included in the documents appended to the report. Martin Daley did not look at the incident forms and was told by Jacquie Molyneux that they did not keep these forms. No one sought to correct this misleading information from Jacquie Molyneux. If Martin Daley had read the incident forms, this would have cast doubt on some of the comments made about the claimant, to the effect that she put in incident forms as a form of retaliation. He did not seek any comments from the claimant after interviewing other witnesses. We conclude that it was detrimental treatment, putting the claimant at a disadvantage, to receive a grievance outcome which was based on a flawed process. In these circumstances, we conclude that the respondent has not proved that the detrimental treatment of the first grievance outcome was not in any material sense on the grounds of the claimant having made protected disclosures. Subject to the time limit issue, to which we will return, we would conclude that this complaint is well founded.

From: REDACTED
To: REDACTED
Sent: Tuesday, 29 August 2023 at 10:00:12 BST
Subject: Your comments about regulation of NHS managers under a future Labour government

BY EMAIL

Wes Streeting MP
Shadow Health and Social Care Secretary

28 August 2023

Dear Wes,

Your comments about regulation of NHS managers under a future Labour government

The Guardian yesterday quoted you thus:

"The case for a proper system of accountability has been made again and again. Labour will introduce this in office, and make sure those found guilty of serious misconduct are disbarred."

The Guardian also wrote:

"The party said it would consult on the details of the regulatory system once in power, including the roles it should cover, the most appropriate regulatory body, and the competencies themselves. These would include responding to whistleblowing and empowering staff to raise concerns."

"Any system will be proportionate and supportive and aim to deliver excellent management and leadership throughout the NHS," the party said."

I am glad to hear that in principle you support the concept of regulation for managers. May I ask if you have any policy outline in mind yet, as this is a subject dear to many people's hearts.

For example, do you commit to a principle that any regulation of managers should be as rigorous as that applied to clinicians, and not a diluted affair?

I ask as Amanda Pritchard NHS England CEO reportedly told the Times on 24 August 2023
she was reconsidering the possibility of NHS managerial regulation, but added that she was specifically focussing on systems for regulating teachers and bankers.

"She has told health chiefs she wants an urgent meeting next week to consider whether formal regulation is the right response to the Letby case and look at whether systems for overseeing ***teachers and bankers*** *could be models to follow." [my highlight]*

Teachers and bankers

From the 2019 Kark report, my understanding of the regulation of teachers and bankers, which Amanda Pritchard proposes to possibly adopt in the NHS, is that it is not equivalent to the stringent level of regulation applied to clinical healthcare professionals. Professional regulation of clinical healthcare staff requires compliance with standards and ongoing revalidation. Instead, the regulation for teachers seems to be a reactive model that primarily responds

only to reports of the most serious wrongdoing. The Teachers Regulation Agency deals only with the very most serious misconduct and reflecting this, it can only recommend permanent prohibition. This means that if this model is followed, a number of NHS managers guilty of lesser degrees of misconduct, even if repeated, would still slip the net.

Also, I see that the Financial Conduct Authority's Fit and Proper Person test does not define what training is "applicable" for a suitable senior manager. This is a far cry from the way in which the competency of clinical healthcare professionals is strictly defined and regulated.

In his 2019 review Tom Kark recommended that the NHS should adopt a disbarment mechanism in order to expel senior NHS managers found guilty of misconduct (and to prevent them being paid any "golden goodbyes"). NHS England and the Department of Health resisted even this, until the outcry about the Letby scandal.

Importantly, Kark also recommended that if a simple disbarment arrangement proved to be insufficient, the government should proceed to full regulation of NHS managers:

"On the evidence currently available to us, we have not at this stage recommended that the HDSC [Health Directors' Standards Council - a body proposed by Kark] becomes a full 'regulator of directors', accrediting training, registering and regulating directors, and operating a form of revalidation process. But we do recommend that the design of the HDSC allows for a more extensive remit should that prove necessary".

