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# The importance of a transparently independent and professional investigation when things have gone wrong or accusations made

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**The President:** Tom is not somebody I know personally but my notes tell me that he is a barrister at Hollis Whiteman Chambers. He was called to the Bar in 1982 and became a silk in 2010. I have Tom described as a well-versed silk and revered across the full gamut of chambers. As an advocate, Tom is said to be authoritative and commanding but deeply fair, and that may well relate to the subject which we are going to hear about tonight. Tom's experience includes public law, corporate, financial crime, serious crime and there looks to be a wide range of legal proceedings. I could go on but it looks as though we have an excellent person here who is going to be talking about transparency and about the way in which we speak and handle things. I used to chair lots of meetings and medico-legal ones and always went for absolute transparency and it drove many of the others mad because they could not work out what I was hiding! So, I hand over to you.

**Mr Tom Kark:** Good evening, Mr President and everybody in this August society which I did not really know until Robert Francis introduced me to it. I suppose really the reason that I am speaking is because I was his counsel to the Francis Inquiry and I have done various other healthcare things since. I gather that you are all medics or lawyers, so not a critical audience at all! I appreciate that there are few things less edifying than hearing someone bang their own drum about their pet topic, but you have given me the drum and drumstick and I will keep it as short and focused as any barrister will do when there is no brief fee involved and no verdict which can enhance my reputation.

The essence of the topic I have been asked to address is the importance of the independence of investigations when things have gone wrong. It is actually a timely point I suppose in history to speak about this topic on the day that the Ofsted report was published into the problems of sex abuse at schools and in the midst of the setting up of the inquiry into the handling of the Covid pandemic with a thousand-or-so lawyers all jockeying for position.

Another way of approaching it is, why do so many internal organisational complaint investigations fail even when they have been set up with good intent and they result in financial and, even worse you may think, massive reputational damage.

Although this society focuses upon medicine and the law, the issues which arise from poor investigations, or good investigations which are still not seen as independent and transparent, arise in every area of society. From schools, as we have seen today on the news, and universities where sexual impropriety is covered up, to the military where investigations into accidents or bullying – one only has to think about Deepcut – fail to satisfy those involved, to churches and the behaviour of vicars, priests, monks and even nuns! Monks, and Benedictine ones at that! Who would have thought it?

It even touches, as we know from recent news, on the highest offices of state where we get glimpses of gold wallpaper and Lulu Lytle interiors costing supposedly £200,000 and Lord Geidt's rather gentle criticism that the Prime Minister "might have enquired a little deeper and wisely, in my view", as he put it, "allowing the refurbishment of the apartment at No 11 Downing Street to proceed without more rigorous regard for how it would be funded". We all probably recognise that. My wife is trying to buy new curtains at the moment and I am keeping a very rigorous regard on how that is being funded, but perhaps someone would like to step in and help us out?

A meeting of the Society was held via Zoom Meeting on Thursday, 10 June 2021. The President, Professor Harry Zeitlin, was in the Chair.

Without being too unfair to politicians on either side of the floor, it is hard to avoid the turmoil that the Labour Party got itself into trying to investigate the accusations of anti-Semitism. The report by Shami Chakrabarti a long time ago now back in 2016 which identified, as she put it, the "occasionally toxic atmosphere" was branded a "whitewash" by many. Her acceptance of a peerage shortly after publication did not probably improve the appearance of a lack of independence and transparency and whether or not it deserved that criticism is perhaps irrelevant because one might think how clearly was the Labour Party thinking when it appointed one of its own to lead such a sensitive and important inquiry.

Now Keir Starmer has taken it over and sought to address the same issue, but I think everybody recognises that the reputational damage has been enormous. The core problem giving rise to the allegations is one thing, it is the failure to investigate and address issues robustly and quickly which creates the real damage and the medics will know, perhaps even better than lawyers, that the original clinical mistake is rarely actually what gets people into trouble. Certainly that has been my experience with the GMC, which is far from everybody's favourite organisation I know, but it is the cover-up and it is the failure to investigate properly.

