Section A

Institution: **Middlesex University**

Unit of Assessment: **17 Business and Management**

Title of case study: **Improving the treatment of Black and Minority Ethnic (BME) staff in the NHS**

Period when the underpinning research was undertaken: 2005 – ongoing

Details of staff conducting the underpinning research from the submitting unit:

Name(s):	**Role(s) (e.g. job title)**	**Period(s) employed by submitting HEI**
Roger Kline	Research Fellow	2013-ongoing
Prof. Phil James	Professor of Employment Relations	1989-2006/2014-ongoing
Prof. Richard Croucher	Professor of Comparative Employment Relations	2005-ongoing
Prof. Dave Lewis	Professor of Employment Law	1972-ongoing
Dr. Ian Roper	Associate Professor	1998-2019
Prof. Suzan Lewis	Professor of Organisational Psychology	2006-ongoing

Period when the claimed impact occurred: 2014 onwards

Is this case study continued from a case study submitted in 2014? No

Section B

1. Summary of the impact

Outputs from our research proposed replacing existing voluntary approaches to race discrimination in the NHS with a strategy of data-driven accountability and regulatory scrutiny. The resulting large-scale changes throughout England's largest employer have had impacts on policy and individual staff:

Impact on NHS Policy through:

- Kline's highly-influential 2014 report *The Snowy White Peaks of the NHS,* showing under-representation of Black and Minority Ethnic (BME) NHS staff at senior levels
- Introduction in 2015 of NHS *Workforce Race Equality Standard* (WRES) drove sustained, large-scale NHS action on race discrimination – Kline designed the WRES and oversaw its implementation
- integration of the WRES into Care Quality Commission inspections

Impact, following implementation of the WRES, on BME staff in the NHS through:

- improved likelihood of being appointed from shortlisting
- greater number appointed at senior/Board level
- reduction in the likelihood of disciplinary action
- adoption of an equality standard by all NHS professional regulators e.g. Nursing and Midwifery Council; General Medical Council
- action on bullying

2. Underpinning research

From 2005 onwards, a group of staff at Middlesex University Business School developed a programme of research focused upon developing and safeguarding worker rights. Research by James, Croucher and Lewis D, variously into health and safety, the enforcement of the national minimum wage and whistleblowing, demonstrated the shortcomings in voluntary approaches to changing workplace behaviours. It showed instead the need for legislative enforcement in changing workplace behaviours and a role for mandatory requirements to ensure the maintenance of worker rights [3.1]. Related work led by Roper and Lewis S, analysed how voluntary national-level diversity initiatives had been overturned as a result of localised performance management initiatives and financial imperatives, to negatively impact upon NHS diversity management [3.2].

In consideration of alternatives to ineffective voluntary interventions in changing workplace behaviours, one particular approach identified through this body of research was the potential of making greater use of data-driven accountability linked to contractual compulsion and regulatory scrutiny, Kline developed this approach in relation to his analysis of the failure of trade unions and HR services to address

challenges facing staff operating in the public sector, specifically within the culture of the NHS (subsequently published as Carter and Kline, 2017) [3.3]. Kline applied the findings of this research to understanding and addressing race discrimination in the NHS, by means of an analysis of discriminatory aspects of NHS recruitment processes. Initially published in an article entitled *Discrimination by Appointment* in Public World (2013), this research was subsequently developed in greater detail in the highly influential report *The Snowy White Peaks of the NHS* (Kline 2014) [3.4].

The Snowy White Peaks of the NHS (SWPNHS) examined NHS Trust data on the ethnicity of senior post holders and Board membership in relation to the impact of the previous voluntary Ministerial Race Equality Action Plan (2004), and found little improvement on previous under-representation of ethnic minorities in senior positions. It demonstrated that the proportion of London NHS Trust Board members from a BME background had fallen from 9.6% in 2006 to 8% in 2014, whilst 40% of London's NHS Trust Boards had no BME members. The proportion of chief executives and chairs from a BME background had also decreased from 5.3% in 2006 to just 2.5% in 2014, and the proportion of senior and very senior BME managers had not increased since 2008. Overall, the likelihood of white staff in London being senior or very senior managers was three times higher than for black and minority ethnic staff. The report's findings, subsequently expanded via a critical review of international practice, starkly showed the ineffectiveness of the existing voluntary approach to staff development which constituted NHS strategy at this time [3.5]. Instead, a different strategy of data-driven accountability linked to contractual compulsion and regulatory scrutiny for healthcare providers was advanced as a more effective means of challenging longstanding institutional blockages.

