

**IN THE EMPLOYMENT TRIBUNAL**

**CASE NO: 2300819/2019**

**(LONDON SOUTH)**

**B E T W E E N:**

**DR CHRISTOPHER DAY**

**Claimant**

**-and-**

**LEWISHAM AND GREENWICH NHS TRUST**

**Respondent**

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**WITNESS STATEMENT OF BEN TRAVIS**

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I, **BEN TRAVIS**, of Lewisham and Greenwich NHS Trust, Queen Elizabeth Hospital, Stadium Road, Woolwich, London, SE18 4QH WILL SAY AS FOLLOWS:

**Introduction**

1. I am the Chief Executive of Lewisham and Greenwich NHS Trust ("the Trust") and I have been employed in this post since April 2018. Prior to that I was acting Chief Executive of Oxleas NHS Foundation Trust from September 2015, being appointed to the substantive post in 2016. I am a qualified accountant and I have held senior positions within both the NHS and the business services sector over the years, including Finance Director at Oxleas for four years. I have worked within the NHS since 2005.
2. The Trust is an extremely busy one. It is based over two sites, Queen Elizabeth Hospital ("QEH") and University Hospital Lewisham ("UHL"), and also provides community services. It has presentations per year of 300,000 in the Emergency Department and 600,000 outpatients' appointments per year. The Trust employs around 7,000 staff and has an annual income of over £700 million.
3. Part of my ethos as Chief Executive is to recognise the importance of transparency and external scrutiny. One example of this is that shortly after I joined the Trust in April 2018, I commissioned an investigation from Ashfold Consulting after staff raised unprompted concerns about bullying and harassment at a leadership review in May 2018. The purpose of the investigation was to find out more from people who had experienced

problems and from those involved in handling these issues. I wanted to give a voice to those who felt that the system had let them down.

4. The report was published in December 2018. It was a challenging report which made some serious findings about bullying at the Trust and the Trust's response to these allegations.
5. Following the findings of that report, I set out a preface to the report which was published on our website. I also referred to the report on my Twitter account [page 1242]. The report was shared with all colleagues. I did not want to shy away from the findings of the report and made clear that I wanted to make the Trust a great place to work for everyone [page 1242 - 1245].
6. The Trust has five core values which were agreed shortly after I joined following consultation with staff. I saw this as an opportunity to open up a conversation about the working culture. The first of these values is to treat everyone with respect and compassion. In line with this, and following the publication of the report, I ensured that the Trust set up a "respect and compassion programme" in early 2019 in response to staff feedback that more needed to be done to support the organisation's workforce. The programme is led by me and includes executive directors, trade union representatives and representatives from the Trust's equality, diversity and inclusion network. The Trust also established an oversight group which meets on a quarterly basis to review the work of the programme board. The oversight panel has two independent co-chairs: Roger Kline (a leading expert on improving culture in NHS organisations) and Sir Steve Bullock (former mayor of Lewisham and an experienced chair).
7. Throughout this time, I ensured that the report was published and remains on the Trust's website, and set up open meetings with the Trust's staff to provide updates on progress following publication of the report.

#### **Dr Day's previous claims**

8. I first became aware of Dr Day's previous Employment Tribunal claims against the Trust (case numbers 2302023/2014 and 2301466/2015 – "Claims 1 and 2") in around June/July 2018. However, as set out at the outset of my statement, the Trust is exceptionally busy and as CEO I have multiple demands at any one time. Therefore, at the time, the case was never the sole focus of my role; rather I was involved in a series of short meetings or briefings to oversee our response to the case. Our previous Director of Workforce and Education, Janet Lynch, was leading on the case at that point. Janet Lynch was also Deputy Chief Executive at this time. Janet Lynch updated me primarily on the reputational aspects rather than the specific details of the case. Dr Day had historically worked at Queen Elizabeth ("QEH") but he had left the Trust in August 2014, almost four years before I joined the Trust. I therefore had no involvement with the original allegations. Whilst I understood that Dr Day had raised concerns and alleged

that he had suffered detriments as a result of raising concerns, I did not know the detail of the specific concerns raised. The bigger issue of which I was made aware at the time was one of reputational concern; in particular a concern about any potential adverse impact on the recruitment and retention of medical staff. I recall being told that, at a CQC inspection in 2018, the CQC inspector asked a member of the Intensive Care Unit "*What's it like working on a unit with such a terrible reputation*", which reinforced my concern. There had been significant press and social media interest in the case and I understand that this is addressed in the statement of David Cocke, Associate Director of Communications.

9. The final hearing to determine Claims 1 and 2 commenced on 1 October 2018. The Trust's primary instructing client was Janet Lynch in her remit of Director of Workforce. I did not attend the hearing but I received a daily oral update from her. I understood from her that, in accordance with expectations, the case was going well for the Trust and Dr Day's evidence had been very poor. I now understand that partway through Dr Day's evidence, his barrister, Chris Milsom, approached the Trust's barrister, Ben Cooper QC, on a without prejudice basis to discuss the possibility of settlement and that this approach from Chris Milsom took place on 5 October 2018. However, I do not recall speaking with Janet Lynch at this time and I had no involvement at that stage of the case.
10. Janet Lynch spoke to me about potential settlement in the early part of the week of 8 October 2018, although I cannot be certain of the exact date and I made no note of our discussion. I recall that my starting position was that if the case was going as well as had been described, I was not keen to engage in the settlement discussions initiated by Dr Day's barrister. I wanted a final conclusion from the Employment Tribunal on the facts, particularly in view of the fact that the case has been continuing for so long. However, I was also conscious that all the Trust's witnesses were yet to give evidence and that this was going to take up a significant amount of senior clinician time. The Trust had seven witnesses, including four consultants, two of whom also held the posts of Director of Medical Education (Dr Mehool Patel) and Deputy Medical Director for Performance and Professional Standards (Dr Dan Harding) at the Trust. The very clear feedback from the senior clinical team was that settlement was the preferred option. This case had a significant impact on their clinical commitments. There was also personal anxiety at having to give evidence in such a high profile case. I also had to be mindful of the significant saving of cost, to include legal fees, if the case ended early without the requirement to attend approximately a further 10 days at the Employment Tribunal hearing.
11. Janet Lynch explained the negotiations to date. After the passage of time I cannot recall what specifically we discussed, other than that I was weighing up the considerations

referred to above. At this point, we had received no formal offer of settlement from Dr Day.

