

Detailed Account of Case of Dr Narinder Kapur

Dr Narinder Kapur, a consultant neuropsychologist, was Head of Neuropsychology at Addenbrooke's Hospital, Cambridge. Both prior to Cambridge (at Southampton General Hospital) and after Cambridge (at University College London, Leeds Teaching Hospitals NHS Trust, Hurstwood Park Neurosciences Centre in Sussex, etc), he had an exemplary record of working relationships with clinical or management colleagues, junior staff and students. He is past-President of the *British Neuropsychological Society* and a fellow of the *British Psychological Society*. In 2017, he was awarded a Lifetime Achievement Award by the *British Psychological Society*. He set up the Neuropsychology International Fellowship scheme, sponsored by both societies, which enables Neuropsychologists from developing countries to visit the UK. He is currently visiting Professor of Neuropsychology at University College London, and honorary consultant Neuropsychologist at Imperial College Healthcare NHS Trust.

Dr Kapur had won awards for the clinical excellence of his work at Addenbrooke's hospital, part of Cambridge University Hospitals NHS Foundation Trust, and had published an award-winning paper entitled, *On the Pursuit of Clinical Excellence*. He had edited an award-winning book, *The Paradoxical Brain*. He had published papers on patient safety and on clinical ethics. He wrote an article on the lessons to be learned from the Francis Report into Mid-Staffordshire Hospital, and this article was published in *The Psychologist*, the professional journal of the British Psychological Society. He has written papers on the application of Gandhian principles in healthcare, and has put these into practice by setting up Gandhi scholarship schemes and Gandhi book fairs. He had won a prize in Addenbrooke's own Staff Suggestions Scheme, a prize he donated to Addenbrooke's overseas charity. Even the Trust acknowledged that his clinical performance was, in its own words, 'exemplary', and that he had shown great generosity to patients and to staff. He had received scores of letters of appreciation and support from colleagues and from patients, including a heartfelt letter of support from his junior staff. All of these were ignored by those in management who were determined to dismiss him at all costs. There appeared to be a total disconnect between management and clinicians, with the patient's voice nowhere to be heard. This total disconnect was highlighted in a damning report by the Care Quality Commission in 2015, who put the Trust into special measures, an action that was preceded a few days earlier by the resignation of the Trust chief executive, Dr Keith McNeil, someone who had opposed Dr Kapur's return to Addenbrooke's.

Due to repeated staff shortages, Dr Kapur often found himself having to work extra hours (unpaid) in evenings, weekends and in his annual leave. His budget was frequently frozen, and he often had to spend his own money on items for his department.

Dr Kapur was dismissed in December 2010 following an alleged breakdown in relationships with his line manager Juliet Walters (who no longer works at the Trust), who had only worked for five years in the NHS when she joined Addenbrooke's in 2008, and who had apparently never managed a clinical psychologist or even a clinician before in her whole career. While Dr Kapur found himself line managed by her, all the other

neuroscience consultants were line managed by a clinician. At the internal dismissal and appeal hearings, letters of appreciation from staff at every level and from patients were ignored – it seemed to be a case of 'management first', rather than 'patients first'. In the case of his dismissal, there was a clear breach of Department of Health guidelines (2006) that in such situations 'the decision maker should not be the practitioner's immediate line manager', and this concern was echoed by an employment tribunal. The tribunal ruled in July 2012 that Dr Kapur's dismissal was unfair, although it noted that his standing up to management was a contributory factor in the strained relationships. The tribunal judgment contained 18 points where the Trust was criticised, but so far there has never been an apology from Addenbrooke's, nor any indication of changes in relevant management procedures, nor any accountability for those who were held to be at fault and whom the tribunal condemned for their behaviour.

