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By Email Personal Information redacted by the USI

Our Ref: CW29/CW29/UK01-2005656-00004/104633283 v1
Your Ref: Notice 52 of 2022

Chloe Williams
Solicitor
Personal Information redacted by the USI (Direct Dial)
Personal Information redacted by the USI

15 June 2022

Dear Ms Donnelly

Reference: Practitioner Performance Advice (formally known as NCAS) - Notice 52 of 2022

Our Client: NHS Resolution

We act on behalf of NHS Resolution in accordance to your Section 21 Notice served on 4 May 2022 and attach in zip folders 140 documents of material, including two witness statements from Dr Colin Fitzpatrick and Dr Grainne Lynn, together with an index which we hope you will find beneficial.

Background

Our client wishes to provide the following by way of background to the documents disclosed:

1. Our client joined the (then) NHSLA in 2013 (not 2014).
2. Our client's services to Northern Ireland are provided through a Service Level Agreement (SLA) which has been included at 113-114 in the bundle. The local framework that governs the SLA is Maintaining High Professional Standards in the Modern HPSS (*MHPS HPSS*). The Northern Ireland framework was introduced in 2005.
3. Two members of staff, Dr Grainne Lynn and Dr Colin Fitzpatrick were close to either leaving the organisation or retiring before our client became aware of the Section 21 Notice. As such, in the circumstances, our client took the opportunity to seek their view and involvement with the case prior to their respective departures. Our request for an extension of time to provide one or two further documents is to address any gaps in the Section 21 Notice which the two current witnesses were unable to speak to. It is proposed that these gaps can be addressed by a senior individual who is on a period of extended leave until 6 July 2022.

We look forward to hearing from you at your earliest convenience in respect of the extension of time requested to the Solicitor to the Inquiry in our letter of 14 June 2022.

Belgium | China | France | Germany | Ireland | Italy | Luxembourg | Netherlands | Spain | UK | US (Silicon Valley)

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Yours sincerely

Chloe Williams
Solicitor

Independent Inquiry into Mr Aidan O'Brien

WITNESS STATEMENT OF GRAINNE LYNN

I, **GRAINNE LYNN**, will say as follows:-

1. I qualified in dentistry from Queen's University Belfast in 1983. In 1990 I obtained Fellowship of the Faculty of Dentistry from the Royal College of Surgeons in Ireland. Having worked in hospital, general practice, and community settings where I had been the clinical director, I was appointed part time to what was then called NCAS in 2005, and initially combined this with providing dental services to prisoners in Magilligan Prison in Northern Ireland, and working with the Health Service Executive in Donegal. I subsequently worked full time for NCAS (now the Practitioner Performance Advice Service), although in the past year have reduced my hours to work part time. Whilst working with PPA, I was awarded an LLM in employment law in 2010.
2. The Practitioner Performance Advice Service ("Advice Service") considers concerns about the performance of doctors, dentists and pharmacists and joined NHSLA in 2014. In 2017 NHSLA became NHS Resolution.
3. NHS Resolution is the operating name of NHSLA, and is an arm's length body of the Department of Health and Social Care.
4. Over the years I have worked for NCAS in a part time and full time capacity as one of its advisers, mainly covering Northern Ireland and England (with occasional work in Wales and Scotland).
5. I will retire from Advice Service on 07 January 2021.

6. I make this statement in order to provide a summary of my involvement on behalf of the Advice Service with the Southern HSC Trust in Belfast and the management of Dr Aidan O'Brien, a Consultant Urologist.

NCAS/The Advice Service

7. The Practitioner Performance Advice Service was established in 2001 and is now a service delivered by NHS Resolution under the common purpose, to provide expertise to the NHS on resolving concerns fairly, share learning for improvement and preserve resources for patient care.
8. The Advice Service provides a range of core services to NHS organisations and other bodies in England, Wales and Northern Ireland such as advice, assessment and intervention, training courses and other expert services.
9. The Advice Service is an independent advisory body. It does not have any statutory powers and as a result is unable to require any party to follow its advice or co-operate with its assessment functions. In respect of its advisory functions all of the assistance that we provide is based upon information received from NHS bodies and other parties, such as the practitioner concerned.
10. As a result the Advice Service is dependent on NHS bodies providing the relevant information about a case. We cannot and do not adjudicate upon any concerns about the resolution of performance concerns and decisions in relation to the ongoing employment or contractual status of a practitioner are matters for the NHS body to determine, although we are able to advise on the appropriate procedures which must be followed.
11. The role of an adviser is primarily to support NHS bodies in dealing with concerns about the performance of individual practitioners. The support is usually undertaken by an adviser discussing the relevant concern with an NHS body and then providing advice. In the first instance this process is usually undertaken by telephone. Any substantive discussion or advice is then summarised and confirmed in a letter to the NHS body or practitioner. Letters to an NHS body are not routinely copied to practitioners but we advise the NHS bodies to share with the practitioner unless this is deemed inappropriate. Notes made during telephone calls are not retained once the letter has been prepared and sent. This is because the letter represents the agreed outcome of the call. It is possible that in a lengthy telephone call some

additional matters may have been discussed but all relevant information is captured in the letter.