12. I now understand (as part of my preparation for these proceedings) that Chris Milsom put forward an offer of settlement at 20:07 on Thursday 11 January 2018, after Dr Day had completed his evidence [page 980]. The offer was as follows:

*'Dear all,*

*I am instructed to offer as follows:-*

- 1. Withdrawal of all claims*
- 2. Forbearance from any side pursuing costs (both ordinary and wasted)*
- 3. Confidentiality as to terms*
- 4. Mutual non-derog clauses. We would wish this to encompass any disclosure of the circumstances of settlement/withdrawal of the claim*
- 5. Agreement that no referrals shall be made to the GMC as regards any individual in relation to the circumstances of the claim and/or litigation*
- 6. A written understanding that there is no known basis on which Cs application for a return to training on an open competition basis would be precluded. Any matters relating to the facts of this claim or its conduct shall not be regarded as an impediment to training*

*I appreciate that finalising ts and cs may take time tomorrow. We will be coming tomorrow in negotiating rather than litigation mode so cannot envisage any need for witnesses to be present: this includes Dr Brooke*

*Best,  
Chris'*

13. Janet Lynch continued to lead on the case for the Trust. However, my concerns remained as to whether settlement was the best approach in all the circumstances. I therefore spoke to the Chair of the Trust, Val Davison. This was the first occasion that I discussed potential settlement with her. Our joint view was that the terms of settlement would need overall Board oversight, given all the issues that the Trust had been faced with on the case to that date. In particular, it was a high profile case with reputational issues and I did not consider that it would be appropriate for the case to be settled without the Board being made aware in advance and approving the approach. It was not a decision to be made by solely by Janet Lynch and me. I asked for a briefing note to be provided setting out the various possible outcomes of the case and the impact for each



one, so that this could then be circulated to all Board members for a view and to gain authority to act. I informed Janet Lynch accordingly.

14. Although I wanted Board oversight regarding the potential settlement, there was no intention for there to be a formally convened Board meeting. We would have been unable to comply with the notice requirements which come with that, in particular noting that we had never anticipated the Board to have to discuss the issue of settlement. This had come unprompted by Dr Day's barrister, Chris Milsom.
15. A briefing note was subsequently provided by the Trust's lawyers on Friday, 12 October 2018. That briefing note is legally privileged and the Trust does not waive privilege in respect of this.
16. During the course of that day, I now understand that negotiations continued. At this point, I had very little to do with the case as it was still being led by Janet Lynch. However, one point I clearly recollect is that Janet Lynch updated me to confirm that Dr Day's original offer made by Chris Milsom included a confidentiality clause. Both Janet and I were clear that this suggestion of a confidentiality clause from Chris Milsom was unacceptable to the Trust. This was because of the level of interest, the allegations pursued and the late stage of proceedings for settlement (i.e. that we were part way through the final hearing). We were both surprised to see the original suggestion of the confidentiality clause from Dr Day's barrister, given the focus on transparency.
17. It was not possible to arrange a Board discussion on Friday, 12 October 2018 and so it was agreed that this would be arranged for the evening of Sunday, 14 October 2018. This took place by telephone conference call and took approximately one hour. In advance of this, Janet Lynch emailed the board to set out the details for the call **[page 985]**. This attached two documents from our solicitors, Capsticks, which are legally privileged and so not included in the bundle. This was not a formally convened Board meeting and no notes were taken. This not unusual in circumstances of a private discussion but a summary of the discussion was presented at the private board meeting on 30 October 2018 **[pages 1052-1053]**. The Board discussed the competing factors in this case. These included whether the issues in the case meant that it should play out in full in open court, the clinical time the hearing would take up, the cost of continuing with the Employment Tribunal process, anxieties from the witnesses and the continuing time that would need to be invested in the case. I recall that we noted the terms of settlement included a term that no costs would be sought by either party. The unanimous decision of the Board was to approve the settlement agreement to include the agreed statement. Thereafter, I left Janet Lynch to oversee the mechanics of signing off the agreement and I now understand this was communicated to Dr Day and HEE's legal representatives that evening. The settlement agreement was then signed by all parties

on 15 October 2018 [pages 990-996]. This included an agreed statement, which I understand was read out at the Employment Tribunal which stated:

*"After six days of evidence at the Employment Tribunal brought by Dr Day against Lewisham and Greenwich NHS Trust and Health Education England it has been agreed by all parties that:*

- *Dr Day blew the whistle by raising patient safety concerns in good faith.*
- *Dr Day has performed a public service in establishing additional whistleblowing protection for junior doctors.*
- *The Tribunal is likely to find that both the Trust and HEE acted in good faith towards Dr Day following his whistleblowing and that Dr Day has not been treated detrimentally on the grounds of whistleblowing.*
- *Dr Day's claims are dismissed upon withdrawal".*

### **Communications strategy after settlement**

18. At the discussion on 14 October 2018, where the Board approved settlement, there was a clear view that we needed a communications strategy following settlement and I understand that this is detailed in the witness statement of David Cocke. From my perspective, the overriding concern was a reputational one. Vacancy levels were at a high of 17.5% in 2018 and, in particular, in junior doctor recruitment we were aware that doctors had been put off joining the Trust by the allegations made against it, which in turn made it harder to provide the level of care that the Trust wanted and needed to provide. Up until this point, given the ongoing litigation, the Trust had said little publicly and I considered that in a story which had generated a huge amount of publicity (generated by Dr Day or his supporters), only one side of the story had been told. It was important to me that we stopped looking like a faceless organisation that hid behind "no comment". I therefore wanted to issue a statement which set out the key facts of the case, the impact on the Trust and the steps which the Trust was taking to protect those who wanted to raise concerns.

19. Janet Lynch worked on the first draft of the statement given her in depth knowledge of the case. Ultimately, David Cocke was brought in to ensure an appropriately worded statement could be issued reasonably promptly. I reviewed the content of the statement and approved the content. It was published on 24 October 2018 [pages 1046-1050].

### **Response to allegations relating to costs threat and legal fees**

20. After this statement was issued, a new key theme started to emerge: whether the Trust (and HEE) had threatened Dr Day with costs and whether that caused him to withdraw his case. We had first become aware of this just before the first statement was published when a journalist, Martyn Halle, who was writing an article for the Mail on Sunday had

approached the Trust. On 19 October 2018, Martyn Halle had sought a categorical denial that the Trust had *“threatened Dr Day during the hearing with the risk of it seeking substantial costs running into several hundred thousand pounds”* [page 1028]. Although that article was unpublished, this became the common theme. As detailed in David Cocke’s statement, we were approached by another journalist, Tommy Greene, on 5 November 2018 who was writing an article for the Telegraph newspaper.

21. Around that time there was also a Private Eye article which referred to Dr Day deciding not to risk *“financial ruin...and agreed to drop his claim. In return, Dr Day will not be pursued for eye watering costs”* [page 1056]. This article was written by Phil Hammond, doctor and writer for Private Eye. A Twitter post by him was also critical of settlement and speculated, incorrectly, that Dr Day had been *“gagged in some way”* [page 1038]. In turn this was retweeted and/or further comments made in a similar vein. As part of these proceedings, I have seen disclosure from Dr Day which shows that he assisted Phil Hammond in preparing that article [pages 1035-1042].
22. On 2 November 2018, Norman Lamb MP, now Sir Norman Lamb but referred to as “Norman Lamb” for the purposes of this statement, posted a message on Twitter: *“I’m deeply concerned by the handling of this case by the NHS and Government and the public money spent seeing off a whistleblower. It’s been a massive test of how serious they really are about listening to those who are brave enough to speak out. Sadly they failed that test”* [page 1057].
23. By way of background, the Trust had been aware that Norman Lamb had taken an interest in Dr Day’s case for some time. After seeing this posting by him, we knew that there would be heightened interest in the case, for example it had been retweeted 95 times. We were also on notice at this point from NHSE/I that it was likely that Norman Lamb would pose a question to the Department of Health and Social Care (“DSHC”), to which the Trust would need to respond, and/or that the Trust would receive a Freedom of Information request as to the legal fees in the case.
24. On 12 November 2018, the Trust was notified by NHS Improvement of the following request:

*“DHSC have received the below PQ from Norman Lamb and have asked that we approach the trust –*

*Norman Lamb|North Norfolk|To ask the Secretary of State for Health and Social Care, how much has been spent by (a) Health Education England and (b) Lewisham and Greenwich NHS Trust on (i) legal fees and (ii) other costs associated with defending legal action brought by Dr Chris Day. 189610*

*Please can you ask the trust for:*

- *The figure to respond to the question*
- *Relevant background info*

*We have been asked for a response by COP today so grateful if you could come back to us by 4.45pm today”.*

25. The Trust responded on 12 November 2018. The Trust has been unable to locate a copy of the response. It is not particularly unusual for the Trust to be asked to respond to parliamentary questions and this response would have been provided in the same way as others. I understand from David Cocke that these responses are sent through a generic communications mailbox. However, the email address of the communications mailbox used in November 2018 changed as it had stopped working. The archived communications mailbox account (from which this email was sent) has now been closed. It has not been possible to locate a copy.
26. Meanwhile, I felt it was important to reach out to Norman Lamb following the postings on his Twitter account and I wrote to him on 12 November 2018 **[pages 1062-1065]**. I provided a copy of the Trust’s statement but I also confirmed that it was Dr Day who had initiated the settlement discussions. I emphasised that the publicity and social media around this case had created a negative impression of the Trust and continued to have the same impact. This was contrary to the Trust’s commitment to support those who wished to raise concerns and to continually improve the quality and safety of our services. I ended by confirming that I would welcome a meeting to discuss the matter further with him. However, we received no response from him at this time. I therefore followed up with him again in my letter of 7 December 2018 **[page 1205]**.
27. Our communications team had been preparing a response to Tommy Greene. Kirsten Edwards, Marketing and Communications Manager, updated the Trust Board on 12 November 2018 **[page 1079]**. The Trust Board group email address comprises all executive and non-executive members of the board. This was done for our information rather than comment and Kirsten Edwards responded later on 12 November 2018 **[page 1090]**.
28. The Trust had responded to an MP, a parliamentary question and a journalist’s questions on one case on the same day. This was highly unusual. The latter two pieces of correspondence both turned to the issue of costs: whether a threat was made and what the legal fees threatened were. When the case had first concluded, my instruction to the Communications team had been to explain the facts of the case, as we knew that misconceptions about the case had impacted on the Trust’s reputation. Now the case had taken an entirely new and unpredicted turn.
29. On Sunday, 2 December 2018, an article written by Tommy Greene was published in the Sunday Telegraph **[pages 1141-1142]**. David Cocke emailed the Trust Board on 2

December 2018 to notify us of this article [pages 1138-1140]. I was disappointed by the article and, in addition, I was concerned by a recent statement by Dr Day on his Crowd Justice page [page 1115]. In discussions with David Cocke, I came to the decision that the Trust should issue a further statement to address the repeated questions around costs, which were coming from different sources.

## Second statement

30. The statement was prepared by David Cocke as this fell within his remit as Head of Communications but also because he had been fielding the majority of queries at this time. I reviewed and approved the draft statement alongside Janet Lynch who knew the detailed background of the case. We also sought advice from Capsticks Solicitors LLP on the content of the statements. The reason why I did so was twofold. First, it was for due diligence on the basis that our solicitors had in-depth knowledge of Claims 1 and 2 and we wanted to ensure the statement was factually accurate. Second, we wanted to ensure that the statement correctly set out the legal test as to when costs could be awarded as we understood the Employment Tribunal had a specific approach to costs in that these were not automatically awarded and could only be awarded in specific circumstances after taking a claimant's means into account. Advice was provided by our solicitors but that advice is privileged and the Trust does not waive privilege in respect of this. The Trust published the statement on 4 December 2018 [pages 1165-1167]. The principal purpose of the statement was to address the issue as to how settlement discussions had arisen and the issue of costs. This was in response to the postings and parliamentary question from Norman Lamb, the Sunday Telegraph article and the general social media interest at this time: in other words it was in response to statements made on these matters that had been raised by Dr Day and his supporters. It had nothing to do with the protected disclosures made by Dr Day several years earlier.

31. I understand that Dr Day claims that this statement contained false statements about the without prejudice discussions, in particular the following parts:

- (a) *"he claims that the Trust threatened him with the prospect of paying our legal costs. All of this is simply untrue".*
- (b) *"we did not threaten Dr Day with legal costs to pressure him to drop his claim"*
- (c) *"[o]n the issue of costs, we had decided not to pursue Dr. Day for legal fees before he withdrew his case".*

32. My view at the time was, and remains, that the statement was accurate but I understand that detailed evidence about the course of the negotiations is being given by those directly involved in them. The reason I approved the statements was because I believed them to be true. I knew the last point was true as the approval of the draft settlement agreement by the Board on Sunday, 14 October 2018 was done on the basis that costs would not be pursued against Dr Day. I was responding to what I believed to be the unfair criticism of the Trust that we had pressured Dr Day to withdraw his claim in

an underhand way and at a time when he was particularly vulnerable when, in fact, the first move had come from his barrister, Chris Milsom. The timing of that, which I understand was during Dr Day's evidence, was entirely down to Chris Milsom. The reason for the statements was not in response to (or to penalise Dr Day for) the historic disclosures raised; I was reacting to current issues which were wholly separate to that.

33. At this time, I was discussing the case regularly with David Cocke because of the press and social media interest. At some point there was a proposal to issue the Trust's statements to our local stakeholders. There is not a defined list of stakeholders but, for example, it encompasses our local MPs, council and Clinical Commissioning Group (CCG). I cannot recall which one of us suggested this but it would have been a natural topic during our discussions. This is because we work closely with the stakeholders. It is important to me that there are no surprises relating to the Trust on which the stakeholders might have to field queries. The way to prevent that is for the Trust to proactively brief them so that they have available the Trust's position and context. I believed the statements to be accurate and I considered that it was appropriate for the Trust to update its stakeholders in circumstances where we considered there had been misleading comments made about the Trust.

34. I understand that Dr Day has claimed that the issuing of this letter, enclosing the statements, was a detriment as a result of raising protected disclosures. I have explained above that I believed the statements to be accurate and why I felt it was appropriate to contact the stakeholders direct. For the avoidance of doubt, this decision had nothing to do with the historic concerns raised many years ago when Dr Day was employed by the Trust. My focus was not on what Dr Day had said many years before I became the Trust's Chief Executive; it was to respond to the Sunday Telegraph article and the statements Dr Day and others had made about the circumstances in which the recent litigation had resulted in settlement. The Trust's position is accurately reflected in the judgment of the Employment Tribunal at a Preliminary Hearing on 17 – 19 January 2022 where the finding of the Employment Tribunal was: "*Unsurprisingly the Sunday Telegraph article also provoked reaction from both the respondents. The first respondent issued a statement to its key stakeholders challenging its content*" [page 613].