While at work, on 13 separate occasions over a space of seven years, Dr Kapur had repeatedly complained about the use of unqualified staff in neurosciences clinics that he argued was endangering patient care and about staff shortages which he constantly had to face during his seven years at Addenbrooke's, and which he also felt were endangering patient care. An internal report commissioned by the Trust later found Dr Kapur's concerns about the use of unqualified staff to be justified, and recommended that this practice be stopped, which eventually happened, but only after a number of years. In its 2013 Remedy Hearing judgment, the Employment Tribunal noted that the unqualified staff member in question '*was now being supervised in line with the recommendations of the internal inquiry that had agreed with Dr Kapur's professional stance on the matter*'. Dr Kapur highlighted three adverse clinical events that related to his concerns, and one of these events was a 'Serious Reportable Event' / 'Never Event' as defined by the National Quality Forum. Expert advice that supported some of Dr Kapur's concerns was covered up and kept secret from him by NHS managers, and was also not revealed by the then Divisional Director Professor John Pickard to the panel at his dismissal and appeal hearings. The Trust dismissing officer, Richard Howe, later indicated in court that he should have been told of this advice at the time.

While Dr Kapur was away in Ireland in July 2005 giving a paper at a conference, the neurosciences manager, Mrs Kathy Haynes, who was directly accountable to Professor Pickard, searched his office and hacked his computer, without Dr Kapur's knowledge or consent. Professor Pickard later claimed he knew nothing about this violation when it happened. This action, which may have been illegal, was covered up and kept secret for over six years, when it only came to light in documents required to be released for an employment tribunal hearing. The tribunal viewed this action by Addenbrooke's managers as 'entirely contemptible'. From the very early stages other attempts were made to discredit Dr Kapur. In 2005, the then divisional director Professor John Pickard tried to get Dr Kapur to admit that he had a mental illness and should seek assessment by Occupational Health. The then neurosciences manager, Mrs Kathy Haynes, the person who searched Dr Kapur's office and hacked his computer, tried to suggest that Dr Kapur suffered from Asperger's Syndrome. Dr Kapur considered these insinuations to be malicious, and to be both hurtful and distressing.

A junior psychologist who worked in Dr Kapur's department, Dr Annette Farrant, who had previously worked as a professional actress, made what turned out to be false and malicious allegations about Dr Kapur to the then clinical services director, Professor John

Pickard, who appeared to be gullible enough to swallow whole what she said. Dr Farrant never put her allegations in writing, and she was not called by the Trust to present her complaints to any of the Trust hearings or employment tribunal hearing. Around the same time, a nurse who worked in the Neurosciences Unit at Addenbrooke's, Mrs Elisabeth Hutchinson, also made what turned out to be false and malicious allegations about Dr Kapur. She put them in writing, but was effectively forced to withdraw them when the Trust told her it would not pursue her allegations. She was never obliged by the Trust to apologise for her hurtful remarks. At the employment tribunal hearing, it transpired that Mrs Hutchinson's husband, consultant neurosurgeon Professor Peter Hutchinson, who also worked in the same Unit, helped his wife to write the letter of complaint, but he also did not see fit to apologise for the erroneous and damaging content of the letter. Mrs Hutchinson was also not called by the Trust to present evidence at the employment tribunal hearing. The absence of these key witnesses at the employment tribunal hearing is all the more extraordinary as Professor Pickard and his management colleagues relied so heavily on them for their criticisms of Dr Kapur. At the employment tribunal, Professor Pickard also lied when he told the court that on occasions he had invited Dr Kapur around to his home.

Although the employment tribunal did not feel a causal connection between whistleblowing and dismissal had been legally established, it ruled that Dr Kapur made his concerns known in good faith (was a genuine whistleblower by making 'protected disclosures'), and the tribunal was 'not convinced that a great deal of attention was applied [by the Trust] to issues affecting protected disclosures'. Dr Kapur reported his patient safety concerns to his MP at the time, Andrew Lansley, who was also during that period Secretary of State for Health, but Mr Lansley took no action to successfully prevent Dr Kapur's dismissal or to successfully get him reinstated after he won his employment tribunal hearing.