Even charities. Oxfam's decision to sweep the Haiti allegations under the carpet provided them with short-term relief but, frankly, had a devastating long-term impact on the charity which lost donors, government funding and the departure of executives.

I would love to be able to claim that lawyers are immune from this sort of behaviour or at least from messing up the investigations which inevitably follow, but some of you will have read in February 2018 the well-known and respected law firm Baker McKenzie found itself featured in the news when allegations that a partner had sexually abused an associate at the firm came to light. The associate had taken a pay-out and entered into a confidentiality agreement and, of course, left the firm. The partner "naturally" stayed having been "sanctioned" by the firm but he has now left. The internal investigation was a PR disaster and it led not only to Baker McKenzie having to bring in Simmons & Simmons (a "Silver Circle" firm – imagine the cost of that!) to conduct a review into their investigation but then the Solicitors Regulation Authority got excited and they commenced their investigation into how Baker McKenzie had handled the original complaint. That was a public relations disaster. That lawyers should handle things so badly and get themselves into that sort of pickle is perhaps surprising but, rather like doctors, we are sometimes much worse at diagnosing our own problems and prescribing a cure than we are advising on the problems of others.

Your Society's focus being medical and legal work I will focus briefly on the healthcare setting. I have been involved in that for a little while. While I am not in the criminal courts defending or prosecuting people accused of murder or manslaughter, I have been involved in healthcare regulation and the investigation of major public disasters. The importance of good investigation in the healthcare setting is so obviously important that it should not need to be restated but it still happens. It is still happening that Trusts fail to investigate or fail to deliver.

It is so important, particularly now I think, that we have trust in the system that delivers healthcare to us and that means that every section of society has to have that trust because the amount of misinformation and scepticism at present is probably greater than it has ever been. I suspect that is because rumour and misinformation, whilst previously limited to word of mouth or poor press reporting, is not only available now to all but positively encouraged and disseminated for malign purposes.

I was shopping for food, literally three days ago, and there was a youngish woman (mid-30s, in my view, counts as young now) and her partner and they were wearing "QAnon" sweatshirts. It just staggered me, partly because they were in Waitrose! That just demonstrates the extent to which the tentacles of that sort of nonsense misinformation that QAnon produce has reached.

Back in 2010 I helped Sir Robert Francis in his inquiry into the Mid Staffs Trust. We were met on our first day with protests that this public inquiry was going to be a whitewash and that was before we even set foot through the door. The subsequent inquiry and Robert's report which followed demonstrated, I hope, conclusively that it was not a whitewash, but gaining trust was a very significant part of the battle. Recently, just three weeks ago, I was back in Stafford on a murder and I took a taxi from my own hotel and the driver asked if I had been to Stafford before. I said "yes" rather tentatively, as you could imagine, and when she asked when I said I was "slightly involved in that inquiry into the hospital" and I was met by a barrage of, "Oh that bloody inquiry, it was just a few nurses on one of the wards". So, as hard as one can try to get the message across, the message can never be too simple and, even then, there are some ears into which it will never reach or brains into which the message will never sink.

By contrast, I think the NHS did buy into the Francis Report. I know it is not everybody's favourite (there were many, many recommendations), but it is still taught to healthcare students. In fact, when my daughter came home from starting training as an OT a couple of years ago her first words to me were, "Dad,

you will never believe what we have spent the day on today," (forgive my language) she said, "the bloody Francis Report!" So, it is still being taught and it has actually had an effect.

I think part of the reason was because we recognised, and we all recognised, that there was the danger of another Stafford or parts of those practices which can arise almost anywhere and one of the answers I think is the culture of candour.

The poor conduct of complaints investigations by health trusts leads to a number of unwanted consequences and we see it in the press and we see it in the courts. First of all, there is reputational damage when the failure of the investigation becomes known, there is very often significant financial loss but, far worse perhaps, there is damage to staff morale as to the credibility of internal governance standards. There is further financial loss when the Employment Tribunal disapproves of the way the investigation was conducted and awards damages and then the High Court get involved and injuncts an investigation, as has happened, or awards damages. There is also the contamination of witnesses by a failed process, and then there are regulatory breaches which may mean that even the CQC will start to get excited.