12. In advising NHS bodies on how they should deal with concerns about performance of individual practitioners, reference is made to the procedures set out in Maintaining High Professional Standards in the Modern NHS (MHPS) in England or Maintaining High Professional Standards in the Modern HPSS in N. Ireland. These documents set out the procedures for handling concerns about practitioners relating to conduct capability and health. It also contains specific guidance on how NHS bodies should investigate concerns, and the procedures they should follow when considering the exclusion of a practitioner.

The role and involvement of NCAS/the Advice Service

13. The first contact from Southern HSC Trust was on 7 September 2016. I was not involved at that stage and the case was assigned to my colleague Dr Fitzpatrick. My first involvement with the case was in December 2016 when I was asked to call Dr Richard Wright (the then Medical Director) about a serious adverse event investigation that had flagged up a problem with Dr O'Brien's review of a patient with cancer. The patient had allegedly come to some harm, and there were concerns about Dr O'Brien's review system, including allegations that he was not updating the system appropriately and, possibly taking notes to his home and not returning them.
14. I dealt with the matter instead of Dr Fitzpatrick as he works part time and was unavailable.
15. A summary of my discussions with Dr Wright on 28 December 2016 appears in my advice letter dated 29 December 2016 which I now produce as **GL1**. I explained that any formal investigation would need to be conducted under MHPS, and that given the information to date it was likely a more formal process was now warranted. It was noted that at the time Dr O'Brien was unwell and further steps were being taken to see if he was fit to work and possibly fit to participate in an investigative process. We did discuss at the time the criteria for possible formal exclusion.
16. I left it that given the possible exclusion I would review the case with Trust in about a month's time. I then sent follow up emails in January, March and May 2017 and in August 2017 our file was closed as there was no response to my emails. This is in line with our standard practice. We do not have a proactive role in these matters and

whilst I did not know what was happening at the Trust I concluded that they were not seeking advice from us and presumed that they were continuing with the MHPS process.

17. The next contact was from a new Medical Director, Dr Khan who emailed the Advice Service on 17 September 2018 asking for an immediate meeting or call. I was able to offer a call on 20 September.
18. A summary of my discussions with Dr Khan on 20 September 2018 appears in my advice letter dated 21 September 2018 which I now produce as **GL2**. We reopened our case and I recorded that the Trust investigation had been very delayed due to complexity and extent. I noted that since February 2017 the doctor had been working to an agreed action plan with on-going monitoring, so that any risks to patients had been identified and addressed. I did not see a copy of the action plan.
19. As Dr Khan explained that Dr O'Brien was seeing private patients at his home and did not have a private sector employer, I suggested that he should be asked to agree not to undertake any work in that area of practice and noted that he should not currently be working privately. I noted that Dr Khan intended to proceed with the case as a conduct matter under MHPS rather than one of capability. Dr Khan confirmed that the local GMC ELA (Employee Liaison Associate) was aware of the issues and I suggested that she should be updated.
20. I explained that Practitioner Performance Advice could offer support via the Professional Support and Remediation (PSR) team by drafting a robust action plan with input both from the practitioner and the Trust and subsequently I arranged for the forms to formally request PSR support to be sent to Dr Khan. This is a free service we can offer to assist Trusts. The forms were never returned.
21. The next contact was when Dr O'Brien himself contacted the Advice Service to express concerns about communications between the Trust and the Advice Service. I arranged to speak to Dr O'Brien on 4 October 2018 and then we spoke at greater length on 11 October 2018.
22. A summary of my discussions with Dr O'Brien on 04 and 11 October 2018 appear in my letter dated 17 October 2018 which I now produce as **GL3**. Dr O'Brien was worried that Trust had wrongly suggested he had been supported to address concerns, whilst his account was that whilst he was told about the concerns, he did

not receive any support or assistance in managing the difficulties (which he attributed to serious workload issues). He was concerned that he had not seen any correspondence with NCAS/The Advice Service prior to recent letters with Dr Khan.