I would very grateful to understand more about Labour's policy position and whether you will seek full regulation as opposed to the partial models for regulating teachers and bankers that NHS England is scrabbling to offer as appeasement post Letby.

I have little confidence that NHS England left to its devices will do anything but protect the interests of power.

The lack of a level playing field between clinicians and non-registered managers is a significant part of what has fuelled managerial abuse against doctors, nurses and other frontline practitioners.

Indeed, some abusive professionally registered managers have taken themselves off register to evade accountability.

Unregulated managers have been free to enact unsafe political orders and to provide useful plausible deniability for the Department of Health by suppressing evidence of failures to resource the NHS safely and failures of bad policy. They have not been bound by a statutory professional code to put the public interest and the needs of patients first.

If NHS managers are to be regulated, why should they be regulated to a lesser degree? Real action is needed, not the semblance of action.

Also, all grades of managers should be regulated, and not just directors, giving parity with the way in which clinicians are regulated.

If you leave some managers unregulated, it is quite conceivable that more of the dirty work will simply be commissioned lower down the chain of command.

Is Labour committed to regulating ALL NHS managers?

We have already seen some profound failures of the Care Quality Commission that was established by Alan Johnson, which seems to have done everything in its power not to investigate the concerns of patients, families and whistleblowers on the spurious pretext that it does not have a remit to investigate individual "complaints". CQC in fact has power to investigate serious incidents under CQC Regulation 12.

As a serious example, CQC has still not explained itself properly in the case of Sally Lewis, whose terrible death by neglect (as determined by the coroner) it failed to investigate for two years. There is still a need to fully understand the catastrophic systems failures at CQC which led to this appalling, mission-critical departure from its regulatory duties. The CQC has so far simply said it does not know how it happened, and refuses to disclose more information. This is just not good enough.

The CQC is hard to distinguish from the NHS which it is supposed to regulate. There is an endless revolving door between the two, and routine use of specialist inspection staff drawn from the NHS in the form of "specialist advisors" and importantly, NHS trust executives advising on CQC's Well Led

inspections as “executive reviewers”. The latter are appraising their own peers in a small community. (There are just over 200 NHS trusts). Such a lack of separation is surely very damaging to regulatory impartiality and public confidence.

The CQC has handled Regulation 5 Fit and Proper Persons (FPPR) most shockingly. It has accepted the most dubious assurance evidence from regulated bodies and it has also misrepresented this to parties who have referred directors under FPPR. For example, CQC told me that it closed down an FPPR referral on David Rosser the former CEO and medical director of University Hospitals Birmingham NHS Foundation Trust, based on an “independent” report. This turned out to be a report by a subordinate trust employee who was not even a board member, assisted by a lawyer from a firm retained by the trust. The CQC later admitted that it should not have claimed that it was an independent report.

I think based on all the evidence to date, it would be fair to ask if club culture masquerades as regulation in the NHS.

The charade has seriously failed the public and harmed patients and staff.

It is of critical importance that regulators are properly designed to be effective.

It is also of vital importance that regulators are properly overseen and that existing regulators are cleaned up.

I particularly ask you to note the recent BMA vote of no confidence in the seriously failing General Medical Council.

This is an extraordinary state of affairs and represents just how degraded our institutions have become. Moreover, the GMC admitted to me that it had only sanctioned a single medical director (Rosser) in the last five years with respect to flawed referrals to the GMC.

There is a yawning chasm of trust and probity to be repaired.

I hope to hear from you.

Yours sincerely,

Minh

Dr Minh Alexander

Retired consultant psychiatrist and NHS whistleblower

APPENDIX

These are the relevant excerpts from Tom Kark and Jane Russell's 2019 review of the Fit and Proper Person test in the NHS, for Steve Barclay, which relate to the FCA and the TRA:

*"**Teaching Regulation Agency***

11.30 We met with Alan Meyrick (Chief Executive Officer).
11.31 The TRA regulates the teaching profession by conducting misconduct hearings
and maintaining a database of qualified teachers.