An in-house internal investigation committing only internal time and resources often seems like the optimum solution, particularly if you are trying to keep a lid on the issues becoming publicised, that is until it goes wrong. Sometimes making something public may involve short-term pain and publicity but, in the long run, the organisation will have dealt with the matter more decisively and externalised investigations can be run just as discreetly as those "within the firm", as it were. I declare an interest because, obviously, as a barrister, I am interested in external investigations, but my own view is they have a far better chance of being accepted as the final word and also removing the temptation to leak, tweet or sue.

It is, however, challenging to run an internal investigation which has integrity and achieves buy-in from the involved parties because every investigation is different and organic and presents new problems for the in-house team. You need a knowledge of the law, you need an experience of witness handling, you need a degree of clarity and firmness and sound judgment, but most of all, you may think, you need independence from the parties and you need a multidisciplinary team which includes doctors and lawyers.

I think we all recognise that few investigations end with both sides being happy or, very often, with either side being happy. That is not the purpose. The purpose is to conduct an investigation which is fair, has integrity and can successfully stand up to challenge in the courts, should it go that far.

I noted that one of your previous speakers was Mr Henry Marsh, who is sometimes referred to as "the Boswell of neurosurgery", and I think the refreshing thing that caught the public imagination about his first book certainly, apart from the insights which he provided into brain surgery and the surgeon's daily diet, was the candour with which it was written. It was a "messes and all" diary and admitting when things have gone wrong which is not only crucial for patients and relatives but, as medics, you will know is essential for improvement.

The model of the Air Accident Investigation Branch is interesting. I had some dealings with them two years ago when I prosecuted the pilot who crashed his Hunter jet at Shoreham killing 11 men. We had great trouble getting any information out of the AAIB at all and could only do so by order of the High Court and although that was obviously very frustrating for us as prosecutors, we could understand why they protected the material they have so carefully because they need to encourage pilots and other staff to be absolutely open with them when things have gone wrong and therefore have a degree of protection and immunity from prosecution at least on the basis of anything given to the AAIB.

Hospital investigations are complicated even further by the blame culture which still persists in many areas of medicine. The relatively recent introduction of the Health Safety Investigation Board is I think intended to change the blame culture and lead to what they describe as "a learning culture". Their website says, "We do not replace local investigations and cannot investigate on behalf of families, staff, organisations or regulator" and it is not intended to deal with complaints against personnel. However, it is I suspect no coincidence that the Chief Investigator is Keith Conradi who was the Chief Inspector of Air Accidents for the AAIB for six years from 2010 to 2016. So, that is the way it seems that they want to go in the investigation of health disasters.

Recently, the organisation Justice produced a report entitled *When Things Go Wrong: the response of the justice system* and they called for a new state and independent body such as a central inquiries unit to facilitate the investigation of mass fatalities. They want better processes for setting up public inquiries and a statutory duty of candour in relation to the assistance to such inquiries. That is a big shopping list and there is a view of course that should the Government set up an inquiries unit, and that is something Justice want, that might be something of a conflict zone.

In my own small way I did call for something similar recently. My particular focus a year-and-a-half ago was the higher echelons of management in the NHS because Jane Russell, an experienced employment barrister,

and I were commissioned by the Minister for Health to investigate the workings of the Fit and Proper Person Test as it applied to senior executives on trust boards within the NHS. We investigated, we spoke to a very large number of people and we submitted a report to the Government in which we recommended the setting up of an independent council, which we termed "the Health Directors Standards Council", to undertake investigations, *independent* investigations and draw conclusions in relation to complaints alleging serious misconduct by senior directors in the Health Service. We did that because we felt, and those we spoke to felt, that there was a real need for an independent tribunal to retain trust in the system.