#### **Events leading to third statement**

35. On 4 December 2018, David Cocke emailed me to confirm that the Trust was subject to an increasing amount of criticism on social media [page 1168]. This related to the Sunday Telegraph article about Dr Day's case which had been published a few days beforehand but also postings by the QE Patient Forum. I responded to ask if we could have a quick call which is my normal response to this type of email. I cannot recall if we did speak on this occasion.



36. On 4 December 2018, Dr Day wrote to the Trust's lawyers to advise that he planned to challenge the settlement agreement and to overturn the dismissal judgment **[pages 1184-1186]**. On 5 December 2018, Dr Day updated his Crowd Justice fundraising page. The page referred to four threats made to him whilst he was under oath **[pages 1213-1214]**.
37. Social media activity was particularly intense at this time. On 6 December 2018, Dr Day posted a message stating that he was very surprised by the Trust's statement of 4 December 2018 **[page 1209]**. The post troubled me. As I have stated earlier in my statement, I sought to avoid hiding behind "no comment" and I felt it had reached a point where I needed to respond in order to ensure that my position was clear to interested twitter users. I therefore replied on 7 December 2018 with the following tweet: "*I joined LGT earlier this year so am relatively new to this case. In our statement we wanted to be clear there are 2sides to this story, & share our version of events. I am the 1<sup>st</sup> to admit we don't get everything right, but we are not the bad guys that we are being portrayed as*" **[page 1209]**. There were a series of responses to my reply, including from Dr Day, about whistleblowers being treated badly and so I sent a further reply on 8 December "*I recognise as an NHS we have real issues with bullying, harassment & the fear of speaking up. In LGT we have our own challenges which I'm committed to tackling. But just because the above is true doesn't mean in this particular case LGT made threat to/trying to silence Dr Day*" **[page 1209]**.
38. Shortly after this, on 8 December 2018, I was tagged in a tweet addressed to me from Dr Sebastian Hormaeche who asked for a response to the four threats set out on the Crowd Justice page **[page 1207]**. Dr Bob Gill then responded to that message with additional questions **[pages 1208]**.
39. At this point, I began to discuss with David Cocke whether a third and final statement was required to respond to these additional points, in particular the four threats allegation. However, this was superseded by Dr Day formally applying on 11 December 2018 to the Employment Tribunal to set aside the settlement agreement and, initially, we decided to step back from any further statements given that there were now live legal proceedings which addressed similar points.
40. On 20 December 2018, Tommy Greene emailed Kirsten Edwards regarding the Trust's December statement and the issue of a costs threat **[page 1247]**.
41. On the same date, I confirmed on my Twitter account that we had shared the report from Ashfold Consulting in respect of the allegations of bullying and harassment at the Trust. The replies were immediately directed to Dr Day's case, even though the report related to different matters **[page 1242]**.



42. On 18 December 2018, Kate Savin (assistant to Norman Lamb) emailed my Executive Assistant, Valerie Richards, to propose a meeting take place on 14 January 2019 [p1232]. I believe that this was the first response we had from Norman Lamb.
43. On 20 December 2018, a letter from Norman Lamb to Matt Hancock MP, Secretary of State for Health and Social Care, was posted on Twitter which addressed concerns about the settlement of the case and the alleged costs threat [page 1246].
44. On 21 December 2018, the HSJ published an article on the findings of the Ashfold Consulting report [pages 1250-1253]. The HSJ is the pre-eminent publication for the NHS and a key opinion former. I understand that David Cocke's statement details the impact of this and that, again, the comments made on the article referred to Dr Day's case despite the report being unrelated. It is important for me to emphasise the negative impact of the comments on this article, which was a key factor in the Trust's decision to press on and issue a third statement. I accepted the article content as fair in respect of its commentary on the Ashfold Consulting report. What concerned me, and what I found troubling, was that the comments on the article quickly turned into comment on Dr Day's case [pages 1254-1281]. It felt increasingly toxic and that the narrative of the original report was being lost and used for alternative means. I also noted that some of the comments were aimed directly at me and I felt an inevitable pressure to respond to them. In short, the comments to this article made me consider that the Trust had to set the record straight by responding with a third statement.
45. By this point, I was clear that I wanted to issue a third statement to respond to these further issues. When I saw a further tweet again linking the Ashfold report to Dr Day, I decided to reply and a series of postings then followed [pages 1248-1249]:

Ben Travis: *"Although Dr Day is seeking to re-open legal proceedings, we have decided to publish a 3<sup>rd</sup> statement on Monday as we are committed to being transparent"*.

Dr Chris Day: *"Do you ever stop to consider the effect your multiple public statements have on me& my family. Monday is Christmas Eve.*

*On the costs threats; the only possible options are; I am lying, you are lying or the lawyers are lying. The application hearing will get to the bottom of it"*.

Ben Travis: *"I'm more than happy to wait to issue our statement until the new year, if you'd prefer. We planned to publish on Monday in response to multiple requests, two weeks ago and yesterday, to respond to some further questions. Please let me know how you'd like us to proceed"*.

Dr Chris Day: *"P.S For what it's worth I respect your decision to make that recent report public. It couldn't [sic] have been an easy decision but it seems to me the right one"*.

Ben Travis: *"Thanks Chris, I really appreciate your tweet, very happy to wait and pick this up in the new year. Hope you and your family are able to put this to one side for a few days and enjoy xmas"*.

46. The issue of the third statement was temporarily paused at this time. However, in order to address the issues of the costs threats referred to, I instructed Capsticks Solicitors to prepare correspondence on these points. Letters were provided on 21 and 22 December 2018 **[page 1283-1285]**. I confirm that the Trust does not waive privilege in relation to any surrounding correspondence.
47. The Trust also provided an update on its intranet page following queries from its staff **[pages 1286-1287]**.
48. I was then on annual leave on 2 January 2019. When I returned, to ensure that Dr Day was kept updated at the earliest point and in the interests of transparency, I authorised for the embargoed statement to be provided to Dr Day and this was done on 3 January 2021 **[pages 1296-1297]**. Meanwhile, Norman Lamb had set up a meeting with Dr Day, Mrs Day, Norman Lamb and me to take place on 14 January 2019 **[page 1295]**.
49. Dr Day responded to David Cocke's email to request that the statement was provided to Ben Cooper QC and his junior Nadia Motraghi and that they needed to agree with the wording of the statement. Dr Day asked that this be confirmed in the text and that it should not be published without this confirmation. I also received a direct message from Dr Day via Twitter requesting that any statement keep the allegations exactly as reported on the Crowd Justice **[page 2208]**.
50. Dr Day's reply needed consideration. Our view was that it would not be appropriate to attribute approval for any such statements to any particular members of the Trust or its legal team. David Cocke's statement sets out the approval process for the publication of Trust statements and this approval process does not include named approval from any one person. I was also conscious that any comment from the Trust's lawyers may be prejudicial to the live reconsideration application by Dr Day.
51. At around this time we were being chased for our statement by Tommy Greene. Dr Day had also published a further update on his Crowd Justice website on 9 January 2019 **[page 1313]**. As with the second statement, we were seeking legal advice as to the content of the statement for the same reasons as set out at paragraph 30 above. Again, I confirm that advice was provided but that advice is privileged and I do not waive privilege in respect of this. I would note, however, that Capsticks Solicitors LLP prepared two

letters [pages 1283-1285]. Both letters were absolutely explicit in saying that no cost threats were made against Dr Day. These were subsequently provided to Norman Lamb.