Following the widespread attention that the SWPNHS report attracted, Kline was commissioned in 2014 to design a *NHS Workforce Race Equality Standard* (WRES) as a means to develop such an approach to race equality within the NHS. Building on findings of his report, and in collaboration with colleagues from the Universities of Manchester (Esmail) and Harvard (Priest), a methodology to underpin design of the WRES was developed. From this, Kline and Esmail designed the specific nine metrics to be incorporated into the WRES, launched in 2015, that NHS providers were required to collect, analyse, and enhance, bringing together essential features of the relative treatment of White and BME NHS staff related to their career opportunities and treatment [see 5.2].

Subsequent research by Kline and others has focused upon understanding, evaluating and disseminating interventions on specific aspects of the WRES (Section 4 below). Kline (with Lewis, Duncan) [3.6] published a first ever analysis of the substantial financial cost of bullying and harassment to the NHS in England (which disproportionately impacts BME staff), estimated at £2.3 billion per annum. Kline and Atewologun (2019) were commissioned by the General Medical Council (GMC) to examine the disproportionate referrals of some groups of doctors, notably BME doctors, to the GMC. Results showed the treatment of overseas doctors as "outsiders". This finding was reflected in flawed induction and integration of such doctors, a pattern of employment of large numbers of such doctors (as specialist and associate doctors, agency staff, and GPs) in challenging environments with little support. and their operation in work environments involving blame rather than learning as the key driver [3.7].

3. References to the research

3.1 Harpur, P and James, P. (2014). 'The shift in regulatory focus from employment to work relationships: Critiquing reforms to Australian and UK occupational safety and health laws', *Comparative Labor Law and Policy*, 36(1): 111-130. http://www.law.illinois.edu/publications/cllpj/arc...

3.2 Roper, I. Etherington, D. and Lewis, S. (2017)," Hollowing out national agreements in the NHS? The case of "Improving Working Lives" under a "Turnaround" plan ", *Employee Relations*, 39(2):145-159. http://dx.doi.org/10.1108/ER-05-2015-0092.

3.3 Carter, R. and Kline, R. (2017) The crisis of public sector trade unionism: Evidence from the Mid Staffordshire hospital crisis. *Capital & Class* 41(2): 217-337. doi:10.1177/0309816816678572.

3.4 Kline, R. (2014) *The Snowy White Peaks of the NHS: a survey of discrimination in governance and leadership and the potential impact on patient care in London and England*. London: Middlesex University http://eprints.mdx.ac.uk/13201/. doi:10.22023/mdx.12640421.v1
(Fully refereed research report, reviewed by an advisory committee led by Prof Esmail (Manchester), Prof Carter (Leicester) and Ruth Passman (NHS England National Head of Equality). The report was

published via Middlesex University to ensure independence and academic rigour whilst maximising speed of publication).

3.5 Priest, N., Esmail, A., Kline, R., Rao, M., Coghill Y. and Williams, D.R. (2015) Promoting equality for ethnic minority NHS staff--what works? *British Medical Journal*. 2015; 351: h3297. Published 2015 Jul 8. doi:10.1136/bmj.h3297 https://www.ncbi.nlm.nih.gov/pubmed/26157106.

3.6 Kline R and Lewis D. (2018) The price of fear: estimating the financial cost of bullying and harassment to the NHS in England. *Public Money and Management* 39(3):166-174. DOI: 10.1080/09540962.2018.1535044

3.7 Kline, R and Atewologun D. (2019) *Fair to Refer. Reducing disproportionality in fitness to practise concerns reported to the GMC*. GMC (2019) https://www.gmc-uk.org/-/media/documents/fair-to-refer-report_pdf-79011677.pdf

4. Details of the impact

The impacts evident from this body of work are of two main kinds: benefits as a result of the enhancement of NHS policy and contracts; and benefits to individual NHS employees brought about by implementation of the Workforce Race Equality Standard (WRES).

(1) Benefits as a result of enhancement of NHS policy and contracts

Prior to 2013, tackling race discrimination in the recruitment, development and treatment of the NHS, workforce of 1.2 million was overwhelmingly devolved to NHS Trusts and other local NHS bodies. Publication of *The Snowy White Peaks of the NHS* [3.4] had a pivotal impact on debate, through identifying the scale of race discrimination within the NHS and suggesting ways of addressing this issue. The report was sent to every NHS Trust by NHS England as recommended reading and then became required reading on all NHS Leadership Academy courses. Commenting on the report's influence, the former Chair of NHS Providers stated: *"I have seen many reports like this over the years and none have had the traction achieved by this report. It has been the trigger for tackling unfairness robustly. I still hear people referring to the report specifically which is remarkable after nearly 5 years and with the sheer volume of NHS policy during that period."* [5.1]