Why is it important to get the Fit and Proper Person Test right? There have been several reports and studies which demonstrate that there is a clear link between the behaviour and ethos of the board of a trust and the leadership that they provide and the efficiency and effectiveness of hospital trusts. Indeed, Sir Robert Francis's Report was one of the reports that identified that issue. Various inquiries have found that the biggest health disasters this country has had, have flowed directly or indirectly from poor management and leadership whether it is Bristol, Mid Staffs, Liverpool Community, Gosport War Memorial, Winterbourne View, Birmingham. There was that famous quote from the Griffiths report, "If Florence Nightingale were carrying her lamp through the corridors of the NHS today she would almost certainly be searching for the people in charge" because who is in charge and whether they are fit to do the job is critical to safe patient care.

Our extensive reading and discussion with those affected, which included many doctors and also nurses and whistleblowers, revealed few fans of the Fit and Proper Person Test as it is currently applied and there was a recognition that it really did not do everything, some would say anything, of what it holds itself out to do and it has become really a distraction or a tick-box exercise, just another hoop to go through, the concept being that every member of a board has to pass the Fit and Proper Person Test, but it does not do that and it does not stop the unfit or misbehaved from moving around the system – as Robert rightly described it, "the revolving door of the NHS".

Some of the issues raised about the FPPT and how the test is applied were:

- The test requires, first of all, that senior executives meet the test and have the competencies and skills fit for the job to which they are posted. That is actually the statutory language. That is applied fairly vigorously to "barn door" issues such as "are you a bankrupt?", "are you allowed to work in a trust because your name is on the DBS list?" or convictions, but it is applied considerably less vigorously, or not at all, on other important aspects such as whether the director actually has the competence, the experience and the qualifications to perform the role.
- The test that the individual has the qualifications and competence to do the job has absolutely no criteria attached to it, so it becomes a sliding subjective test depending on the need of the provider to appoint a director. If you are a central city teaching hospital you may have a queue around the block when you advertise for board members but perhaps not so if you are a bit in the sticks in an old-fashioned general hospital.
- Whether the test is ever applied or re-assessed during the course of a director's career seems to be entirely due to the vigour of the Chair or the Chief Executive or the Human Resources director. The fact that there is no specific criteria to assess competence and qualifications, means the identification of a gap in those becomes harder and harder to identify.
- The CQC when they inspect a trust on a "Well-Led" review will examine a trust's processes and systems and they will look at how they arrived at the decision that a director is fit and proper for the purpose but they will not look at the quality of the individual, they will not look at whether in fact the person is a fit and proper person for the role.
- Another problem is that the test only applies to providers in England and so does not prevent directors who have "failed" from moving into commissioning or moving around the system in another jurisdiction.

Astonishingly to me and this may not surprise the medics here, there is no central database and thus there is no accessible continuous history of each director. When Jane and I started this inquiry the first thing we said was, "Could we have a list of every chief exec in every trust in England?" There are only 230 trusts. The answer was, "Well, we could Google that for you". What that means is that each trust has to acquire that information afresh for each director upon appointment. The NHS as an organisation, if you can call it an organisation, does not know who is employed in the role of director nor any history of any of the directors of any trust.

So, the quality of information retained by each trust about each director and in support of its decision that that person has passed the Fit and Proper Person Test is of extremely varying quality and sometimes it is simply non-existent.

Another issue that we looked at was references which you may think is a critical tool to assess how an individual has acted in their previous employment. Very often they are simply vanilla references, "X has

worked from A date to B date and has not been dishonest". The information in a reference which leads into the application of the Fit and Proper Person Test is, in those circumstances, totally lacking in important information.

One of the problems we found was that if somebody gets fired or sacked or is asked to leave, there may very often be a compromise and a confidentiality and settlement agreement. That would lead to an agreed reference and that will inevitably fail to disclose the true background to the director's departure from the previous trust even where misconduct has been involved.

Directors who have been shown to have committed serious misconduct at a trust have nevertheless obtained further director level jobs within the NHS, sometimes actually in the same trust but in a different part of it. There is currently no power to disbar a director, even those who have been proved to have committed serious misconduct.

