

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL
BETWEEN

DR CHRIS DAY

CLAIMANT

-and-

LEWISHAM AND GREENWICH NHS TRUST

FIRST RESPONDENT

HEALTH EDUCATION ENGLAND

SECOND RESPONDENT

THIRD SUPPLEMENTARY WITNESS STATEMENT OF CLAIMANT

I, **Dr Christopher Day** of [REDACTED], make this third supplementary statement and say as follows: -.

1. The events that have transpired over the last 2 weeks have demonstrated in real time to the Tribunal (and to observers) the attitude of the Respondents towards this litigation, and therefore towards me.
2. This has now been further evidenced by the late disclosure of the note of the Trust Board meeting on Sunday 14 October 2018.
3. The Respondent has previously explicitly denied the existence of any record of the Sunday 14 October Board meeting [**SB p238**] (even though it is now evidenced that the very recently disclosed note was circulated within the Respondent).
4. It is this note that records the discussions leading to the Respondent's Board approving the settlement of my whistleblowing case in 2018. Not disclosing this note and denying its existence to the Tribunal has impacted adversely on my earlier application to set aside the settlement agreement in addition to the effect it has had on the present claim, which I will now turn to in this statement.
5. The Respondent's denials of the existence of this occurred over a 5-month period and even after applications and orders from the tribunal) (**see para 289-294 of my main statement part of which, for ease of reference, I set out below**)

“292. On the 21 July 2020, I sent the First Respondent’s solicitor an email attaching Mr Greene’s email sent to the SRA [SB p233-236].

“On the 21 July 2020, I sent the First Respondent’s solicitor an email attaching Mr Greene’s email sent to the SRA [SB p233-236]; “Please can I request an explanation as to why the written record of the Trust board meeting/teleconference that occurred on Sunday 14 October 2018 that approved the settlement of my case, was not disclosed in the recent application 64 proceedings and or appeal. It is likely that such a record will make clear what the Trust Board knew at the time of settling in respect of the following;

1. The Trust's stated position/instruction on wasted costs during settlement talks;
2. The Trust's stated position/instruction on ordinary costs during settlement talks;
3. The use of any reference to costs to secure the wording of the agreed statement and to discourage the cross examining of witnesses.
4. The Board's knowledge/consent to the above tactics while I was giving evidence in purdah
5. The Board's understanding of the patient safety issues in my case and whether they have been accurately reported in the various Trust public statements. It is likely to also make clear what the Trust Board knew about my reasons for settling and agreeing to the wording of the agreed statement. “

293. The Respondent’s solicitor replied on 4 August 2020 referring to the anticipated standard disclosure order, “the Employment Tribunal will no doubt in due course make an order for disclosure of relevant documents. If any documents exist relating to the meeting you refer that are relevant to the issues in that claim, they will be disclosed in accordance with that direction”.

294. On 21 December 2020, I applied for an order for the formal record of this Board meeting and other relevant documentation/communication relating to it, as none of this material was listed in standard disclosure [SB p237] The Respondent’s solicitor responded by email dated 23 December 2020 and stated, “there is no documentation that falls within the class of documentation” [SB p238]. When I pressed for an order on 19 March 2021 [Page 535], documents relating to the organisation of the meeting were finally disclosed [Page 985-989]. These documents fall short of an actual record of the meeting. They are clearly relevant but were not included in standard disclosure or provided after I made a specific request for them in an application dated 21 December 2020 when the existence of such documents was denied to the Tribunal.”

6. After 4 years of waiting, a note of the Board meeting has been now disclosed on the evening of 7 July 2022.
7. It appears that this note recording the Board meeting was included in emails to the former legal client of the Respondent, Janet Lynch; the person who I believe to be the current legal client Kate Anderson (who also wrote the note); the Chief Executive Ben Travis; and perhaps most significantly, David Cocke. It is of concern whether this was one of the documents and emails David Cocke decided to deliberately delete on the morning of 1 July 2022 before the hearing re-commenced.
8. The note of the Sunday 14 October Board meeting shows the following;
 - a) Someone with the initials LA “*confirmed all four Trust Medical witnesses felt strongly that we should agree the proposed settlement. It would be difficult to control media presentation of evidence that may emerge in the second half of the Tribunal*” and “JB confirmed agreement to settle, noted potential exposure to the Trust if we didn’t.”. This shows to me that a key motivating factor of the Trust Medical witnesses, Janet Lynch, and the Board in their actions in this claim are fears about how the live evidence of the October 2018 hearing of the protected disclosures and the Trust’s response would be viewed by the public, doctors and journalists in the public gallery.
 - b) Contrary to what Ben Travis has stated in his witness statement in this case about his preference for the case to run its course, the record does not show that he expressed any doubts to the Board, and it records that: “*BT confirmed a view that we should settle*”.
 - c) The Board member AJ stated the Board should attempt to control communications “beyond Chris Day himself”. They are clearly referring to those present in the public gallery observing the evidence and those reading the case papers and how they may disseminate such information. This also confirms my pleaded case as to the evidence of the Trust’s response to my protected disclosures being the main driving force the Respondents actions.
 - d) “*VD confirmed the need to get an internal statement out quickly to Trust staff*”. This suggest that the Trust public statements were proactive and not reactive, and I believe driven by the motivation set out above.
 - e) It records “LGT agreement not to pursue costs” – this suggests that unless I had withdrawn my case they would have pursued me for costs. This is not the same as a drop hands position.
 - f) There is considerable discussion about social media accounts which show that they did want to try to stop me speaking publicly about the matters which formed the basis of my protected disclosures.
 - g) I note also the reference to the GMC.

This statement is true to the best of my knowledge and belief.

Signed: 

Dr Christopher Day

11 July 2022