### Third statement

52. I reviewed and approved the third statement before it was published. The third statement was issued by the Trust on 10 January 2019 and remains the Trust's final statement [pages 1314-1317].

53. I understand that Dr Day claims as a detriment the following within the Trust's statement: *"Dr Day's legal representatives indicated that it would be helpful to them for the Trust: To state what our position would be if the tribunal were to dismiss Dr Day's claims and make findings that he had not been truthful in his evidence. The Trust's legal representatives confirmed that if the tribunal were to dismiss Dr Day's claims and make findings that his evidence was untruthful, then there would be an issue to costs. This reflects that we are an NHS body responsible for public funds"*.

54. As with December 2018 statement, and as I believe is also confirmed in more detail in the statement for David Cocke, the detriment claimed is misleading as the section quoted is shortened and does not set out the initial sentence from the quoted section which was that it was Dr Day's representative who made the approach about settlement discussions.

55. I consider the statement is accurate. It reflects the explanation given to me by Janet Lynch in the earlier stages of the settlement discussions and is reflective of the text message sent by Ben Cooper to Chris Milsom, which I have now seen as part of these proceedings [page 953]. The reason for the statement was to respond primarily to Dr Day's Crowd Justice page of 4 December 2019 and the subsequent requests that followed. I was not seeking to punish Dr Day because he had made protected disclosures years earlier (which I understand to be his case).

56. The context for all these communications was the fact that the Trust was being portrayed as having somehow intimidated Dr Day into withdrawing his claims, which was unfair, and that this was somehow indicative of a desire on the Trust's part to penalise a whistleblower or to cover up wrongdoing. Since I understood that the initiative for settlement had come from Dr Day (or his barrister) and that he had been legally represented throughout, I considered this characterisation of the circumstances in which the case had settled to be misleading. That was frustrating in itself: it was also, as I have described, likely to have an adverse effect on morale and recruitment/retention. It was to "set the record straight", or explain the Trust's side of the story about the circumstances in which Dr Day's claims had settled, that the various statements Dr Day complains about were made. The fact that Dr Day had "blown the whistle" many years previously was

irrelevant to my thinking: had anyone made what I believed were misleading criticisms of the Trust in a way that generated a lot of adverse publicity and which would or might adversely impact on the Trust's morale and staffing, I would have wanted to respond to those criticisms.

### **Meetings with Norman Lamb MP**

57. Norman Lamb had arranged to meet with Dr Day, his wife and me on 14 January 2019. I note in correspondence which I have reviewed for these proceedings that Dr Day was originally under the impression that the Trust's Medical Director, Dr Liz Aitken, would also be in attendance but it was never planned that she would attend **[page 1354]**. This meeting was set up in response to the Trust's earlier contact in November and December 2018. The meeting took place at the parliamentary office of Norman Lamb at Portcullis House. David Cocke accompanied me to the meeting. At the outset of the meeting, I gave the Trust's perspective on the case. Dr Day then set out his challenges as to why he considered the statements to be factually incorrect, in particular in respect of the Trust's first statement and some of the summary findings of the MJ Roddis reports. MJ Roddis were external investigators who had been commissioned by the Trust to review Dr Day's grievance and clinical concerns. This matter dated back to 2014 which was well before I had started at the Trust. Whilst I knew of the headline summary of both reports, I had not read these in full and I did not know every detail of them. However, I was aware that the report had concluded that, overall, the Trust had acted appropriately but there were opportunities for learning and improvement. The latter point was to be expected, as that was part of the reason for commissioning an external review. In terms of specific findings, we had relied upon Janet Lynch for this part of the statement as workforce lead. This made it difficult for me to respond at the meeting to Dr Day on specific questions related to the reports, despite a number of questions from him.
58. At this point, I decided it would be helpful to have an internal review of the case to date. I decided that an objective member of the senior Trust team should carry out an internal review in the first instance. I therefore asked Kate Anderson, Director of Corporate Affairs, who had no prior significant involvement in the case, to conduct the review. Her background is as a qualified accountant in the KPMG Public Sector Audit team, working with NHS organisations in both an audit and advisory capacity. She has strong corporate governance and audit skills and I had absolute faith that she would carry out a thorough review. If Kate Anderson identified concerns that a fair process had not been followed then I would have considered the option of an independent review, at that point.
59. Meanwhile, on 28 January 2019, Norman Lamb wrote to me **[pages 1402-1403]** and enclosed a letter from Dr Day to him with enclosures dated 23 January 2018 **[pages 1386-1397]**. In his letter, Norman Lamb asked whether the Trust continued to stand by the statements, in light of the contents of Dr Day's letter. Norman Lamb further asked

whether I considered anything in Dr Day's letter to be in any way inaccurate, before stating that he considered aspects of the Trust's public statements to be severely defamatory and that they should be withdrawn forthwith along with a full apology. I was extremely disappointed by the content of the letter but I was satisfied that the review by Kate Anderson would identify if such allegations had substance.

60. Whilst there were no formal terms of reference for Kate Anderson's review, I discussed with her that I wanted a detailed review of the processes followed to date and the findings reached by others. In particular, I asked her to review the Trust's statements and the findings of the MJ Roddis reports to confirm whether the Trust's approach in response to Dr Day's concerns had been appropriate and to consider the points that had been raised by Norman Lamb. If any concerns were identified, then these should be flagged. The purpose of the review was to inform my response to Norman Lamb and any follow up actions that the Trust might want to take.
61. Kate Anderson concluded her review of the case. She considered the way the Trust had handled the case during the Employment Tribunal proceedings and the subsequent statements it had issued. Kate Anderson concluded that the Trust's actions and statements had been appropriate. She updated me in person on her findings rather than preparing a written report. However, she reflected her findings in a detailed draft letter to Norman Lamb, attaching a chronology of the various processes followed, in order that I could respond to the issues raised at the meeting on 14 January 2019 **[pages 1416-1420]**. Ultimately, I did not send this letter because Dr Day had begun to reference our discussions with Norman Lamb in support of his application to set aside the settlement agreement for Claims 1 and 2 **[pages 154-184]** and he subsequently issued the current proceedings against the Trust. However, it did help to form part of our preparations for the subsequent meeting with Norman Lamb on 6 March 2019.
62. I responded to Norman Lamb on 7 February 2019 **[page 1404]**. I confirmed that I had spent considerable time looking into the matters put to me at the meeting on 14 January 2019 as well as points raised within subsequent correspondence. I confirmed that I had prepared a detailed written response to Norman Lamb. However, in light of Dr Day's email of 5 February 2019 to the Employment Tribunal which included our recent correspondence **[pages 154-168]**, I did not consider it appropriate for me to respond in writing to either Dr Day or Norman Lamb at that time.
63. My letter confirmed that I remained keen to meet with Norman Lamb and I confirmed that at this meeting I would provide further context on the points raised at the January meeting and by Dr Day in his subsequent letter. I also explained that I was keen to have a wider conversation to identify how we might move the current situation forward in a constructive way. I stated that this may include discussion of the steps that the Trust could now take

to assist Dr Day with a return to the national training programme and how I planned to provide assurance to a future generation of junior doctors at the Trust that any concerns they raised would be addressed effectively in a supportive way.