23. On 18 October 2018, having sought Dr O'Brien's consent, I let Dr Khan know I had been speaking to Dr O'Brien.
24. On 30 October Dr O'Brien called again (together with his son, Personal Information
redacted by the USI) to discuss copy correspondence he had received between our service and the Trust. A summary of my discussions with Dr O'Brien on 30 October 2018 appear in my letter dated 31 October 2018 which I now produce as **GL4**. Dr O'Brien's letter in response, dated 1 November 2019 is produced as **GL5**. He shared his concerns about meetings of the Trust's Oversight Committee in 2016 and the scope of the more recent review.
25. On 31 October 2018 I was able to speak to Dr Khan and he subsequently emailed on 5 November 2018 (**GL6**) when we agreed a meeting with our involvement was unlikely to achieve anything further. A summary of our exchanges appears in my letter dated 6 November 2018 which I now produce as **GL7**.
26. I replied to Dr O'Brien on 9 November 2018 in a letter which I now produce as **GL8**.
27. I next followed up with the Trust with an email to Dr Khan on 2 January 2019 in which asked "I am just checking if this case has come to a conclusion and if so whether you are happy for Practitioner Performance Advice (formerly NCAS) to close its file on it." Dr Khan replied to explain that there was a now a formal grievance issue which had to be dealt with first. There was also a new Medical Director Maria O'Kane
28. I emailed Dr Khan again in February 2019 and he told me that they were still addressing the formal grievance. In June 2019 I emailed Dr Khan and Dr O' Kane, the new Medical Director, to ascertain whether the grievance had been brought to a conclusion and what had happened with regards to the conduct hearing. On 10 June 2019, I received a reply from Dr Khan setting out that the hearing was on hold pending the outcome of Dr O' Brien's grievance. In September 2019 I emailed Dr Khan and Dr O' Kane again for an update, and when I did not receive a reply our file was closed in February 2020. In the meantime Dr O' Brien had contacted us to check if there had been further correspondence with the Trust.

29. The matter was reopened when the Trust contacted the Advice Service in July 2020 and dealt with by both myself and my colleague Dr Colin Fitzpatrick. My involvement was limited to a brief call with Dr O'Brien on 15 July 2020 but he subsequently spoke at greater length to Dr Fitzpatrick.
30. From my perspective the case was not particularly unusual in terms of our involvement as the Advice Service. We provided advice particularly around safeguarding the situation for patients, and left the Trust to progress their investigation which we recognise can be complex and take time. I did note that the issue was considered by the Trust to be a conduct matter relating to breaching policies around files, and failures with reviews. It was my impression that prior to the most recent communications in 2020, the Trust essentially considered Dr O'Brien to be clinically competent– the letter of September 2018 refers specifically to “no evidence of concern about Dr O’ Brien’s clinical ability with individual patients”. In 2018, the Trust had hoped to resolve the matter with conduct processes, but Dr O’ Brien was unhappy to proceed on that basis. Dr O’ Brien has made many representations to me and to Dr Fitzpatrick about workload issues being at the root of the problem, and has said that he is victimised for being a whistle blower.

Statement of Truth

I believe the facts stated in this witness statement are true.

Signed

Personal Information redacted by the USI

Dated 23 December 2020

29 December 2016

SENT VIA EMAIL ONLY**PRIVATE AND CONFIDENTIAL**

Dr Richard Wright
Medical Director
Southern Health And Social Care Trust
68 Lurgan Road
Portadown
BT63 5QQ

NCAS ref: 18665 (Please quote in all correspondence)

Dear Dr Wright

Further to our telephone conversation on 28 December 2016, I am writing to summarise the issues which we discussed for both of our records. Please let me know if any of the information is incorrect.

In summary, this case which my colleague Dr Fitzpatrick had previously discussed with Mr Gibson, involves Dr 18665, a senior consultant urologist about whom there have been increasing performance concerns. The allegations are of poor record keeping, and slowness of triaging referrals and arranging reviews. Dr 18665 is also reported to have removed a very substantial numbers of charts from the Trust's premises without bringing them back; despite requests that these be returned many charts remain outstanding. Dr 18665's colleagues have, on occasions, seen patients for whom there have been no notes. Dr 18665 is currently on sick leave, but has indicated that he is returning to work in January 2017.

A recent Serious Adverse Incident (SAI) has caused concern that there is potential for patients to be harmed by the ongoing situation. You are awaiting the report of the SAI but on the information available to date, you feel the Trust will need to undertake a formal investigation of Dr 18665. The Trust is also considering exclusion.

