

Tuesday 26th July 2022

To members of the board for Lewisham & Greenwich NHS Trust

Re: Serious concerns about the actions of Lewisham & Greenwich NHS Trust (LGT) in relation to Dr Chris Day's employment tribunal

Dear Board members,

As a group representing patients, NHS campaigners, health professionals and members of the public, we are deeply concerned about matters arising from our observations, reporting and court submissions relating to the (June/July 2022) 16 day employment tribunal hearing for claimant, Dr Chris Day (C) and respondent LGT. Below we set out the most important issues which require your urgent attention and further action.

Concealment of key evidence and contempt of court - Board meeting October 2018

LGT for 4 years denied the existence of the record of the Board meeting that approved the settlement agreement between Dr Day and LGT that took place on the evening of Sunday 14 October 2018. We understand that the meeting record was hidden from Dr Day and its existence denied to a Journalist and even a Judge which is contempt of court and a criminal offence. It appears that the Board and Dr Day were not in possession the whole truth about each other's position when agreeing to the settlement.

Kate Anderson, LGT Board's director of Corporate Governance who authored the meeting note must have denied its existence through law firm Capsticks, as Ms Anderson was the instructing client at that time.

Poor governance - Ben Travis CEO

Normal Lamb MP and Justin Madders MP asked for a public inquiry into the Trust's handling of the Day case. Instead Ben Travis, CEO of LGT, instructed Kate Anderson to conduct a formal review but LGT failed to disclose to the court any record of the review or any internal notes, emails relating to it. Mr Travis relied on this formal review to refuse the call for an independent review.

Legal misrepresentation - Ben Travis CEO

Ben Travis was criticised in an order dated 2 September 2021 for failing to comply with discovery obligations when he wrote 18 letters to local MPs and stakeholders about the Day Case that were not disclosed to the court. Mr Travis claimed the material sent was to fully brief public officials but was forced to accept by Andrew Allen QC (AAQC) that the material he sent out was not accurate. In the June/July 2022 hearing Mr Travis denied he had communicated with any other stakeholders but this was subsequently found to be untrue.

"Been revealed as recently as last night to have sent further letters to at least 6 further stakeholders in 2019 in documents that could not have been missed if a reasonable discovery exercise had been carried out in 2020. This is aggravated by the fact that criticism of R[respondent] had already come from EJ Kelly on 2 September

2021 that R had “failed to comply with its discovery obligations” in relation to the 18 other stakeholder letters [585].”

[Microsoft Word - Submissions Draft Final v6.docx \(drchrisday.co.uk\)](#)

The latest disclosure contradicts evidence given to the tribunal by Ben Travis last week, who said nobody else had received any statements.

Mr Allen told the tribunal that trust had “presented two institutional witnesses (Ben Travis and David Cocke) whose witness statement evidence is so undermined by the fact of and the content of R’s late disclosure (not to mention Ben Travis’s own oral evidence) that they can no longer be regarded as reliable witnesses of truth. These witnesses were the people in charge of carrying out a discovery exercise involving searching their own in boxes for relevant material – which they clearly failed to do adequately given that plainly relevant material had been squeezed out of R over last two weeks – produced in a piecemeal fashion only because of questions upon questions from C pointing out the inadequacy of the exercise being conducted.”

<https://davidhencke.com/2022/07/15/revealed-trust-sent-secret-partisan-briefings-on-dr-days-whistleblower-case-to-nhs-top-brass-and-four-trusts-including-to-dr-amanda-pritchard-now-head-of-nhs-england/>

Contradictory evidence from Ben Travis CEO

“Contrary to what Ben Travis has stated in his witness statement in this case about his preference for the case to run its course, the record does not show that he expressed any doubts to the Board, and it records that: “BT confirmed a view that we should settle”.

<https://davidhencke.com/2022/07/12/david-cocke-the-trust-official-who-destroyed-potentially-relevant-emails-instructs-top-lawyer-and-pulls-out-of-cross-examination-in-chris-day-tribunal/>

Deletion of key evidence regarding Dr Day’s warnings about patient safety at LGT - Janet Lynch, Trust director and instructing client 2014 to 2019

The court was informed that Janet Lynch’s entire NHS email account was now permanently destroyed by NHS Digital, a claim they deny, blaming the LGT. As the manager acting as instructing client in the Day case from 2014 -2018, her emails would be essential components of any proper pre-hearing disclosure.

He [AAQC] added that “by not calling the relevant witnesses” behind the trust’s approach to settling the case and its controversial public statements, Lewisham and Greenwich had sought to construct a misleading case “which has crumbled around them” once the late disclosures came about.

