

BETWEEN

DR CHRISTOPHER DAY

Claimant

and

LEWISHAM AND GREENWICH NHS TRUST

Respondent (formerly First Respondent)

WITNESS STATEMENT OF ANDREW JOHN ROWLAND

I, **ANDREW JOHN ROWLAND**, of Capsticks LLP, St George's Road, London SW19 4DR,
WILL SAY AS FOLLOWS:

1. I am a qualified solicitor and a Partner in the Employment Division at Capsticks. I started at the firm as a trainee solicitor in September 1996 and qualified into the Employment Division in September 1998. I gradually became involved in this case around the time of the preliminary hearing on 13 November 2020, when Martin Hamilton (who had been leading on it) stepped back to focus on his role as Managing Partner. The operational running of the case continued to be undertaken by Rachel Luddem, an experienced Legal Director (the level below partner), who had been involved with Dr Day's previous Employment Tribunal claim. I provided (and continue to provide) strategic input and higher level supervision as needed.
2. I make this statement following an Order from Employment Judge Martin on 4 July 2022. The Order requires Lewisham and Greenwich NHS Trust ("the Trust") to produce a witness statement setting out the mechanism and methodology used to conduct the original disclosure exercise and the mechanism and methodology of the new discovery exercise bearing in mind the provisions of the Practice Direction to CPR 31.
3. This witness statement has been produced at very short notice in order to comply with the Tribunal's Order. In compiling the statement, I am reliant primarily on the searches that I have been advised by the Trust were undertaken as part of both disclosure exercises.

Accordingly, this statement largely sets out my understanding of the position as relayed to me by others.

4. For the avoidance of doubt, nothing contained within this witness statement amounts to the Trust waiving legal advice privilege and the Trust has no intention of waiving such privilege.

Janet Lynch

5. Janet Lynch (former Director of Workforce and Education and Deputy Chief Executive) left the Trust's employment on 30 April 2019, although I understand that she was not physically onsite or actively engaged in the running of the Trust after the last week in February 2019. Barbara Tringham, Acting Chief Information Officer and Data Protection Officer for the Trust, has indicated that Janet Lynch was recorded as a leaver when she left the Trust, which means that her email account was, in effect, suspended. I understand that Ms Tringham has been told that Janet Lynch's email account associated with the Trust was permanently deleted by NHS Digital (the external organisation responsible for nhs.net email accounts) on 22 July 2019 in accordance with its Data Retention and Information Management Policy and, as such, is now unrecoverable. I am informed that the key individuals involved in this case (as set out in paragraph 7 below) were unaware that Janet Lynch's email account would be deleted in that way.

Original Disclosure Exercise

6. In relation to the current proceedings, at a Preliminary Hearing on 13 November 2020, case management orders were made. This included orders for exchange of lists of documents on 18 December 2020 and exchange of requested copy documents on 8 January 2021.
7. When the Trust was carrying out the disclosure exercise prior to exchange of lists of documents, the key individuals involved in the process were Meera Nair (Chief People Officer, the individual most familiar with the Employment Tribunal process and its obligations), David Cocke (Associate Director of Communications, heavily involved in preparing/issuing the statements) and Kate Anderson (a point of contact for the board, including Ben Travis, CEO).
8. In terms of the operating environment at the Trust at the time the disclosure exercise was being undertaken, particularly between the Preliminary Hearing on 13 November 2020 and disclosure on 18 December 2020, the Trust was under extreme pressure

endeavouring to cope with the Covid pandemic. I am informed by the Trust that this was felt across all clinical and corporate areas, with many corporate staff being redeployed into clinical environments, and this meant that from March 2020 onwards, the Trust's capacity was severely limited and disclosure of documentation was an iterative process, as described below.