As you are aware, the concerns about Dr 18665 should be managed in line with local policy and the guidance in Maintaining High Professional Standards in the Modern HPSS (MHPS). We discussed that as the information to date - no noted improvement despite the matter having been raised with Dr 18665 - suggests that an informal approach (as per paragraphs 15-17 of Section I of MHPS) is unlikely to resolve the situation, a more formal process is now warranted.

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Any formal investigation should be undertaken to robust and specific Terms of Reference (ToR) and in line with the guidance in paragraphs 28-40 of MHPS Section II. The Case Manager should write to Dr 18665 as per paragraph 35 informing him of the name of the Case Investigator and Designated Board Member; any objections by Dr 18665 to the appointment of nominated individuals should be given serious consideration. The investigation should not be an unfocused trawl of Dr 18665's work but we discussed that if there are concerns that patients may not have received appropriate treatment, or that there are patients with inadequate records, then this could be managed separately with an audit/ look back to ensure that patients have received the appropriate standard of care. We noted that further preliminary information (such as from the SAI and taking account of Dr 18665's comments) may be helpful in deciding the scope of the investigation and therefore the ToR.

As well as being outwith the Trust's Information Governance policies, the allegations, if upheld, may mean that the legislation (DPA) has been breached, and once more information is available you may wish to take further advice on this. Paragraphs 20 and 21 of the GMC's Good Medical Practice also set out standards for record keeping including a requirement that records are kept in line with data protection duties.

Dr 18665 is due to attend Occupational Health to ascertain whether he is fit for work; if he is not, we noted that there would be no need at this time to consider exclusion but you may then wish to ask the Occupational Physician whether/when Dr 18665 would be fit to participate in an investigative process.

If Dr 18665 is deemed fit for work, we discussed the criteria for formal exclusion, and the option of an interim immediate exclusion for a maximum of 4 weeks (as per paragraphs 18-27 of Section I MHPS). The latter would allow for further information to be collated and to take account of Dr 18665's comments about the allegations, before deciding whether there are reasonable and proper grounds for formal exclusion such as a concern that the presence of the practitioner in the workplace would be likely to hinder the investigation. I note that there had been a concern expressed previously about a record missing for 2 years inexplicably appearing on a secretary's desk. In line with paragraph 22 of Section II MHPS, there is an obligation to inform other organisations, including the private sector, of any restriction or exclusion of a practitioner and a summary of the reasons for it.

Dr 18665 should be encouraged to contact his defence organisation/ BMA for help and advice. He may also benefit from staff support such as counselling, at what is likely to be a stressful time for him. Dr 18665 should be told of the involvement of NCAS and you are welcome to share this letter with him if you think this would be helpful.

As discussed, and as Dr 18665 may be excluded, NCAS will keep this case open and I will review it with you in approximately 1 month. Please call in the interim if you have any queries.

Relevant regulations/guidance:

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern HPSS (MHPS)

Review date:

27 January 2017

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If you have any further issues to discuss, or any difficulty with these arrangements, please contact Case Support on the direct line above.

I hope the process has been helpful to you.

Yours sincerely

Personal Information redacted by the USI

Grainne Lynn
NCAS Adviser

cc Case Support Team

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Practitioner Performance Advice (formerly NCAS)

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21 September 2018

PRIVATE AND CONFIDENTIAL

Dr Ahmed Khan
Medical Director
Southern Health and Social Care Trust
Beechfield House
68 Lurgan Road
Portadown
BT63 5QQ

Ref: 18665 (Please quote in all correspondence)

Dear Dr Khan,

Further to our telephone conversation on 20 September 2018, I am writing to summarise the issues which we discussed for both of our records. Please let me know if any of the information is incorrect.

Practitioner Performance Advice (formerly NCAS) encourages transparency in the management of cases and advises that practitioners should be informed when their case has been discussed with us. I am happy for you to share this letter with Dr 18665 if you consider it appropriate to do so. The practitioner is also welcome to contact us for a confidential discussion regarding the case. We have recently launched a new guide for practitioners, which sets out information about our role and services which may be of interest and is available on our website under publications.

In summary, this reopened case, which I had previously discussed with your colleague, Dr Wright, involves Dr 18665, a senior consultant urologist about whom there had been increasing concerns. An investigation, for which you are the Case Manager, has now been completed – it was very delayed because of the complexities and extent of the issues – and you are considering the options as set out in paragraph 38 of Part I MHPS (Maintaining High Professional Standards in the Modern HPSS). You wanted to seek advice around this. You indicated that since February 2017, Dr 18665 has been working

to an agreed action plan with on-going monitoring so that any risks to patients have been addressed.

