JUDICIARY OF
ENGLAND AND WALES

Care Quality Commission

-v-

Southern Health NHS Foundation Trust

Sentencing Remarks of District Judge Loraine Morgan (Magistrates' Courts)

12 October 2017

The case before the court, brought by the CQC, is the public expression and admonition of the defendant Southern Health NHS Foundation Trust for its acknowledged failings over a period of time that led specifically in the early hours of 3.12.2015 to injuries being sustained by a patient in their care –AB – which have proved to be life-changing and have impacted significantly upon him and all who love and care for him. I have read in the Victim Impact Statement from AB's wife of the head injuries sustained, the continuing care he required for some months to deal with the immediate physical injuries but also of the continuing impact upon him, the limitations it has placed upon his activities since and the changes to his personality that have occurred. AB's wife is to be commended for the love, care and unsung commitment which she, like so many others, has shown to her husband. Their hopes and plans for an active and fulfilling retirement have been dashed and the court recognises this personal impact.

AB was admitted as a patient at Melbury Lodge Psychiatric Unit on 25th November 2015. It was not the first time he had been admitted there and on his previous admission in March 2012 had managed to get up on to a low roof at the unit in an attempt to abscond. This was the known history of this particular patient. With that known history warnings were given as his wife feared the same attempt might be made. Tragically it was, AB fell from the roof and sustained injuries.

However, this was not the only patient who had found access to this roof to be only too easy. Between 2010 and 2014 there were 6 other incidents involving other patients at this unit getting on to the roof in addition to the previous incident involving AB. Inspections of the roof and access to it had been undertaken. It was recognised to be accessible and a danger to the patients at the unit who because of their particular characteristics and vulnerabilities would be all the too likely to climb on to it.

But the inspections and recommendations that were made on April 2012, August 2014 and May 2015 were not carried out. And so it was that on 3rd December 2015 when AB behaved exactly as could have been predicted he was able to climb onto a low roof from which he fell. I say that his behaviour could have been predicted not only because of the previous experience of AB trying to abscond, but because AB himself referred to this at the time of his admission in November 2015 and threatened to do it again. Additionally AB's wife had warned the staff on duty that night of her specific concerns and reminded them of his history and other factors in his background that would support the likelihood of such an attempt.

It is of significant concern to the court that even this tragic incident did not result in immediate steps being taken to prevent any more such incidents and on further occasions 3 other patients gained access to the roof before the steps were taken to prevent any re-occurrence. Earlier investigations and reviews were undertaken and remedial works identified but the recommendation were not acted upon and the dangerous state of affairs was allowed to persist. The court can only conclude that the culpability of the trust was high, as was the risk of harm

This in essence is the failing that brings the trust before the court and I do find that the potential harm to the patients of Melbury Lodge that arose from this failing, taking into account the nature and vulnerability of those staying there exposed patients to what was a very obvious risk and one that existed for some time before the tragic incident involving AB. Further it I suggested that the recommended works were not carried because money was not available to put them into effect. It has been confirmed today in court that if £300,000 had been spent by the trust in a timely manner not only could this prosecution have been avoided, but also the personal loss to AB and his family.

This therefore is the background and context in which the court must approach this case.

But I must also balance statutory and other mitigating factors when I deal with this case.

There was an immediate guilty plea entered by the trust at the earliest opportunity. The trust is entitled to full credit for this. There was no prevarication on their part and a point that might have been taken and which might have led to these proceedings being prolonged was avoided. For AB and his immediate family I hope the early acceptance of full responsibility by the Trust provides some solace. It is a further factor that I do take into account in the favour of the trust.

Secondly I have seen evidence of a real sea change in the governance of the trust. From a CQC report when the Trust was given a Warning Notice a further focussed inspection published in July 2017 recognised significant improvements and changes which have been implemented across the board, not just at Melbury Lodge, which have been acknowledged as effecting positive change in the culture of the trust. While improvements have been identified that still need to be made, there is evidence that the trust is committed to working with the CQC to address these.

Another factor that the court must take into account is that this is a public body, and while economic constraints may have led to the immediate remedial works not being undertaken, the impact of any fine the court imposes must be taken into account if it would impact upon the trust's ability to provide services. It is proper that this case can be distinguished from one where the defendant is a private corporation whose profits go to shareholders or are reflected in the remuneration of its officers.

In the statement of Paula Anderson the finance director there is evidence which is not disputed that while in the year 2016/2017 there was a surplus, this was attributable to Sustainability and Transformation funding without which there would have been a deficit.

For the year 2017/2018 a substantial fine would put the Trust's ability to achieve its financial target in question which would in turn affect the allocation of Sustainability and Transformation funding and put the Trust in deficit. This would impact upon the Trust's ability to provide services and have not only a financial but also social impact. I have also been reminded by counsel for the Trust of the financial constraints under which all public bodies currently operate, and other operating costs the Trust has faced this financial year. It is recognised sentencing practice that a court should reflect this and make a substantial reduction in any fine.

Apart from the general principles contained in the Sentencing Council Definitive Guideline on Reduction in sentence for a guilty plea there are no specific applicable guidelines in this case, but I have been referred by both prosecution and defence to 2 recent cases of HSE v Surrey & Borders Partnership NHS trust and CQC v St Anne's Community Services and note the sentence there. They are distinguishable from this prosecution as in those cases the patients tragically suffered fatal injuries. However, while in the St Anne's case I note that the service provider had failed to act upon safety alerts of 2 occasions, this case is, I find, particularly aggravated by the known existence of a recognised hazard and a failure to act upon it despite recommendations.

Turning therefore to sentence. I fix the initial level of the fine at £300,000, but reduce this by one third to reflect the full credit to which the trust is entitled. I also further reduce the fine to reflect the steps taken by the trust to acknowledge responsibility, and to put in place robust governance and management procedures to avoid any re-occurrence. I also do give make a substantial reduction to reflect the financial impact upon the trust as both prosecution and defence agree I must.

Taking those factors into account the fine I impose is £125,000. I do order that the trust should meet the prosecution costs in the sum of £36,000, which I find to be reasonable and proportionate, plus the victim surcharge of £170.

NB: The reporting restriction that was imposed on 29th June prohibiting the true name and address of AB, the man who fell from the roof of Melbury Lodge on 3rd December 2015 and the location(s) at which he receives medical treatment from publication has been extended indefinitely. This was with the concurrence of the press and the court heard no further representations upon the point.

District Judge Loraine Morgan (Magistrates' Courts)

12th October 2017