Influence of the report was extended when Kline was commissioned to design a Workforce Race Equality Standard (WRES) that imposed a contractual requirement for NHS service providers to collect, analyse and publish WRES data alongside an Action Plan, setting out how they would reduce identified patterns of race discrimination [5.2]. On this phase of the work, the former Chief Executive Officer of NHS England stated: *"The Snowy White Peaks of the NHS (2014) and the resulting development of the Workforce Race Equality Standard (in which Roger [Kline] was centrally involved) from 2015 onwards, played a crucial role in focussing NHS organisations on the importance of tackling race equality in NHS organisations. It triggered numerous positive initiatives in NHS trusts and other NHS organisations across the NHS which started to help to reduce some of the discrimination."* [5.3]

The combination of data analysis and Action Plan became an essential component of the quality regulator's (Care Quality Commission - CQC) public assessment of the quality of Trusts' leadership. In 2017, the CQC set out how WRES would be integrated into hospital inspections. The former CEO of the CQC stated that: "*development of the Workforce Race Equality Standard from 2015 onwards played a crucial role in prompting the Care Quality Commission… to include inspecting against the implementation of the WRES as an element in determining whether an NHS provider was "well-led" or not. Roger Kline's work enabled us to take this decision"* [5.4]. The *Clinical Commissioning Groups (CCG) Improvement and Assessment Framework* made it a requirement for CCGs to give assurance to NHS England that their providers were implementing the WRES, and that WRES results and action plans must be part of contract monitoring and negotiation between CCGs and their respective providers [5.5].

(2) Benefits following from implementation of the Workforce Race Equality Standard (WRES)

Following the 2015 launch of the WRES, Kline was seconded on a part-time basis as joint director of the WRES (2015-2017) to oversee its implementation. In this way his research directly informed the analysis and drafting of the first two annual reports on progress in implementing the WRES (2016, 2017), which enabled NHS organisations to understand their own metrics and to benchmark them against neighbouring or similar employers in order to drive progress. In 2018, NHS England chose to invest £1

million a year to extend the WRES programme to 2025. A dedicated WRES team of 7 staff currently manage this application of Kline's research insights and findings. An independent report evaluated implementation for the first two years (2015-2017), confirming early progress on metrics and the impact on improving diversity on NHS boards (Dawson et al. 2019) [5.6].

Implementation of WRES has produced a number of significant outcomes:

(1) Impact on diversity in the NHS
Over the first four years (April 2015 – April 2019), four of the nine indicators showed statistically significant improvement, notwithstanding that embedding these changes will inevitably take longer. The number of BME nurses and midwives in more senior grades (Bands 6-9) increased in the first 4 years (2015-2019) by at least 4,000 more than predicted by annual trends prior to 2015, and the numbers promoted in each year more than doubled. There was also a reduction, during the same period, in the relative likelihood of White staff (compared to BME staff) being recruited from shortlisting from 1.57 to 1.45. The total number of BME staff at very senior manager (VSM) pay band increased to 143 in 2019, up by 30% from 2016 and BME members of NHS Trust Boards rose from 7.0% to 8.4% in 2017-2019 (earlier Board figures are not directly comparable) [5.7]. Kline has sustained this progress through influencing practice via high profile and widely read blogs for the British Medical Journal [5.8] and ongoing work with the NHS as a part-time joint inclusion adviser to the NHS national talent management programme, In 2020 he was appointed a member of the Expert Group advising on the production of an ethical framework for COVID-19 testing for NHS workers, commissioned by the Department of Health and Social Care, and invited to become a member of the NHS BAME Clinical Advisory by the NHS Chief People Officer.

(2) Disciplinary action
The highlighting through WRES data of the disproportionate disciplining of BME staff led to a new approach to concerns about capability and conduct by inserting an additional layer of accountability prior to any form of investigation. This was intended to reduce both the overall level of disciplinary action and the relative likelihood of BME staff being disciplined. Impact of this measure was reflected in subsequent improved WRES data reporting on WRES Indicator 3. Early implementation at England's Barts Health NHS Trust of a new protocol in response to this measure led to a substantial reduction in disciplinary cases and a reduced relative likelihood of, BME staff (compared to White staff) being disciplined; an initiative that was recommended for wider application by NHS Resolution in 2019, as part of promoting innovative interventions. Nationally, the relative likelihood of BME staff entering the formal disciplinary process compared to white staff has reduced year-on-year, from 1.56 in 2016 to 1.22 in 2019 [5.7].