Worse still, some trusts are asked to conduct their own investigation sometimes into a recent but past FPPT to examine the past behaviour of a director when he/she was working at a completely different trust and they are simply not set up to do that.

We made five core recommendations.

We thought it was central that the assessment of whether a director has the necessary skills and competence for his/her role is made easier by the creation of a list of what the NHS considers to be the critical competencies of a senior executive director working in the Health Service and, further, the training and development is easily available to fill any gaps in knowledge and skills. In terms of diversity, how can you expect to receive a diverse cadre of applicants if there are no targets to aim at and no criteria and the whole thing looks too much like a club?

The availability of good comprehensive information about each director in the health system, which is not constrained by poor uninformative references or by settlement agreements restricting the information which can be passed from trust to trust was also, in our view, of great importance. So, we asked that there must be mandatory references.

We also said crucially that it was important to distinguish the treatment of those directors who are currently not very good at the job, in other words their competence may be poor or, very often, the task is simply too great, who could, with support and/or training, become competent from those who were involved in serious misconduct. The less than competent, although struggling, should be strengthened and helped with training and support but those who behave in a way which is properly categorised as "serious misconduct" should, we feel, face the possibility of being barred from working at director level.

So, our recommendations were designed to cure those perceived problems by requiring the design of a set of specific core elements of competence which all directors should be able to meet before appointment and against which they can be assessed and setting up a central database so that information about directors is consistently retained and a history is built up in relation to each individual board level director. That database would hold information about each director's current post and their qualifications and experience, as well as historic and current assessments and any information about any upheld grievances.

We asked the Government to require that a mandatory reference form be designed – that already happens in the financial industry, so there ought to be absolutely no reason why it could not happen in the NHS – and that would need to be completed by the employer and signed off by a board level director so that there is responsibility for it. The form would require full, open and honest information about the director concerned, which could not lawfully be curtailed by the terms of a settlement agreement. Actually, when we spoke to people, we spoke to a Human Resources manager at a large trust and she said to us, "Look, that would be absolutely fantastic because it means that when we are forced into a compromise agreement we cannot agree to give a vanilla reference."

Finally, we recommended the setting up of an independent body which has the power to bar directors where serious misconduct was proved to have occurred. We suggested that it is called the "Health Directors Standards Council". It should have the power to investigate, to require the production of information and have the power, following a hearing, to bar directors from director level appointments in the Health Service just in the same way as doctors can, if serious misconduct is proved, get "erased" as it is rather horribly called.

The definition of "serious misconduct" obviously needs serious thought, but we recommended that the focus should be on deliberate or reckless but not inadvertent behaviour and, apart from obvious misconduct such as dishonesty and crime, we felt there should be a focus on behaviour which suppressed the ability of people to speak up about serious issues in the Health Service, whether that is by allowing bullying or victimisation of those who "speak up" or blow the whistle, or by any form of harassment of individuals, and I am sorry to say, as some of you will know, that still occurs in the Health Service.

We also recommended that serious misconduct should first be considered at trust level because you must not remove from trusts that essential responsibility of being the responsible employer but, above that, we have tried to introduce independent investigations

for those against whom complaints are made at the higher level.

I appeared before the Health Select Committee following that report and the Government appear now to have accepted the majority of the recommendations, barring setting up the tribunal, but the proof of the pudding of course will be in the eating.

Our view is that unless those at a high level in the NHS can be held to account, how is the system going to work for those lower down the pecking order? To hold people to account where things have gone seriously wrong or people are alleged to have behaved very badly, you do need independent and transparent investigations.

Many organisations including health trusts, banks, solicitors firms and schools think that wheeling in their in-house people or their go-to firm of solicitors is the answer. That can work but it is a very, very difficult task to undertake and the problem is always going to be the appearance of bias, whether there is real bias or not, and the costs of a flawed investigation and the damage done to the integrity of the investigations themselves can be enormous. Quite apart from all of those things, the loss of faith in the system of investigation and by witnesses who are then asked to recount their experiences a first time, then a second time when there is an independent investigation, and then sometimes a third time in criminal proceedings is hugely damaging.