There was indeed a need for the Trust to improve its safety record, and incidents highlighted cause for concern, including the tragic death of a child where the coroner pointed to mistakes in the patient's care. The Trust reportedly had 9 'Never Events' in two years, and regulators such as Monitor and the Care Quality Commission (CQC) expressed significant concerns relating to patient care at Addenbrooke's. At a lecture on patient safety given by the medical director at Addenbrooke's hospital in March 2010, the medical director Dr Jag Ahluwalia pointed to similarities between adverse clinical events at Addenbrooke's and those at the mid-Staffs hospital, which has been the subject of a number of major inquiries. In the case of a ninth Never Event, which Dr Ahluwalia failed to recognize and disclose in spite of a senior patient safety manager apparently considering that it should be classed as a Never Event, the Care Quality Commission indicated that 'this incident should have been reported as a Never Event'. At an employment tribunal hearing, Dr Ahluwalia appeared to deny the existence of such a Never Event, raising the possibility that he may have committed perjury at the time. When Channel 4 News was about to broadcast an interview with Dr Kapur, where this event and related concerns were to be aired, Addenbrooke's instructed its lawyers to write to Channel 4 News, who then felt pressurised to drop the interview from being broadcast. The journalist involved felt as if she 'had been gagged'. In some people's eyes, this action represented a form of 'legal bullying'.

In its 2015 inspection of Cambridge University Hospitals NHS Foundation Trust, which included Addenbrooke's Hospital, the CQC rated the Trust as 'inadequate' and put it into Special Measures, citing staffing issues as one its key concerns. It noted that the Neuropsychology Service still remained without a fully qualified consultant in post, and current Neuropsychology staff in post were not being properly supervised. It pointed to a disconnect between management and clinicians. The CQC Report made headline news on TV and in the newspapers, and the chief executive, Dr Keith McNeil, who approved the 'gagging' of Channel 4 News and repeatedly refused to meet up with Dr Kapur, resigned a week before the CQC Report was published in September 2015.

Dr Kapur felt that he was bullied or excluded after he repeatedly raised concerns, and also felt that lies were told or the truth was distorted in order to cover up for this bullying. On one particularly distressful occasion where Dr Kapur felt he was being bullied by the divisional director Professor John Pickard, who shouted and screamed at him, the other witness present - Mrs Kathy Haynes - thought Professor Pickard was so out of control that he was going to have a heart attack. At the employment tribunal hearing, one of Professor Pickard's former colleagues in Southampton, a senior consultant neurologist (Dr Lee Illis) recounted an almost identical episode that happened to him at the hands of Professor Pickard when Professor Pickard worked in Southampton. Another former colleague in Southampton, the late Mr Jason Brice, who in fact was a key person in the panel who appointed Professor Pickard to his post there, recounted how when Mr Brice pointed out to Professor Pickard that his infection rates after surgery were higher than those of other neurosurgeons, Professor Pickard became very irate at being told this. Professor Pickard reportedly also tried to bully senior colleagues in his Cambridge research team, and one of the senior members of his research team – Professor Adrian Owen – told Dr Kapur that he thought Professor Pickard was 'an evil, evil man'. When Dr Kapur first raised concerns about John Pickard to the Head of Neurosciences, Professor Alastair Compston, the latter said, '*You are not the first person to raise concerns about him*'. A consultant stroke physician at Addenbrooke's, Dr Elizabeth Warburton, also indicated to Dr Kapur that on occasions she felt under inappropriate pressure by some of Professor Pickard's behaviour. On another occasion, a junior female research assistant felt distressed after being rebuked on the phone by Professor Pickard. In some people's eyes, Professor Pickard was a 'serial bully' who was able to use his power and influence to get away with unacceptable behaviours. The fact that, after considering elements of Dr Kapur's concerns, including those of bullying, an Independent Mediator awarded Dr Kapur £20,000 and also his full legal costs, confirms that he was fully justified in considering he had been very badly treated. Although one of the Addenbrooke's managers, Kathy Haynes, was obliged by the then Operations Director, Richard Sunley to apologise to Dr Kapur, when Mr Sunley met up with Professor Pickard in person and asked him to also apologise to Dr Kapur, Professor Pickard reportedly got angry, and in a threatening manner insisted to Mr Sunley that he would never ever apologise to Dr Kapur.