9. I understand that the key individuals involved in the preparation and issuing of the statements that formed the basis of the Claimant's complaints undertook general disclosure exercises, which I have described below.
10. Specific requests for documentation based on the outcome of the general disclosure exercise were then made to the Trust and I am informed that further searches were undertaken for relevant correspondence/documents relating to the following categories:
 - a. board minutes
 - b. press articles
 - c. social media activity
 - d. documentation shared with Sir Norman Lamb
 - e. correspondence from the Trust to the local MPs, key stakeholders and the HSJ following the statement on 4 December 2018
 - f. documents relating to a board teleconference on 14 October 2018
11. Requests for these more specific searches arose out of: (a) disclosure from the Trust, where it was considered based on an initial review that further relevant documents may exist (where documents or individuals were, for example, referred to in disclosed emails), (b) the process of preparing and finalising witness statements, (c) disclosure from the Claimant, (d) specific requests for documentation from the Claimant, and (e) an Order for specific discovery. I understand that the individuals asked to undertake searches in relation to those requests would vary according to who was most likely to hold the relevant information. For example, in relation to the request for documents relating to a board teleconference on 14 October 2018, I am informed that all members of the board at that point in time were asked to search their emails for any correspondence relating to that meeting.
12. I understand that documentation that was considered by the Trust to be potentially relevant to the issues identified in the case was forwarded to Capsticks so that decisions could be taken as to what should be disclosed, particularly bearing in mind some of the difficult issues around legal privilege which were involved as well as relevance.

Ben Travis

13. I am informed by the Trust that searches for Ben Travis's emails were conducted by his then Executive Personal Assistant, Valerie Richards, on his behalf but that Ms Richards no longer works for the Trust and it is not therefore possible to establish what searches of his emails were undertaken or how.

14. I understand that Ben Travis did not search personal emails as he did not recall any such means being used to correspond in relation to the issues in this case. I am informed that he did however undertake a search for messages on his twitter, WhatsApp and text messages at the time, which disclosed no relevant communications other than those twitter messages already disclosed.

David Cocke

15. David Cocke will be providing a separate statement in relation to disclosure and I do not therefore deal with his position here.

Kate Anderson

16. As Director of Corporate Affairs for the Trust, Kate Anderson has remained in contact with Capsticks throughout the process of disclosure for this case, and I understand that she has sought to ensure that we have been made aware of all relevant documentation and correspondence, providing a number of documents both generally and in response to specific queries. As the lead contact point for the Trust Board, Kate Anderson was also sighted on the exercise performed to ask all Board members to search for correspondence relating to the discussion held by available Trust Board members on Sunday 14 October 2018.

New Disclosure Exercise

17. I set out below my understanding of the mechanism and methodology used to undertake a new disclosure exercise as set out in the Tribunal's Order.

18. The position in relation to Janet Lynch's emails is set out above.

19. I am told that Ms Tringham has been instructed to undertake further searches for relevant documentation or correspondence and that, where possible, she is conducting a search for the correspondence (including texts and WhatsApp) of Dan Harding, Duncan Brooke,

Elizabeth Aitken, Mehool Patel, Peter Luce, David Cocke and Ben Travis in relation to the following:

- a. the making and drafting of the public statements of 24/10/18, 4/12/18, 10/1/19 including all iterations of those documents;
- b. any communications about the fact of any without prejudice position put forward by any party to the litigation;
- c. any communications to stakeholders about the Claimant's case including those made on 4/12/18.

20. I am informed that Ms Tringham and her team have conducted searches of the individuals' mailboxes themselves, searching for the terms "Day" (despite the generic nature of this term), "Stakeholder", and "Statement" for the period between 15 October 2018 and 15 January 2019, subject to what is set out below. I understand that she has also conducted searches for all correspondence between the individuals and Janet Lynch during this time. I understand that she has also asked individuals to search their WhatsApp and text messages.

21. I have been informed by the Trust that the position in relation to specific individuals and searches is as follows:

- a. Dan Harding is on annual leave but has stated that he has already undertaken extensive searches which did not identify anything other than the email that he has already disclosed, and that he is not aware of any further conversations or correspondence on the production/publication of statements following that email.
- b. Mehool Patel is currently isolating at home due to having Covid, but has stated that his searches were not able to identify any items for disclosure. However, Dr Patel lost access to his email archives following an upgrade of the Trust's computer system and therefore has no emails in relation to the period during which the three statements were issued.
- c. Peter Luce is currently unavailable in person but has stated that he made one comment on the press release and has nothing else to disclose.
- d. An issue has arisen in relation to searches of David Cocke's emails and these will be addressed in a separate witness statement from him.

- e. It is not possible to access Ben Travis's emails from before 25 May 2019 but the Trust cannot establish why this is the case at present.
- f. It has not been possible to access Dr Brooke's email for any dates more than 60 months ago.

22. I understand that, otherwise, the searches recorded above have been or are being undertaken. The disclosure arising from these searches is being dealt with separately and I do not therefore refer to it in this statement.

The contents of this statement are true to the best of my knowledge, information and belief.

Signed: Andrew Rowland Dated: 05/07/22