During my work with Robert in Mid Staffs and subsequently on the Fit and Proper Person Test, I have come across far too many people whose livelihoods, happiness and mental health has been badly affected and sometimes ruined by unfairness or failures in an investigation process. Most of those who I met introduced themselves as "an NHS whistleblower". It is depressing that they now define themselves by their prior actions and that is how they see themselves in the structure, and all complained about their treatment and the gross unfairness of the process which led ultimately to their sacking or their exclusion from the Service.

My view/our view was that the Fit and Proper Person Test can be used as a force for good in improving the quality of leadership in the NHS but only if serious failures by leaders are properly and independently examined.

In the healthcare world you need a combination of medics and lawyers and experts to undertake that task and that is why I felt this topic has some relevance at least to this Society.

Thank you for giving me a stick with which to beat that particular drum and the time in which to beat it. If there any questions, I am very happy to answer them, if I can. Thank you for staying with me. I am astonished!

**The President:** Can I thank you very much, indeed. You have been talking on a subject which is very, very close to my heart as, for example, I was on the committee at Cleveland and Birmingham; I was not on the committee in Manchester but I have been on a whole lot of the inquiries and the only reason why I ended up on those inquiries was because they had difficulty in finding people who would do what they really ought to. So, I am very much in favour. It is very difficult for people to speak about the management of big systems. Don't get me wrong there are honest people, but there are an awful lot of people who do what they can to get what they can. I am very interested in what you have been saying. I have about 10,000 other questions but I would like to open it up to people who have come because I think it is such an important area. I am sorry to ramble on there but it is so near to my heart.

**Mr Tom Kark:** It is so important because when people do get damaged by these things and then they see the investigation going wrong as well, that just doubles down on the damage.

**The President:** I will have to be very careful but I actually got warned off formal committee meetings looking at these things because I would not just accept what I was being told and that I wanted a formal systematic investigation and people went mad. Did we meet in Staffordshire?

**Mr Tom Kark:** I think we might have done.

**The President:** Can we ask people now because I think this is a very important area and a very important area as to how valuable to society it is to have people who will take the risk of speaking openly and the truth. I see that Diana, who I have described before as our extremely wonderful Editor, wants to ask a question.

**Mrs Diana Brahams:** Thank you very much for your talk. I am a retired barrister. My experience in the medico-legal field was that, first of all, if a hospital conducted an internal inquiry it was pretty much a waste of time I am afraid and my clients and I rather regarded it this way and it was very sad because sometimes they would, of course, encourage outside consultants to come in and look at it but they tended to be the friends of the people who had messed up in the first place, so it did not exactly inspire confidence and my clients were often required to say they would not bring a claim and, if you said that you were not prepared to say you would not bring a claim, they would not have an inquiry. So, there was not a lot of regular confidence in those!

The other thing I was going to mention was the problem with references. The problem with references is that people do not feel they can speak the truth in them as we know. So, I wonder how you feel about people who ring up people who have written references

and say, "Can you, please, tell me off the record a bit more about this person" and then they start asking questions that are not covered in the reference.

**Mr Tom Kark:** Of course that happens but if there has actually been a compromise agreement, they get in terrible trouble if they do that if it is ever disclosed and, frankly, that should not be necessary. The FCA introduced mandatory references a couple of years ago now. In other words, there is a set of questions that has to be answered honestly and no compromise agreement can get around that. I will keep my fingers crossed but I had a meeting with Jacqueline Davies who is, I think, Head of Leadership and, without saying too much, I think there is a very strong push for mandatory references in the NHS and I cannot see why there would not be actually, and there should not have to be those secret conversations, "Hang on, what really happened?".

**Mrs Diana Brahams:** It is a bit beyond that, actually. I am speaking in terms of some of the anodyne references that people get when you want them to be moved on out of your department, and it is not that they have done anything terrible, it is just that they are no good but people cannot actually say so.