<https://www.computerweekly.com/news/252522787/NHS-trust-deliberately-deleted-up-to-90000-emails-before-tribunal-hearing/>

Patient safety issues

LGT has consistently tried to play down the serious nature of the protected disclosures made by Dr Day including in court, in letters to stakeholder and in public statements. LGT has managed to ensure none of the senior clinicians to whom Dr Day made the protected disclosures, key witnesses to the events, have been cross examined. Further, LGT vigorously attempted to prevent the evidence of two consultant anaesthetists being heard at the Tribunal to set out the reality of Dr Day's patient safety concerns.

Dr Megan Smith:

'There was a clear and present danger to patient safety: absolutely no question about that'

<https://drchrisday.co.uk/wp-content/uploads/2022/07/Dr-Megan-Smith-WS.pdf>

Dr Hormaeche:

'it is clear ICU Core Standards support the validity and importance of Dr Day's disclosures in respect of consultant-to-patient ratios, 12 junior doctor-to-patient ratios and airway support. I cannot understand why Roddis Associates would conclude otherwise.'

'repeated failure to comply with the Standards exposes patients to increased levels of risk, which given the already high risk nature of the patient cohort, should not happen.'

<https://drchrisday.co.uk/wp-content/uploads/2022/07/Dr-S-Hormaeche-WS.pdf>

Peer Review proving Trust Lying to the Evening Standard in 2016

Trust comment in Evening Standard in 2016

"We investigated Dr Day's concerns in detail. We have robust procedures to support staff who raise concerns and we encourage our staff to speak out when concerns arise. We identified the need to increase medical staffing numbers for the intensive care unit at Queen Elizabeth hospital. The unit is now fully compliant with quality standards."

Dr Day showed in unchallenged tribunal evidence that this statement to the Evening Standard was false. The Roddis investigation denied there was a problem with staffing and supervision in the ICU and therefore did not identify any staffing problems to be solved. The Roddis report sought to explain away relevant quality standards that indicated the unit was not compliant with national standards.

Concealment and Destruction of evidence - Mr David Cocke, Director of communications

In 2018 David Cocke authored public statements to the press and local stakeholders about Dr Day's case against L&G Trust (LGT). LGT had hidden emails between Mr Cocke and LGT's assistant medical director Dr Harding from the court. Dr Harding was the recipient of the protected disclosures central to Dr Day's claim.

In a statement to the ET, Mr Cocke stated on 4 July he had permanently destroyed 90,000 emails.

In his final submissions on 14 July 2022, Allen [Andrew Allen QC – AAQC] said that he believed “that the respondent’s conduct of this litigation...has placed the fairness of the hearing in jeopardy”.

<https://www.computerweekly.com/news/252522787/NHS-trust-deliberately-deleted-up-to-90000-emails-before-tribunal-hearing/>

Mr Cocke then withdrew from being a witness to defend the Trust against the claim and has instructed a criminal law firm to represent him.

In a statement after proceedings had been stopped again Judge Anne Martin said “I just wanted to make it clear, that without further medical evidence, the Tribunal can not accept the reason for him [Mr Cocke] not being called to give evidence is medical. It is a decision made by the Respondent.” Or in other words a deliberate step from the Trust to avoid Mr Cocke being cross examined.

<https://davidhencke.com/2022/07/12/david-cocke-the-trust-official-who-destroyed-potentially-relevant-emails-instructs-top-lawyer-and-pulls-out-of-cross-examination-in-chris-day-tribunal/>

Questions for LGT Board

1. What steps will LGT take to investigate the serious issues outlined above?
2. Have either Ben Travis or David Cocke been suspended pending a full investigation into their actions in relation to the Day case?
3. As requested by Sir Norman Lamb, will LGT now undertake an independent public inquiry into its conduct of this case and the dangerous conditions – including avoidable deaths – in its ICU department during the period when Dr Day raised patient safety concerns?
4. Has LGT informed the police about the potential criminal action taken by Mr Cocke?
5. Has LGT informed the Information Commissioner’s Office about the destruction of Janet Lynch’s email account and the actions taken by Mr Cocke?
6. What steps will LGT take to recover the evidence that has been destroyed? Any efforts must have public confidence and be independent.
7. How can LGT rebuild public trust that it will not be party to such serious misconduct in the future?
8. How will LGT avoid further expensive and destructive litigation against whistle-blowers who raise serious patient safety concerns, and rebuild trust of medical staff silenced by the actions taken against Dr Day?

We look forward to your response by email to: info@reclaimthenhs.org.uk

On behalf of:

Reclaim the NHS (Previously Keep Our NHS Public - Greenwich)

Queen Elizabeth Hospital Patient Forum

Your NHS Needs You