There were 5 Terms of Reference for the investigation (although the last related to the extent to which the managers knew of or had previously managed the concerns). You told me that having read the report, the factual accuracy of which Dr 18665 has had a chance to comment on, you have concluded that there was evidence to support many of the allegations with regards to Dr 18665. Specifically, following detailed consideration, you noted that:

- a) There were clear issues of concern about Dr 18665's way of working and his management of his workload. There has been potential harm to a large number of patients (783) and actual harm to at least 5 patients;
- b) Dr 18665's reflection throughout the investigation process was concerning and in particular in respect of the 5 patients diagnosed with cancer;
- c) As a senior member of staff within the Trust Dr 18665 had a clear obligation to ensure managers within the Trust were fully and explicitly aware that he was not undertaking routine and urgent triage as was expected;
- d) There has been significant impact on the Trust in terms of its ability to properly manage patients, manage waiting lists and the extensive look back exercise which was required to identify patients who may have been affected by the deficiencies in Dr 18665's practice (and to address these issues for patients);
- e) There is no evidence of concern about Dr 18665's clinical ability with individual patients;
- f) Dr 18665 had advantaged his own private patients over HSC patients on at least 9 occasions;
- g) The issues of concern were known to some extent for some time by a range of managers and no proper action was taken to address and manage the concerns;

You told me that the SAI (serious adverse incident) investigation, which has patient involvement, is looking at the issue where patients have, or may have been, harmed as a result of failings. You are aware that patients are entitled to know this.

We discussed the current situation and the overriding need to ensure patients are protected. I note that you have a system in place within the Trust to safeguard patients, but we discussed that this needs to be mirrored in the private sector. You explained that Dr 18665 saw private patients at his home and did not have a private sector employer. I would suggest that as paragraph 22 of Section II MHPS states that "*where a HPSS employer has placed restrictions on practice, the practitioner should agree not to undertake any work in that area of practice with any other employer*" Dr 18665 should not currently be working privately.

We discussed that the issues identified in the report were serious, and that whilst there are clearly systemic issues and failings for the Trust to address, it is unlikely that in these circumstances the concerns about Dr 18665 could be managed without formal action. We also discussed that whilst the issues did have clinical consequences for patients, as some of the concerns appear to be due to a failure to follow policies and protocols, and possibly also a breach of data protection law, these might be considered to be matters of conduct rather than capability. We noted therefore that it would be open to you in your

role as Case Manager to put the matter forward to a conduct hearing, but that Dr 18665 could also be offered support going forward to ensure that in future he is able to meet and sustain the required and expected standards. You told me that the local GMC ELA is aware of the issue and I advised that you may wish to update her on the position. In the majority of cases, the GMC prefers Trust to conclude their own processes before considering referral, and early referral is only indicated in a minority of cases; but the ELA would be best placed to advise on this.

I told you that, whilst there are no noted clinical performance concerns, Practitioner Performance Advice could offer support via the Professional Support and Remediation (PSR) team by drafting a robust action plan with input both from Dr 18665 and the Trust to address some of the deficiencies which have been identified (around the management of workload, administrative type of issues, for example). The purpose of the plan would be to ensure oversight and supervision of Dr 18665's work so that the Trust is satisfied there is no risk to patients, but also to provide support for Dr 18665, to afford him the best opportunity of meeting the objectives of the plan. We noted that this might involve job planning issues such as reducing Dr 18665's workload, and enhanced appraisal.

Since we spoke, I have talked to PSR, and we will arrange for the forms, which must be completed to formally request PSR support with a plan, to be sent out.

I note you said that there are no reported health concerns. However, as this is likely to continue to be a stressful time for Dr 18665, he should be offered any additional support deemed appropriate (access to staff counselling, mentoring, etc.).

As discussed, we will keep this case open. Please feel free to call at any stage, if you have queries.

Relevant regulations/guidance:

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern NHS (MHPS)
- The Medical Profession (Responsible Officer) Regulations 2010 and Amendment 2013

Review date: 24 September 2018

Yours sincerely,

Personal Information redacted by the USI

Dr Grainne Lynn
Adviser
Practitioner Performance Advice

Practitioner Performance Advice (formerly NCAS)

2nd Floor, 151 Buckingham Palace Road

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www.resolution.nhs.uk

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17 October 2018

PRIVATE AND CONFIDENTIAL

Dr Aidan O'Brien
Consultant Urologist
Southern Health and Social Care Trust

Ref: 18665 (Please quote in all correspondence)

Dear Dr O'Brien,

Thank you for ringing me to discuss your case. We spoke by telephone on 1 and again, as scheduled, on 11 October 2018, and I am writing to summarise the issues which we discussed on these occasions. Please let me know if any of the information is incorrect