The Trust repeatedly declined to follow line management guidelines from Dr Kapur's professional body, *The British Psychological Society*, and ignored the advice of its own commissioned review that called for a 'radical overhaul' of management. This lack of respect was also evident at both his dismissal and appeal hearings, where no-one independent of the Trust was on either panel, and where senior management refused to have on the panel experts in Dr Kapur's field, Neuropsychology, with Dr Ahluwalia claiming such expert peer input was "not necessary", even though this is standard

practice for medical consultants, for bodies such as the *General Medical Council* and the *Health Care Professions Council*, and always occurs for consultant appointment panels. Where patient safety concerns are raised, it is also common practice to have an external 'college review', with experts brought in from a relevant professional body, but no attempt was made to carry out such a measure in respect of Dr Kapur's genuine patient safety concerns. Pleas for independent, external advice and input were repeatedly ignored or belittled. As the Francis Report into the Mid-Staffs Hospital scandal noted (Executive Summary, p. 75) - *The creation of a caring culture would be greatly assisted if all those involved in the provision of healthcare are prepared to learn lessons from others and to offer up their own practices for peer review. Whilst peer review will have a specific relevance in cases of practitioners where there may be concerns about substandard performance, it has a far more fundamental role in changing behaviour to ensure a consistent and caring culture throughout the healthcare services.*

The dismissal panel in Dr Kapur's case consisted of one person, Richard Howe, along with a note-taker from human resources. Richard Howe was an engineer who had no clinical qualifications and had never run a clinical service in his life. Mr Howe insisted that attending management meetings was more important than engaging in clinical activities related to patient care, and criticised Dr Kapur for arguing otherwise. At the end of the dismissal hearing, which Mr Howe later claimed was fair and at which he had not yet made up his mind, he winked at the union official who was present as if to indicate the likely outcome and presumably thus to do some sort of deal which would involve Dr Kapur resigning and signing a compromise agreement. The Employment Tribunal ruled that aspects of the hearings resembled 'a show trial', gave 'a pronounced advantage to management side witnesses', and produced evidence that was 'forensically meaningless'. It also ruled that in not properly exploring alternatives to dismissal Addenbrooke's did 'not conduct itself as a reasonable employer'.

The Secretary of State for Health, Jeremy Hunt, has called for an approach that incorporates 'a little less Stalin, and a little more Gandhi'. Current NHS policies and procedures still allow for Stalinist 'show trials' in NHS disciplinary hearings to continue to take place, as they have done in the past, and such a situation cannot be tolerated in a democracy in the 21st century. In a Statement in the House of Commons on March 9, 2016, the Secretary of State also declared that a 'culture change must also extend to NHS disciplinary procedures'.

In his 2015 inquiry into Whistleblowing in the NHS, Sir Robert Francis heard that some disciplinary hearings are little more than one-sided kangaroo courts: "*Repeatedly we hear of unaccountable managers protecting themselves and undertaking biased investigations, character assassination, lengthy suspensions, disciplinary hearings which resemble kangaroo courts, and ultimately dismissal of staff who previously had exemplary work records . . .*" This closely mirrors what Dr Kapur suffered.

When he was told he would be dismissed, Dr Kapur was given less than a few hours notice to finish what had been over 30 years dedicated service in the NHS. He could not come back to work the next day, outpatient appointments had to be cancelled, and a complex treatment case that only he alone could manage had to be abandoned. '*Although they may not have meant it, I felt I was being treated like a terrorist, as if I would do great harm to the hospital by staying another day. I fully expected that even if I was*

dismissed, I would be allowed at least 4 weeks to tidy things up and see the patients who had been booked to see me. There was a complete absence of dignity and respect'.

After he was dismissed, Addenbrooke's managers such as Kathy Haynes set about 'digging for dirt' and tried to find evidence of financial impropriety, attempts that failed and in fact brought to light Dr Kapur's generosity and willingness to put the needs of his NHS Department before personal gain during his period at Addenbrooke's. This action by Addenbrooke's to raise allegations of fraud was '*condemned unreservedly*' by the tribunal, and termed '*a most unsavoury incident*'. The Trust also contrived allegations of bullying, which Dr Kapur found particularly distressing, as he had gone out of his way to ensure excellent working relationships with junior staff and senior colleagues alike. Dr Kapur considered such allegations from Addenbrooke's management to be wholly false and seriously defamatory. In another unsavoury incident, Richard Howe was directly witnessed by Dr Kapur to have been in uncontrollable, hysterical giggles in the gents' toilets at Addenbrooke's shortly after hearing remarks from one of Dr Kapur's witnesses at his appeal hearing, who compared some of Addenbrooke's management procedures to those used in Stalinist Russia.