64. I understand that, on the same day, the Trust responded to a Freedom of Information Request ("FOI Request") from Tommy Greene of The Telegraph with details of the Trust's spending up to 31 January 2019 on the fees of MJ Roddis (external investigators), Capsticks Solicitors LLP, and counsel from Old Square Chambers. I have now seen from Dr Day's disclosure for these proceedings that it appears that Tommy Green, Dr Day and Norman Lamb were liaising on this point **[pages 1410-1412]**.
65. Norman Lamb responded to my letter on 18 February 2019 **[page 1413]**. Norman Lamb again stated that he considered the Trust's statements to be defamatory, described them as having clear inaccuracies, and urged me to remove the statements. In the same letter, Norman Lamb also challenged the Trust's payment to MJ Roddis for simply attending Dr Day's original Employment Tribunal hearing for six days. The letter was then subsequently posted on the Twitter page for '54000 Doctors', although it has not been possible to find this post for these proceedings so it may have been deleted.
66. I took issue with the £12,983 plus VAT figure quoted by Norman Lamb for MJ Roddis attending the hearing. In fact, these were the fees for MJ Roddis since legal proceedings began. For context, Dr Day lodged his first claim against the Trust 2014. The £12,983 plus VAT figure was not therefore, simply for attending the hearing for six days, as asserted in the letter. Rather it encapsulated the entire costs of assisting the trust and preparing for the hearing since legal proceedings began. These costs were incurred over a period of some months and were necessary given the serious allegations made by Dr Day in respect of the investigation process, which were a key aspect of his claim against the Trust for £5.5m in damages. There were two witnesses who needed to be called from MJ Roddis to deal with these allegations. Both witnesses drew up witness statements and their attendance at the hearing was also required as Dr Day's oral evidence dealt with his allegations against each of them in more detail.
67. I discussed with Kate Anderson whether we should write to respond to Norman Lamb to confirm this. However, we decided that, if necessary, it would be better to discuss this at our upcoming meeting with him.
68. Kate Anderson and I met with Norman Lamb on 6 March 2019. The purpose of this meeting was to report back on the review by Kate Anderson. I did not take any notes of the meeting and I am unaware of any notes that were taken. We provided a pack to Norman Lamb in the meeting which was as follows:



- a. Item 1: Email from Claimant to Employment Tribunal dated 26 February 2019 **[page 187-189]**
- b. Item 2: Letter from Employment Tribunal dated 18 February 2019 **[page 185-186]**
- c. Item 3: Letter from Norman Lamb to Ben Travis dated 18 February 2019 **[pages 1413]**
- d. Item 4 from Ben Travis to Norman Lamb dated 7 February 2019 **[page 1404]**
- e. Item 5a: Letter from Dr Day to Norman Lamb dated 23 January 2019 with enclosure **[pages 1386-1397]**
- f. Item 5b: Letter from Norman Lamb to Ben Travis dated 28 January 2019 **[pages 1402-1403]**
- g. Item 6a: Letter Capsticks Solicitors LLP to Ben Travis and Janet Lynch dated 22 December 2018 **[pages 1284-1285]**
- h. Item 6b: Letter Capsticks Solicitors LLP to Ben Travis and Janet Lynch dated 21 December 2018 **[page 1283]**
- i. Item 7: the three Trust statements **[pages 1044-1055, 1165-1167 & 1314-1317]**
- j. Item 8: Letter Dr Luce to Claimant dated 30 January 2015 attaching MJ Roddis reports as Item 9 **[pages 651-758]**
- k. Item 9a: Claire McLaughlan investigation report dated December 2014
- l. Item 9b: Dr Mike Roddis investigation report dated December 2014
- m. Item 10: Email from Dr Day dated 26 August 2013 **[page 625]** and email chain with Dr Day and Dr Brooke in August – September 2013 **[page 626-628]**
- n. Item 11: Letter from Dr Day to Tim Higginson dated 4 August 2014 **[pages 629-633].**

69. The meeting was a wide-ranging one and we discussed a number of issues. We discussed the findings of the review by Kate Anderson and talked through all of the documents included in the pack of information presented. The pack included the two letters from Capsticks Solicitors LLP. I recall that we spent some time discussing the issue of costs in the Employment Tribunal context and my recollection is that Norman Lamb understood the position that costs are not automatically awarded and so, if Dr Day had been advised that he was a risk of a costs award, then he must have received advice that he was not only likely to lose but to lose in such a way that one of the exceptions where costs may be awarded could apply.

70. We also talked extensively about the work the Trust had undertaken on culture.

71. Finally, we explained our desire to try and support Dr Day in resuming training and his desired career path.



72. It was a positive meeting and I felt that by the end Norman Lamb understood the Trust's position.

73. At the conclusion of the meeting, there were two points for the Trust to consider. First, Norman Lamb had requested a further review of the entire case and proposed that Andrew Gent, the author of the Ashfold report, do this. The review proposed by Norman Lamb was effectively an internal running of the Employment Tribunal proceedings, which had been closed down, and would have included evidence from all of the Trust's witnesses from the original claim. However, I said that I would consider this proposal. Second, I wanted to reflect as to how the Trust could support Dr Day in moving his current situation forward.

74. I carefully considered the request by Norman Lamb for the further review. I discussed this suggestion with Val Davidson and subsequently the Trust Board. I also discussed this with colleagues at NHS Improvement. My decision was that the further external review proposed by Norman Lamb should not be undertaken. I quote below from my subsequent letter to Norman Lamb dated 3 April 2019 which provides the reasons why:

- *"As you are aware, the Trust commissioned an external investigation in 2014 to consider Dr Day's complaints. Whilst I appreciate that Dr Day was not satisfied with the outcome of that original external investigation, his position on this formed part of his Employment Tribunal claim. That claim has been review [sic] at an employment tribunal and concluded by settlement agreement.*
- *Given Dr Day's continued legal actions against the Trust, I am unclear that any review that did not reach an opinion consistent with his own views would be accepted by him. Given any 'new' review would review the existing body of evidence, it is difficult to see how further scrutiny would reach a different conclusion, and therefore the value in committing further public resources to this exercise.*
- *Finally, Dr Day's concerns relate to a wider set of circumstances than his treatment by the Trust. Whilst the Trust could inform the findings of a system wide investigation of the support received by whistle-blowers such as Dr Day, I am not in a position to commission a review with a scope that would extend beyond my organisation to cover the wider NHS."*