In summary, you are a senior consultant urologist and have been the subject of a long running investigation after allegations were made about your practise. This investigation has now concluded and the matter is to proceed to a hearing. I note that the investigative report, which identified issues which have led to the matter being put to a hearing, also identified previous failings in management of your case. You told me that you have grave concerns about many aspects of the process. Specifically, you allege that the Trust has misled Practitioner Performance Advice service (formerly NCAS) by implying that you were supported to address concerns in 2016. Whilst you were told about the concerns, you did not receive any support or assistance in managing the difficulties (which you attribute to serious workload issues). You reported that when you asked in 2016 how the issues could possibly be addressed, the manager shrugged his shoulders

You also told me that, despite repeated requests, you have not received any of letters prior to the recent communication with Dr Khan. You are considering legal options.

You are aware of your right to see information which is held about you and will likely submit a Subject Access Request (SAR) to Practitioner Performance Advice service. You know that I cannot act as your advocate and I advised that you seek advice from your

defence organisation or legal team so that you can consider how best to raise your concerns. We discussed it is open to you to raise a grievance in line with Trust policy, and to write to the Designated Board Member, Chair or Chief Executive about your concerns. I suggested that before you would take legal action or approach any outside bodies with your concerns, it would be prudent to ensure you have exhausted internal processes, and that your defence organisation considers that this action is appropriate and necessary in the circumstances.

As discussed, I will inform Dr Khan of our conversation, and the subject of it. You are welcome to share this letter with him if you wish.

I hope you found our conversation helpful.

Relevant regulations/guidance:

Yours sincerely,

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Dr Grainne Lynn
Adviser
Practitioner Performance Advice

Practitioner Performance Advice (formerly NCAS)

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31 October 2018

PRIVATE AND CONFIDENTIAL

Dr Aidan O'Brien
Consultant Urologist
Southern Health and Social Care Trust

Ref: 18665 (Please quote in all correspondence)

Dear Dr O'Brien,

Further to our follow up telephone conversation of 30 October 2018 in which your son, Mr Michael O'Brien, Personal Information redacted by the USI, also participated, I am writing to summarise the issues we discussed for all of our records. Please let me know if any of the information is incorrect.

You explained that you have now been given by the Trust the letter of 13 September 2016 which was written by my colleague, Dr Colin Fitzpatrick, following his conversation with Mr Simon Gibson. You have also received copies of the minutes of the Trust oversight group which identified that the matter should be subject to formal investigation.

You are not able to understand why the advice in Colin's letter was not followed and how, in December 2016, the situation had escalated to the point that a formal investigation and immediate exclusion was deemed warranted. Your recollection is not compatible with the information in my letter of 28 December 2016, as you say, there was no attempt made by the Trust to resolve the matter informally and you were not made aware of the significance of the issues until 30 December 2016. You were concerned that there had been further contact with NCAS (now Practitioner Performance Advice) in the interim. Additionally, despite being told by Dr Wright that he only became aware of the situation in December 2016, Dr Wright was a member of the oversight group which had met on 13 September 2016 and 12 October 2016.

I told you that the information on the file (and I note you will also receive this information, following your Subject Access Request – SAR) should represent the totality of the communication with Practitioner Performance Advice, and that between October 2016 and December 2016 there is no further information on file other than that which you have been given.

I note that whilst Dr Khan had decided that the matter should be put to a conduct panel, Michael expressed surprise that this would be done before the review into the Trust's handling of the case, which Dr Khan has also recommended should be undertaken.

We discussed that it may be helpful, with the Trust's agreement, for all parties, including Practitioner Performance Advice, to meet. I told you that I would liaise with Dr Khan to ascertain dates, if appropriate.

As before, you are welcome to share this letter with the Trust.

Yours sincerely,

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Dr Grainne Lynn
Adviser
Practitioner Performance Advice

Private and Confidential

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Dr. Gráinne Lynn,
Practitioner Performance Advice,
2nd Floor,
151 Buckingham Palace Road,
London.
SW1W 9SZ.

1st November 2018.

Reference: 18665

Dear Dr Lynn,

Thank you for your letter of 31st October 2018. I write to you because I wish to clarify two matters from our discussion on the 30th October 2018.

The first clarification relates to Dr Wright's knowledge of the concerns. Dr Wright is a member of the Oversight Committee and indeed sat on the meeting of the Oversight Committee on the 22nd December 2016. The minutes of that meeting confirm that there were two earlier meetings of the Oversight Committee at which these issues were discussed, the 13th September 2016 and 12th October 2016. However, as I do not have the minutes of those earlier meetings, I cannot state with certainty that Dr Wright was in attendance at those meetings. I attach the minutes of the meeting of the 22nd December 2016 to which I refer.