**Mr Tom Kark:** Everyone is terrified of the lawyers!

**Mrs Diana Brahams:** That is right.

**The President:** Can I ask if we have people in other countries because I have travelled to other countries and I have spoken to people in other countries and I have found the comparison of what happens in different societies was very enlightening to understand the mechanisms and what one can do about it. Do we have any people in our audience who can both ask the questions but shed some light on what happens in wherever they are resident/their society?

While we are waiting – please, anybody can put their hand up at any time and stop me – I became bemused by the financial problems. I ran services and looked after the finances for a counties network of services in my field and then it was taken over by the NHS. You would not believe what people in official positions did with health money because about 30% of health money was going on other things; it was largely going on preparing work to protect themselves but I do not know how much this applies to other areas in health.

**Mr Tom Kark:** I don't either. Obviously, the NHSLA, as it was and I cannot remember what its current manifestation is, sucks up a huge amount of money and they try to avoid litigation where they can. My understanding – I should say straight away that I am not a personal injury lawyer – is that they will settle things very often without challenging a claim because they are so frightened of the legal costs, and that cannot be healthy either. We do not want unnecessary litigation but the balance perhaps has shifted and there may be those present who know far more about it than I do but I wonder if the balance sometimes shifts too far in the other direction that as soon as there is a complaint they will pay up. I have spoken to doctors who have said, "I didn't even know about a complaint being made and I then discover that a payment had been made", which cannot be good for the profession at all I would not have thought.

**The President:** I would like to think that the two professions are very open but some people actually indicated that they would feel at risk if they spoke out.

**Dr Atef Marcos:** Thank you very much for your very eloquent and very interesting talk. I was employed by Staffordshire Hospital at the time and so I do relate to a great deal of what you have said. Do you feel that the Department of Health itself bears some responsibility since they move senior management who have been removed from one trust, as you rightly said, possibly to another trust within the same organisation or are sometimes employed by the Department of Health itself and then come back again to recirculate in the healthcare system?

**Mr Tom Kark:** You are absolutely right and I think there is a recognition of that happening. What I have heard happening is that people leave the trust; they actually used to go into I think NHS improvement or other bits of the system into commissioning for instance, and then a couple of years later they pop out again and they go off to run another health trust. When Robert did his report, he said we have to stop the revolving door and the Government came back with another report called *Hard Truths* and said that absolutely we have to stop that happening. I am not holding my breath. I know that there is a bit of a political push for things to happen but I do not want to say too much because I will jinx it.

**Dr Atef Marcos:** Understandably, and I think the other area is the area of professional conduct. Every healthcare worker, whether a doctor/nurse/any professional within the healthcare system, has their own organisation, as you rightly said, who can sanction their behaviour.

**Mr Tom Kark:** Except healthcare workers in fact. People working in homes for the elderly are not under the HCPC, they are not under the GMC and they are not under the NMC. There is no regulator. I find that absolutely astonishing.

**Dr Atef Marcos:** Many of these organisations are private organisations and I think probably the CQC can hit them hard. When it comes to management by and large and particularly senior management, there is nothing at all, as you rightly said. At the time of the Labour Government in the 1990s, Blair circulated the idea that there would be an overall umbrella of a healthcare professional body instead of the GMC and

the NMC but this never materialised and we are almost 20 years on from that.

**Mr Tom Kark:** There is an extraordinary lack of information actually. We talk about the NHS as though it is an organisation but those of you who actually work within it will know rather better than that. It is a huge conglomeration with a large budget. To walk into the Department of Health and for them not to be able to tell me who the chief exec was of each trust, not to be Big Brother about it, I did find absolutely astonishing, but I think that is now being looked at quite seriously.

**The President:** I would like to thank our speaker because this is an extremely important topic. It is one that I do not do so much in it now but I used to be very involved with them. An awful lot of people are very afraid to talk about it openly and I think the more that it is open the more people who are honest will be prepared to come in and work in these areas, so I would like to thank you very much for being prepared to talk to us on these topics.

**Mr Tom Kark:** I am genuinely honoured to have been invited, so thank you very much indeed.

**The President:** We wish you good health. Goodbye.–