(3) Professional regulators and race equality
NHS professional regulators have focused more on equality as a result of embedding the WRES metrics. The Nursing and Midwifery Council changed its Fitness to Practice strategy to stress explicitly the importance of race equality. The former Director of Fitness to Practise, Nursing and Midwifery Council said of this development: *"The [Middlesex] work … has significantly influenced the determination of the Nursing and Midwifery Council to address this issue and shaped some of the elements of our recent (2018) Fitness to Practice strategy which explicitly acknowledges the importance of the issue of discrimination in patterns of referrals"* [5.9]. He goes on to say: "*I don't think it's an exaggeration to say that you've* [Kline] *helped 'move the dial' on equality for the whole health & care sector*. In response to Kline and Atewologun's 2019 review for the General Medical Council (GMC) [3.7], which identified the reasons why some doctors - notably BME doctors - were disproportionately referred within their own Fitness to Practice process, all of the report's recommendations were accepted by the GMC and a comprehensive implementation programme is currently underway. Evidence provided by Kline in a commissioned study for the Professional Standards Authority (2018) also significantly influenced their adoption of a new standard on diversity, which has led all NHS professional regulators to a fresh review of their approach to race equality [5.10].

(4) Action on bullying
Kline's 2013 report, *Bullying: the silent epidemic in the NHS*, and the subsequent Snowy White Peaks of the NHS report, identified that NHS bullying particularly impacts on BME staff. This directly influenced the inclusion of a substantial section on the disproportionately poor treatment of BME whistleblowers in the Government-commissioned Freedom to Speak Up Review (Francis 2015). Subsequently, NHS Improvement has drawn on this and Kline and Lewis' analysis of the financial cost of bullying to the NHS

and its £2.3 billion cost per annum], in the production of a new toolkit to promote cultures of civility and respect in the NHS [5.11]. This includes a 'bullying cost calculator' based upon Kline and Lewis [3.6] (2018), and forms part of a major anti-bullying policy initiative. Kline was also invited to join the NHS Health and Wellbeing Expert Advisory Board in 2020, to advise on bullying, whistleblowing and race discrimination and the NHS Improvement Culture Transformation Advisory Group.

5. Sources to corroborate the impact

5.1. Factual statement from Chair of NHS Providers (2014-19) which sets out key role played by the development of the Workforce Race Equality Standard in focussing NHS organisations to tackle race equality. NHS Providers are the main NHS employers' representative body.

5.2. Technical Guidance for the NHS Workforce Race Equality Standard (WRES) 2015-2016 written by Kline and Passman (2017) which informs Service Condition 13.6 of the NHS Standard Contract and requires providers to implement the WRES and submit an annual report to the Co-ordinating Commissioner on its progress in implementing that standard.

5.3. Factual statement from Chief Executive (2014-19), NHS England, setting out the key role of WRES in focussing NHS organisations on the importance of tackling race equality. NHS England is the national commissioning body for the NHS in England

5.4 Factual statement from Chief Executive (2014-19), Care Quality Commission (CQC), demonstrating how inspecting against the implementation of the WRES was adopted by the NHS quality regulator, the CQC, and set out in their 'Equality and the Well-led provider: New Equality Objectives 2017-19)

5.5 CCG improvement and assessment framework 2017/18. This framework requires Clinical Commissioning Groups (CCG) to give assurance to NHS England that their providers are implementing the WRES, and that WRES results and action plans are part of contract monitoring and negotiation between CCGs and their respective providers.

5.6 Dawson et al. (2019) Evaluation of the NHS Workforce Race Equality Standard. An external evaluation of WRES for first two years (2016 & 2017) demonstrating its initial positive impacts.

5.7 NHS Workforce Race Equality Standard 2019. Data Analysis Report for NHS Trusts (2020) NHS England (Equality and Diversity Council). The most recent national report showing progress of WRES

5.8 Promotion of actions to tackle NHS workforce race discrimination via 11 blogs by Kline for the *British Medical Journal* Leader site in 2020, including the most visited blog on this site (June 13, 2020) After the speeches: what now for NHS staff race discrimination. https://blogs.bmj.com/bmjleader/category/roger-kline-actions-to-tackle-nhs-workforce-race-discrimination/

5.9 Factual statement from Director of Fitness to Practise, Nursing and Midwifery Council 2017-2019, which sets out how this work influenced the revised approach to Fitness to Practice of the Nursing and Midwifery Council (NMC) with specific reference to race discrimination, as detailed in their 2018 report 'Ensuring public safety, enabling professionalism'

5.10 Professional Standards Authority Standards of Good Regulation (revised) 2019 These standards include for the first time an equality standard (at Para 2.74 and in the Annex) drawing upon Kline's commissioned report and apply to all NHS professional regulators.

5.11 Freedom to Speak Up Review (2015) (Francis Review). Definitive Government commissioned report on whistleblowing in the NHS, with section and appendix on treatment of BME whistleblowers referencing Kline (2014) multiple times. Supporting our staff: a toolkit to promote cultures of civility and respect; NHS toolkit published by Social Partnership Forum with introduction by Kline (pp.5-6) and draws upon Kline and Lewis's work on the cost of bullying. COVID delayed publication of this toolkit by NHSEI will take place in spring 2021.