Secondly, the review that Dr Khan has recommended should be undertaken is wider in scope than the Trust's handling of my case. I do not have an electronic copy of Dr Khan's determination, however he has stated as follows:

"In order for the Trust to understand fully the failings in this case, I recommend the Trust carry out an independent review of the relevant administrative processes with clarity on roles and responsibilities at all levels within the Acute Directorate and appropriate escalation processes. The review should look at the full system wide problems to understand and learn from the findings."

Thank you once again for the telephone call and your letter. I am deeply appreciative of the time and assistance you have given me to date. With my earnest hope that all these matters can be satisfactorily resolved to the mutual satisfaction of all concerned.

Yours sincerely,

Personal Information redacted by the USI

Aidan O'Brien.

Chloe Williams

From: Grainne Lynn
Sent: 05 November 2018 15:47
To: Khan, Ahmed
Cc: Hynds, Siobhan; Gibson, Simon; CST-B
Subject: RE: MHPS Investigation case 18665 confidential

Categories: UPLOADS NO ACTION - Edyta

Hi Ahmed,

Thank you for this. in the circumstances I am not sure anything further could be achieved by a meeting.

If you are happy for me to, I will let the practitioner know that we have discussed this and that you feel the points which he has raised have already been considered. In any event, I will need to let the practitioner know it will not be going forward to a meeting.

I will write back to you summarising our discussion of last week but reflecting the up to date position as per these further emails. I will review the case with you in 6- 8 weeks but please get in touch in the interim if you have any queries

Kind regards,
Grainne

From: Khan, Ahmed [Personal Information redacted by USI]
Sent: 05 November 2018 11:50
To: Grainne Lynn
Cc: Hynds, Siobhan; Gibson, Simon
Subject: FW: MHPS Investigation
Importance: High

Dear Grainne

Further to our telephone conversation on Wednesday 31 October.

Thank you for advising of your recent telephone conversation/s with Mr A O'Brien and his son regarding the on-going process under MHPS within the Trust. My understanding of the main issue raised by Mr O'Brien and relayed by you, is respect of the commencement of the investigation and the decision to move to a formal investigation process rather than manage the concerns informally. Mr O'Brien has outlined that his workload was significantly impacting on his ability to undertake all required work.

As discussed, this is a concern Mr O'Brien raised at the outset of the investigation process. A full and detailed response was provided to Mr O'Brien by letter on 30 March 2017 addressing this issue and setting out the reasons for the decision to manage the concerns through a formal investigation process. As I understand it, this is a judgement for the employer to make under MHPS. Given the serious nature of the concerns, it was considered to be the appropriate course of action. We are now a significant period of time on and have completed a formal investigation, with Mr O'Brien's participation.

I was encouraged to hear from you that Mr O'Brien and his son are not in dispute of the issues of concern. The findings from the formal investigation further outline that the concerns under investigation, and which are now founded, are very serious in nature. After taking further advise, as a Case Manager I remain satisfied that a formal investigation was and is the appropriate course of action in the circumstances. As previously discussed and agreed with you, the next step in the process is to hold a conduct hearing following conclusion of the formal investigation.

I appreciate your offer of a meeting between the trust and Mr O'Brien with you in attendance. Having considered this, we remain unclear as to the purpose of this meeting at this stage. As always we are very happy to be guided by NCAS and if you feel it is useful to meet, we are happy to do so.

We would be very grateful for your advice on the best course of action in this regard and what you feel could be achieved by such a meeting? Please don't hesitate to contact me if required.

Kind Regards,
Ahmed

Dr Ahmed Khan
MHPS Case Manager
Medical Director (Interim)

Personal Information redacted by USI

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Southern Health & Social Care Trust IT Department

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Practitioner Performance Advice (formerly NCAS)

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www.resolution.nhs.uk

Irrelevant information redacted by the USI

6 November 2018

PRIVATE AND CONFIDENTIAL

Dr Ahmed Khan
Medical Director
Southern Health and Social Care Trust
Craigavon Area Hospital
68 Lurgan Road
Portadown
BT63 5QQ

Ref: 18665 (Please quote in all correspondence)

Dear Dr Khan,

Further to our follow up telephone conversation of 31 October 2018 in which Ms Siobhan Hynds and Mr Simon Gibson also participated, and your email of 5 November 2018 to me, I am writing to summarise the issues we discussed and my understanding of the position for all of our records. Please let me know if any of the information is incorrect.