75. After the meeting, I was conscious of my offer to take steps to assist Dr Day. I therefore contacted Tom Grimes, Head of Enquiries, Complaints and Whistleblowing, and Oliver Shanley, Regional Chief Nurse for London, at NHS Improvement. I have quoted verbatim the steps taken as confirmed in my subsequent letter to Norman Lamb dated 3 April 2019 [pages 1422-1423]:

*"I have recently contacted senior colleagues at NHS Improvement to discuss the support and resources that the NHS has available at a national level to whistle-blowers who are in similar positions to Dr Day. I have spoken to Tom Grimes, Head of Enquiries, Complaints and Whistleblowing, and Oliver Shanley, Regional Chief Nurse for London, in relation to Dr*

*Day's case. When we spoke Tom (cc'd) shared details of the Whistleblower Support Scheme that NHS Improvement is launching soon, which is aimed at supporting whistleblowers who are considering their return to work. The scheme aims to provide a package of relevant support (including coaching and career development support) and may well be relevant to Dr Day given his experiences of whistleblowing within the NHS....In addition, and given your wider concerns of the adequacy of support mechanisms for the NHS whistle-blower, Tom would also be happy to liaise with you directly, and provide further context on the scheme. I have included contact details for Tom at the end of this letter".*

76. As set out above, I wrote to Norman Lamb on 3 April 2019. The purpose of that was to confirm that the Trust did not agree to the further review he had proposed, with reasons why, but also to confirm how the Trust could jointly support Dr Day in moving his current situation forward in a constructive way, which remained very much my aim. In respect of the latter point, in addition to the proposed support from NHSI, I also suggested the following:

*"In terms of next steps, please can I ask if you would be happy to have a conversation with Dr Day to discuss this response, or whether you would prefer that I contacted Dr Day directly? Should the proposed offer of NHSI led support prove unsuccessful, I would be willing to consider with you alternative ways to move the current situation forward, for example whether there could be benefit in the Trust entering some form of mediation with Dr Day, potentially drawing on the services of a specialist mediation agency".*

77. After the meeting and my subsequent letter, we received no further request from Norman Lamb to remove the statements or indeed any further correspondence from him. There was no response to my offer of support via NHS Improvement or, in the alternative, some form of mediation.

78. I understand that Dr Day is now alleging as a detriment "*The deliberate failure of the Trust CEO Ben Travis to respond to the Right Hon Norman Lamb's request on 28 January 2019 to either justify or remove the public statements published on the Trust's website*". I dispute that I did not respond to Norman Lamb. My letter of 7 February 2019 gave clear and (I believe) appropriate reasons why I no longer considered it appropriate to respond in writing to Norman Lamb or Dr Day given his decision at that time to disclose some of that correspondence to the Employment Tribunal. My view was that any written correspondence to Norman Lamb was likely to be forwarded to Dr Day and be posted on social media channels. Whilst I did not provide reasons in writing, I did confirm the findings of our review at my meeting with Norman Lamb on 6 March 2019. That confirmed why the Trust considered the statements were accurate and should remain on the Trust's website. That was subject to no further challenge by Norman Lamb. In not acceding to Mr Lamb's request to justify or remove the statements on the Trust's website, I was not seeking to subject Dr Day to a detriment because he had made protected disclosures years earlier (which I understand to be his case). As noted above, I believed the statements on the website to be accurate. Nothing Norman Lamb or Dr Day had told

me since they were posted caused me to change my view about that. I therefore saw no reason to remove them.

#### **CQC and Sir Robert Francis Q.C.**

79. I understand that Dr Day has claimed as a detriment on account of his protected disclosures "*The deliberate failure of the First Respondent to remove and or update their public statements once contacted with concerns about the statements from the Care Quality Commission and or Sir Robert Francis QC*".
80. Engagement meetings are held between the Trust and the CQC local inspection team on a recurring basis every few months. These meetings vary in frequency depending upon whether the Trust has had an inspection and/or whether there are areas the CQC wish to raise with the Trust. The purpose of the meeting is an ongoing liaison meeting between the Trust and its regulator. One such meeting took place on 29 March 2019. This meeting was organised by the CQC as a round table discussion following the CQC Inspection in September 2018. I was in attendance along with Belinda Regan, the Trust's Deputy Director of Governance and Patient Experience and Angela Helleur, the Trust's Chief Nurse. Amanda Williams attended on behalf of the CQC, along with Margaret McGlynn and Priya Patel, who were our local engagement leads. Priya Patel sent an agenda in advance of the meeting [pages 2209-2210]. I do not recall the meeting well but, as part of my preparation for these proceedings, I recall that a number of issues were discussed in addition to this case and it was not the focus of the meeting.
81. When we came to the agenda item to discuss this case, my recollection is that I gave a summary of the case. I confirmed that an informal review had recently been undertaken by Kate Anderson and that I was comfortable with her conclusions. My recollection is that it was mainly one-way information from me. I believe that we may have been asked if the Trust was going to remove the statements. I confirmed that I had now met with Dr Day and Norman Lamb and I had responded to him. I confirmed the statements would not be removed. We were not questioned further on the case. I recall that we took this opportunity to try to find out more given that we had received no direct notification from Sir Robert Francis Q.C. of any issues. The CQC did not raise direct concerns about the statements.
82. I do not recall any suggestion of a Fit and Proper Person Regulations (FPPR, which govern whether directors are fit and proper persons to work in the NHS) issue involving the CQC and, if there had been, I would have remembered this. In particular, I recall no mention at all about any FPPR panel receiving an email from Sir Robert Francis in relation to Dr Day's case on 25 February 2019 or whether it been discussed at an FPPR panel on the 25 March 2019. There was discussion in respect of correspondence from Sir Robert Francis Q.C. in relation to Dr Day's concerns rather than any concerns that

the CQC may have. The Trust's statements had been posted some months earlier in October 2018, December 2018 and January 2019 and the CQC had raised no concerns with us.

83. Angela Williams did not appear to know any of the detail of Dr Day's case. My recollection is that it was a discussion only; I do not recall any suggestion that there would be further contact from the CQC on this point, which is borne out by subsequent events. There was no request from Angela Williams to remove or update the statements and I did not come away from that meeting considering that the Trust was now in a position where it should consider doing so. Nothing in writing was ever received from the CQC regarding concerns about the statements. The Trust heard nothing further from the CQC, which accorded with the end of our discussions at the meeting on 29 March 2019.

84. I understand that, for these proceedings, Dr Day relies upon a letter from the CQC to Sir Robert Francis dated 29 May 2019 **[pages 1425-1426]**. The Trust never received a copy of this correspondence from the CQC at the time and only became aware of it many months later after Dr Day posted a redacted version on a social media accounts. Once the Trust became aware of it, we considered that it was necessary to discuss it with the CQC and so Belinda Regan, as our principal CQC liaison, contacted Margaret McGlynn, Inspection Manager at the CQC and the Trust's CQC relationship manager. Belinda Regan's subsequent email of 11 December 2019 stated **[pages 1448-1449]**:

*"Dear Margaret,*

*Thank you for the call and thank you for agreeing to look into this further.*

*Please find copy of the CQC letter posted on his website.*

*I look forward to hearing from once you've had the opportunity to liaise with your Fit and Proper Persons Committee.*

*Many thanks Margaret.*

*Kind regards*

*Belinda".*

85. I cannot recall the exact sequence of events as to how I was notified of this CQC correspondence. However, I agree with the action taken by the Trust to find out more detail. Belinda Regan would have asked Margaret McGlynn to discuss the issue with the Fit and Proper Persons Committee, because it was understood that it was the Fit and Proper Persons Committee that had been initially contacted by Sir Robert Francis Q.C.