The tribunal described Dr Kapur, who is a Rotarian and who has donated royalties from all his books to healthcare charities in India, as '*a gentleman of the highest integrity*'. Sir David Nicholson, Chief Executive of NHS England, indicated in a letter he wrote to Dr Kapur in March 2013 that '*the actions taken by the Trust were unacceptable*'. In a House of Commons debate on NHS Accountability and Transparency in March 2013, Virendra Sharma MP, a member of the House of Commons Health Select Committee, severely criticised Addenbrooke's Hospital for its behaviour in Dr Kapur's case and for not reinstating him after he was found to be unfairly dismissed.

When he worked at Addenbrooke's hospital, Dr Kapur led a single-consultant service, with only a tenth of the level of staffing of some comparable neuroscience centres. Over the time of his employment, the number of neurologists and neurosurgeons had significantly increased, but staffing in Neuropsychology remained at a level well below recommended standards. After his dismissal, there was no consultant employed to take his place or to support junior staff on site. During his time at Addenbrooke's, Dr Kapur had set up an award-winning Memory Aids Clinic, a clinic that was greatly appreciated by staff and patients alike. As part of the work of the clinic, Dr Kapur produced 11 self-help patient booklets for neurological patients with long-term conditions. He made these booklets available free for patients and also for consultant colleagues to use in their own clinics. That work of Dr Kapur's Memory Aids Clinic ceased after his dismissal. He also organized and funded an annual East Anglia Neuropsychology Forum, free to delegates at every level and from any discipline, which helped enhance the influence and reputation of Addenbrooke's, and this forum also ceased after his dismissal.

In collaboration with Microsoft Research in Cambridge and colleagues, Dr Kapur helped to design the world's first dedicated autobiographical memory aid (SenseCam). He also pioneered the development of 'Smart Papers' – evidence-based clinical guidelines that include check-lists and are designed to help in the early diagnosis of dementia, and help prevent diagnostic and treatment errors in clinical settings. These Smart Papers are now used in Neuropsychology Departments in many parts of the country, as well as in a number of neuroscience centres throughout the world.

When Dr Kapur decided to take the case to an employment tribunal, Addenbrooke's offered £70,000 for him to drop his legal case, and Dr Kapur was also made aware of the legal threat of major costs being awarded against him if he pursued with the employment tribunal hearing. Dr Kapur regarded these as approaches as bribes and threats, and an attempt to avoid accountability in the public domain, and refused to give in to the demands.

As a result of his dismissal, Dr Kapur and his family have suffered major distress and hardship. As well as losing out on over four years' salary, he incurred around £250,000 in legal and related expenses, with an overall schedule of loss amounting to over £1million, and he had to sell his home in Southampton, 'downsize' and move to London. The Trust itself has spent around £300,000 of public funds and taxpayers' money in fighting this case. All of this expenditure could have been avoided if professional guidelines and expert advice had been followed by those in management. *'I drew inspiration from Gandhian principles and from others who had suffered hardship and been through terrible ordeals, and one of those was Dr Karen Woo, a UCL-trained doctor who was killed by terrorists in Afghanistan in 2010 while providing medical care to the poor and needy. As a thanks for the inspiration I gained from her example, in May 2013 I made a £3000 donation to the Foundation set up by her mother, Lynn Woo'. I also drew inspiration from three others who sacrificed their lives as part of their journey to make the world a better place, Shabaz Bhatti, Ursula Schmitz and Maria Gorrostieta. In my clinical practice and clinical research, I have also come across inspiring case stories, stories which helped to keep me resilient in the face of distress and suffering. One story that has particularly moved me, and helped me see my own predicament in context, is that described by Dr Ian Carr when his daughter fell ill.*