I rang to apprise you of conversations which I had over a period of time with Dr 18665 (and his son), and to ascertain whether you felt that a meeting would be helpful. Dr 18665 had consented that I would share details of our conversations.

I told you that Dr 18665 has recently become aware of correspondence between what was then NCAS – now Practitioner Performance Advice – and the Trust in September 2016. Dr 18665 felt that between September 2016 and December 2016, he was not afforded an opportunity to address the concerns which had been raised, and this may have avoided the need for a formal investigation. Dr 18665 also told me that he was never supported to address the concerns, and that whilst he accepts some of the criticism in the investigative report, he also considers that the management failure identified should be scrutinised before he is subject to a conduct hearing.

You explained that prior to the September 2016 telephone call, Dr 18665 had been made aware of the concerns, and that the situation had not improved. Ms Hynes also queried whether there was always a requirement under MHPS to manage issues first under local informal processes, or whether there were occasions when a matter was so significant that it would proceed directly to formal investigation. I advised that there is scope to move directly to formal processes, if the matter is deemed sufficiently serious, but that this is a judgement call for an employer. In this case, you considered that the threshold had been passed. As Dr 18665 was a consultant, it was considered that he should have been more proactive in raising issues. It was also reported that since February 2017 Dr 18665 has been able to undertake his work satisfactorily without additional support.

The investigative report has upheld concerns about Dr 18665's practice. Whilst it is accepted that there were management failings, the findings are such that the Trust believes the threshold for putting the matter to a hearing has been reached. You pointed to the negative effects of the situation on patients noted in the report, and did not consider it would be appropriate to manage the matter informally. The Trust considered that it would be for any hearing to consider the evidence and the mitigation put forward by Dr 18665.

We discussed whether a meeting with all parties should be convened, and you took some time to think about the issues which I had raised to consider the case again and to think about whether a meeting would be useful. Having reviewed the situation, the Trust considered that the points raised with me by Dr 18665 had already been comprehensively managed, that there were grounds for a formal investigation and for putting the matter to a hearing (notwithstanding some of the criticism made of how the case had been managed). You were unsure of the purpose therefore of any meeting. In these circumstances, I agreed that it was difficult to see what a meeting would add and I will inform Dr 18665 of this.

Dr 18665 should continue to be offered support from the Trust (such as from OH, staff counselling, mentoring) at what is likely to continue to be a stressful time for him.

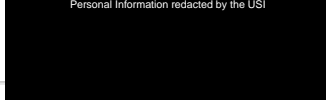
I will review the case with you again in approximately 6-8 weeks.

Relevant regulations/guidance:

- Local procedures
- General Medical Council Guide to Good Medical Practice
- Maintaining High Professional Standards in the Modern NHS (MHPS)
- The Medical Profession (Responsible Officer) Regulations 2010 and Amendment 2013

Review date: 31 December 2018

Yours sincerely,

Personal information redacted by the USI


Grainne Lynn

Adviser

Practitioner Performance Advice

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9 November 2018

PRIVATE AND CONFIDENTIAL

Dr Aidan O'Brien
Consultant Urologist
Southern Health and Social Care Trust

Ref: 18665 (Please quote in all correspondence)

Dear Dr O'Brien,

Thank you for your letter dated 1 November 2018 setting out some clarifications to my letter following our discussion on 30 October 2018. Practitioner Performance Advice (formerly NCAS) does not usually reissue letters (unless it would change the advice which has been given) but the letter has been added to the file so that the clarifications are on record.

Following our conversation of 30 October 2018, I contacted the Trust to explore issues further with them and to offer to meet. On the 31 October 2018, I had a telephone conference call with Dr Ahmed, Mr Gibson and Ms Hynds, and we discussed the case. The Trust are of the view that a full and detailed response was provided to you by letter on 30 March 2017 setting out the reasons for the decision to manage the concerns through a formal investigation process. It is also considered that, notwithstanding some of the acknowledged management issues, the evidence in the report warrants putting the matter forward to a hearing. I note that it is also likely, as per earlier correspondence with the Trust, that they will want to support you moving forward.

These decisions made by the Trust are ultimately matters for them as your employer, and Practitioner Performance Advice cannot arbitrate on these decisions or take on the role of your advocate. In these circumstances therefore, it was considered that a meeting with Practitioner Performance Advice was unlikely to be of any benefit. I would suggest you seek support from your representative about the options available to you.

Yours sincerely,

Personal Information redacted by the USI

Dr Grainne Lynn

Adviser

Practitioner Performance Advice