



Blowing in the wind

DO NHS whistleblowers have any meaningful legal protection if they take safety concerns to the media?

In 2012 Edwin Jesudason, a highly regarded consultant paediatric surgeon and researcher, went to the media because he believed Alder Hey Children's Hospital (AHCH) had failed to address serious concerns about harm and risk to children, and because of the smearing of the mental health of a fellow surgeon-whistleblower, Shibani Ahmed (*Eyes passim*).

Jesudason hoped he would be protected by the Public Interest Disclosure Act (1998), which was introduced to protect whistleblowers after the appalling treatment of anaesthetist Steve Bolsin, who became unemployable in the NHS after exposing the Bristol heart scandal and saving dozens of babies from brain damage and death (*Eyes passim*).

In July 2012 Jesudason won a temporary high court injunction with costs against AHCH, which was seeking his "no fault" dismissal after certain surgical colleagues refused to work with him. However, in trying to make the injunction permanent and to improve protection for other NHS whistleblowers, Jesudason lost at a second high court hearing after his union, the British Medical Association, withdrew its support for him. The BMA often represents doctors on both sides in whistleblowing disputes – hardly an ideal situation.

AHCH has since claimed that all Jesudason's concerns were unfounded and had been dealt with, but it heavily redacted an investigative report into safety by the Royal College of Surgeons, and Jesudason believed it was misrepresenting the report to defend its reputation and hide failures of care. Jesudason was particularly concerned that avoidable deaths were not being learnt from openly, a view supported by the mother of Caitlyn Parry, who died after surgery at AHCH in March 2010. Sian Parry had to take legal action against AHCH to get to the truth – seven and a half years after Caitlyn died because major arteries had been cut in error by a surgeon who had just returned from sick leave and was supposed to be being overseen by another surgeon.

In the same year as Caitlyn's death, on learning Jesudason (now on secondment in America) had reported safety concerns, AHCH surgeon Colin Baillie wrote: "It is imperative that our legal position is solid should [the] trust wish to terminate the employment of Jesudason... The allegations of

patient harm go beyond the cases mentioned in this document, so we can expect more damaging revelations. There are only two possible outcomes; major departmental restructuring (on the quiet) with Jesudason returning... or a very dirty fight, fully in the public eye, with the organisation's chief weapon being to bring Jesudason (who remains a talented surgeon and researcher) before the GMC [General Medical Council] for sanction."

"Weaponising the GMC" is a standard procedure for punishing whistleblowing doctors. Raj Mattu, a brilliant cardiologist lost to the NHS after raising patient safety concerns at University Hospitals of Coventry and Warwickshire (UHCW), had to endure absurd and invented allegations of sexual misconduct, fraud and more than 200 spurious referrals to the GMC (*Eyes passim*). Mattu eventually won a record payout but not before the trust, under the "leadership" of CEO David Loughton, had squandered more than £6m trying to shut him up or discredit him. Loughton is now CEO at the Royal Wolverhampton and the proud owner of a CBE for services to the NHS.

Meanwhile, Jesudason and M.D. submitted a poster about his concerns to a paediatric meeting. AHCH's medical director and former BMA place of work representative, Rick Turnock, responded: "I think the first priority is the poster. Then we turn our attention to Dr Hammond [ie M.D.] GMC number 3257087."

Jesudason wanted his concerns to be investigated fully, but the BMA wanted him to accept a pay-off and compromise agreement, its standard tactic when making awkward situations disappear. When Jesudason went public, it not only withdrew legal support, causing his case to collapse, but pursued him – and is still pursuing him six years later – for costs in the case, estimated at £250,000. The BMA knows Jesudason lost his house and surgical career and has no chance of making any such payment. Jesudason had to represent himself against the BMA in October 2016, and judgment is still awaited 18 months later. Why the doctors' "union" would want to inflict such a punishment beating is unclear, but its later discrediting of junior doctor whistleblower Chris Day continues this pattern (*Eyes passim*).

Jesudason lost an initial employment tribunal in Liverpool after it refused to grant him whistleblowing protection and excluded important evidence against AHCH. He now has an employment appeal tribunal in London this week. It's an important test of whether workers, in good faith, are legally protected when they take legitimate concerns outside an organisation when they are not being addressed internally. You can support his case at www.crowdjustice.com/case/whistleblower-seeks-protection/.

M.D.