86. Margaret McGlynn provided a short email reply on 19 December 2019 which stated **[page 1448]**:

*"Dear Belinda*

*I've checked and no one else has or will be following up this issue with the trust. The reference in the letter is to our meeting in March/April with you, Angela and Ben. Mandy Williams attend as well.*

*I'm on leave now but back on 27 if you have any more questions.*

*Have a good Christmas.*

*Margaret"*

87. The length and tone of the reply from Margaret McGlynn is indicative of the nature of the discussions which took place on 29 March 2019. Concerns were not raised by the CQC and, in particular, no concerns were raised which would have led the Trust to remove or update its public statements. To date, the CQC has never provided the Trust with a copy of the letter of 29 May 2018 and I have only seen the redacted version provided by Dr Day.
88. I confirm that I am unaware of any correspondence to the Trust from Sir Robert Francis Q.C raising concerns about the statements. I note the steps that the Trust took proactively when it became aware of the CQC correspondence dated 29 May 2019 via Dr Day's social media account and I have seen no document from Sir Robert Francis Q.C. alleging that the Trust has failed to respond to concerns raised direct by him. I am not aware of any direct contact from Sir Robert Francis QC. being received by the Trust.
89. I have explained above why I do not consider there to have been any failure by the Trust to respond to concerns allegedly raised by the CQC and Sir Robert Francis QC. Further, I confirm that the reason why the Trust has not removed or updated its public statements is that it believed these were appropriate to address parliamentary, press and social media interest, as described above. It had nothing to do with the historic concerns raised many years ago when Dr Day was employed by the Trust; those concerns played no part in my decision-making.

#### **Current position at the Trust**

90. At the outset of my statement, I confirmed that that I established a respect and compassion programme and that the Trust had also established an oversight group to meet on a quarterly basis. I am pleased to say that the Trust has been seeing improvements as a consequence. In a post dated 18 November 2020, the Trust's website confirmed that these included:

- ***"Providing a one-day training course on the Trust values to leaders in the organisation – so far, over 3,700 staff (around 75% of the leaders in the organisation) have attended the training***
- ***Appointing wellbeing champions and mental health first aiders – nominated by staff to provide support to colleagues, LGT has appointed 150 wellbeing champions and 30 of them have received additional training to become mental health first aiders***

- **Achieving accreditation for flexible working** from *Timewise* after introducing a new flexible working policy – becoming only the second NHS trust to achieve accreditation. This was achieved after feedback that more needed to be done to enable flexible working
- **Appointing an independent speaking up service** in June 2020 in response to staff feedback
- **Improving HR processes** – including ensuring that the organisational values are key to appraisals
- **Launching an equality, diversity and inclusion action plan** and improving the number of staff in senior roles from black, Asian, ethnic and minority groups
- **Reducing vacancy levels to under 9%** - from a high of 17.5% in 2018.”

**[pages 1503-1504]**

91. In view of the fact that this claim is brought by a former employee who alleges that he was subjected to detriments for having raised concerns, I consider it important to explain the work done on the independent speaking up service. The Trust previously introduced an independent service led by former Trust employees. Staff feedback was that this earlier model was not sufficiently independent, and they were not confident their anonymity was sufficiently protected where they had sought anonymity. In response to this, we set up an independent speaking up service. This is provided by the Guardian Service which is an organisation independent of the Trust. The Trust's staff are provided with direct and confidential access to a dedicated “guardian” if the staff member wishes to raise concerns to a person outside of the Trust. Staff can contact the guardian 24/7. The guardian has access to the relevant leadership team (including me if necessary) in order to escalate the issue and the Trust has a RAG rating of concerns to ensure that any concern that the guardian rates as ‘Red’ is escalated immediately to an Executive Director (including out of hours). An audit of our service in the first quarter of 2021/22 indicated a rating of ‘significant assurance with minor improvement opportunities’.

92. In November 2020, it was announced that staff from the Trust were regional London winners in two categories of the NHS Parliamentary Awards. This is an awards scheme where MPs nominate health and care workers who have done an outstanding job. One of these awards was for staff across the Trust who won the “Wellbeing at Work Award” in recognition of the Trust's respect and compassion programme. One of the nominating MPs, Vicky Foxcroft stated: *“Lewisham and Greenwich NHS Trust has made great strides towards tackling bullying, harassment and discrimination, as well as improving staff wellbeing. Its efforts to drive and sustain these improvements deserve recognition”* **[pages 1508-1511]**.

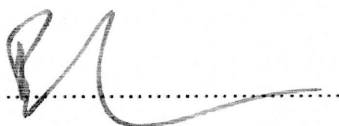
93. In November 2020, it was also announced that the Trust had also been shortlisted for the Health Service Journal 2020 awards in the “Workforce Initiative of the Year” category, which was as a result of the Trust's respect and compassion programme.



94. The winning of an NHS Parliamentary award and the shortlisting for the Health Service Journal award both relate to our Workforce team and the improvements it has made to staff wellbeing. I am really proud of the success of the respect and compassion programme. It is ongoing work but helps to achieve my primary aim from when I joined the Trust, which is to try and make it a great place to work for all our staff. For me, the original report from Ashfold Consulting was a watershed moment and the Trust has worked hard to deliver the practical recommendations.
95. I mention this work because, in addition to addressing Dr Day's specific allegations above, I believe there would be an inconsistency between my commitment to improving the workplace at the Trust that I have described and Dr Day's suggestion that I or the Trust was motivated by a desire to treat him detrimentally for having blown the whistle years earlier.
96. As Dr Day has alleged that the Trust failed to take action after the CQC had raised concerns about the content of the statements, I want to also address the recent CQC report. As set out earlier in my statement, the previous CQC inspection which had been published in January 2019 had given an overall rating for the Trust of "Requires Improvement". The most recent CQC inspection took place from February to March 2020. That report was published on 3 July 2020. Whilst the overall rating remains "Requires Improvement" and I recognise that there remains important work to be done to address this, the overriding narrative was very positive and the CQC evidenced significant improvements across all of the services that it inspected. The Trust improved its ratings from "Requires Improvement" to "Good" in two areas. These were: (a) that the services are effective, and (b) that the services are well-led. Noting that Dr Day worked within critical care at QEH, I also confirm the finding from the CQC that critical care services at QEH achieved a rating of "Outstanding" in the "well-led" domain – an improvement from "Requires Improvement" in the previous inspection. Further, the CQC also found that critical care at QEH had improved from "Requires Improvement" to "Good" (our other site at University Hospital Lewisham was not inspected and retained the rating of "Good").

I confirm that the content of this statement is true to the best of my knowledge information and belief.

Signed.....



Dated.....

23/5/22