'The situation that I was faced with on the afternoon of December 7, 2010 at Addenbrooke's Hospital was quite bizarre and distressing, in that I was being forcibly evicted from the place where I have enjoyed working, and where staff and patients appreciated my work. Although in quite a different context, it reminded me of the story of a young Indian lawyer who had just finished his law degree in London and had started practising law in South Africa. On June 7, 1893, in the middle of the South African winter, he was forcibly evicted from the first class carriage of a train at Pietermaritzburg, refusing to agree that on account of his colour he should have to travel in the third class carriage. He spent the night shivering on platform 1 of the station, and resolved to henceforth fight the injustice that he had suffered. A statue of him now stands in the town square of Pietermaritzburg. His name was Mahatma Gandhi.'

None of the individuals who were responsible for Dr Kapur's unfair dismissal, or for the actions that were criticised by the tribunal, have so far expressed any regret, or appear to have received any admonition or suffered any detriment. There has thus been no accountability for mistakes made or wrongdoings carried out. While Dr Kapur is currently without regular paid employment and in financial debt, those whom the Tribunal severely censured remain in the same posts that they held or have been promoted. Dr Keith McNeil, former chief executive at Addenbrooke's, moved on to a senior post with NHS England, and later moved back to Australia. Addenbrooke's management refused to meet up with Dr Kapur without precondition to discuss a settlement of the dispute, and also turned down an offer of independent mediation. Prior to a Remedy Hearing in April 2013, Dr Kapur was threatened by Addenbrooke's lawyers with over £100,000 in Costs

if he did not agree to an out-of-court settlement. Dr Kapur regarded this as a form of bullying, and ignored the threat. At the Remedy Hearing, Dr Kapur offered to drop the case and reach an out-of-court settlement if Addenbrooke's introduced fairer disciplinary procedures, namely Plurality (more than one member on a panel), Independence and Expertise, but Addenbrooke's rejected this offer.

Addenbrooke's indicated that they had no intention of filling his post, effectively abolishing it. This was seen by Dr Kapur and others as a ploy to make it difficult for the judge to recommend his reinstatement. Both Dr Kapur and eminent colleagues in the field of Neuropsychology issued a letter of concern that such a decision would be detrimental to patient care, to the needs of staff, to teaching & research, and to the reputation of Addenbrooke's. This further instance of disregard for professional standards and refusal to listen to expert professional advice parallels similar behaviour by the Trust when Dr Kapur raised concerns about patient safety during his employment, and provides further justification for his case that he was treated badly as a whistleblower.

Even though Dr Kapur did not consider the criticisms of him to be justified, he offered to go back to his previous job on a probationary basis, but this offer was flatly refused by Addenbrooke's.

Two other dedicated, respected and talented Indian consultants, Dr Patrick Bose and Dr Madan Samuel, have also been unfairly dismissed by Addenbrooke's in recent years, and this possible trend is a worrying cause for concern, especially as both doctors were subsequently cleared by the General Medical Council and had glowing references, and since staff who were involved in 9 Addenbrooke's Never Events seemed to be treated much more leniently. In some people's eyes, this represented a form of victimisation and double-standards. Taking into account the families of all three Indian consultants, 16 people have sadly had their lives damaged or distressed. Addenbrooke's readily commissioned an inquiry into the Dr Myles Bradbury scandal. There needs to be an independent inquiry into the unfair dismissal of these three Indian consultants.

Dr Kapur has indicated that he would like Addenbrooke's to set up an independent, external inquiry into the unfair sacking of three consultants in two years, perhaps a record for any Trust, so that lessons can be learned, and so that in future there is not such waste of public funds, harm to patient care and needless distress to staff. Addenbrooke's has in the past set up such external inquiries after patient safety incidents. Where, as in this case, there have been very costly and detrimental management errors, there is just as strong a case for an independent inquiry to take place.

The Berwick Report on patient safety promoted a guiding principle below, which – if it had been adhered to by Addenbrooke's management – would have prevented the miscarriage of justice that took place in the form of Dr Kapur's unfair dismissal. *Place the quality of patient care, especially patient safety, above all other aims.*