11.32 The TRA takes action on receipt of allegations of serious misconduct pursuant to
the Teachers' Disciplinary (England) Regulations 2012 as amended by the Teachers' Disciplinary (Amendment) (England) Regulations 2014. Serious misconduct is conduct that is fundamentally incompatible with being a teacher or
could lead to the teacher being prohibited from teaching. The TRA does not concern itself with cases of less serious misconduct, incompetence or underperformance
(which it leaves for the teacher's employer to deal with).

11.33 An allegation of serious misconduct is heard by a three-person panel who decide
whether there has been: (1) unacceptable professional misconduct, (2) conduct likely to bring the profession into disrepute, (3) a conviction, at any time, of a relevant criminal offence. If the panel decides that there has been conduct falling
into any of those three categories it makes a recommendation to the Secretary of

State and a senior TRA official decides whether a prohibition order is appropriate.
A prohibition order applies for life and where an individual is prohibited, their details will appear on the prohibited list.

11.34 In very serious cases, an interim prohibition order is imposed whilst the case is
being investigated. There is a right of appeal against a prohibition order via the Queen's Bench Division of the High Court pursuant to Part 52 of the Civil Procedure Rules. Under some circumstances and after a minimum period of 2 years, the Secretary of State may allow a teacher to apply for the prohibition order
to be removed following a recommendation from another TRA panel. The test applied by that panel is whether the individual has demonstrated "clear and unequivocal insight into misconduct that led to prohibition and the extent to which
they can demonstrate a clear commitment to adhere to and exhibit the personal
and professional conduct elements of the Teachers Standards".

11.35 The TRA does not have the power to impose lesser sanctions than a permanent
prohibition order save for the possibility of review after 2 years."

Kark gave this account of Financial regulation:

"Financial Conduct Authority

11.10 We met with Richard Fox (Head of Cross-Sectoral & Funds Policy) and David
Blunt (Head of Conduct Supervision).

11.11 The FCA regulates financial firms providing services to consumers and maintains
the integrity of the UK's financial markets. It regulates 58,000 financial services firms and financial markets in the UK and is the prudential regulator for over 18,000 of those firms.

11.12 Under the Financial Services and Markets Act 2000 (FSMA), the FCA can prohibit

any individual from performing a 'specified function'. In 2014 and 2015 prohibition orders were issued to 25 and 27 individuals respectively. The kinds of behaviour that have in the past resulted in prohibition have been: providing false or misleading information to the FCA (including information relating to identity, ability to work in the UK and business arrangements); failing to disclose material considerations on application forms such as details of County Court Judgments, criminal convictions and dismissal from employment for regulatory or criminal breaches; serious acts of dishonesty (for example which may have resulted in financial crime); and serious lack of competence.

11.13 The FCA applies a statutory 'fit and proper person' test to assess whether individuals are suitable to perform a controlled function. When considering fitness and propriety the FCA assesses the individual's honesty, competence and capability and financial soundness. For senior positions, when assessing fitness and propriety, regard must be had to the individual's qualifications, competence, their personal characteristics and whether they have undergone training. The FCA may withdraw an approval where it considers that a person is not a fit and proper person to perform the relevant function.

11.14 Individuals must submit a detailed application to the FCA in order that their fitness and propriety can be assessed. The application form's fitness and propriety section asks questions of fact requiring a 'yes' or 'no' answer about particular actions. Some questions include the word 'ever', meaning that the required answers are not restricted to a specified period.

11.15 The FCA has mandatory requirements about regulatory references which came into force on 7 March 2017 (referred to in Chapter 8). Regulatory references must cover the past 6 years from current or previous employers including overseas employees. Further, matters to be disclosed include breaches of the FCA Conduct

Rules, the PRA (Prudential Regulation Authority) Conduct Rules and the Conduct
Standards and Statements of Principle and Code of Practice for Approved Persons where such breaches resulted in disciplinary action (which is limited to formal written warnings, suspensions as a disciplinary sanction and dismissal).”

Download all attachments as a zip file

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