CASE NUMBER: 2300819/2019

IN THE LONDON SOUTH EMPLOYMENT TRIBUNAL

BETWEET

DR CHRIS DAY

CLAIMANT

-and-

LEWISHAM AND GREENWICH NHS TRUST

FIRST RESPONDENT

HEALTH EDUCATION ENGLAND

SECOND RESPONDENT

Supplementary Bundle of Documents in Support of Claimant's Application for Wasted Costs

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Correspondence

No	Document	Date	Page
1.	Letter from Hill Dickinson to Tim Johnson Law finally accepting the gap in whistleblowing law that was caused by this case	10 October 2016	1-2
2.	Lewisham and Greenwich NHS Trust letter to Tommy Greene in response to his Freedom of Information Request enclosing LDA contract between First and Second Respondent. (This is the LDA was not disclosed before in this litigation)	19 July 2019	3-5
3.	Hill Dickinson Letter to EAT (Response to Wasted Cost Application)	1 August 2019	6-8
4.	Rahman Lowe Letter to EAT in response to Hill Dickinson Response to the Wasted Cost Application enclosing newly disclosed LDA. (Copy sent to London South ET)	16 August 2019	9-12
5.	Letter from Claimant to ET responding to the EAT request to the Claimant for an update on the wasted cost application following the refusal of the Claimant's appeal to the Court of Appel on setting aside the settlement agreement. Enclosed with this email was the following;	8 July 2020	13-17

	1. Letter dated 9 September 2019 from Sir Norman Lamb to the CEO of Solicitor Regulation Authority. 2. Forward of Email from Tommy Greene to CEO of Solicitor Regulation Authority dated 10 September 2019. 3. Letter from CEO of Solicitor Regulation Authority to Sir Norman Lamb dated 20 September 2019. 4. Letter from CEO of SRA to Sir Norman Lamb dated 22 May 2020 5. Letter from Sir Norman Lamb MP to the former CEO of the Second Respondent dated 13 May 2019 enclosing a letter from the Claimant to Hill Dickinson dated 5 April 2019. 6. Letter from Claimant to Hill Dickinson dated 5 April 2019 referred to by Sir Norman Lamb in his letter dated 13 May 2019 7. Letter from former CEO of Second Respondent to Sir Norman Lamb dated 22 May 2019		18-20 21-22 23 24 25-26 27-29 30
k6.	Email from EAT Registrar requesting comment from Hill Dickinson on the Claimant's letter to the EAT and ET dated 8 July 2020	15 September 2020	31
7.	Email from Claimant to ET and EAT attaching a letter from the Claimant to Capsticks Solicitors dated 26 March 2019	16 September	32-44
8.	Letter from Hill Dickinson to EAT	29 September 2020	45-46
9.	Letter from Claimant to EAT also sent to London South ET	30 September 2020	47-48

Parliamentary Transcript

No	Document	Date	Page
10.	Hansard Transcript on Debate on Whistleblowing describing the Claimant's case and in particular the substance of the wasted cost application	3 July 2019	49-52

Contract Documents

No	Document	Date	Page
11.	Claimant's Emergency Medicine Run Through Contract with Second Respondent	7 March 2014	53-54
12.	Claimants Employment Offer Letter From Guys and St Thomas NHS Trust	24 June 2014	55-58
13.	Document Properties from Lewisham and Greenwich and Health Education LDA indicating its date and the Hill Dickinson Lawyer that drafted it. (First Respondent claim to have lost the hard signed copy)	10 March 2014	59-60
`14.	Award date and estimated value of LDA between Second Respondent and Barts and the London NHS Trust	31 March 2014	60-61
15.	Award date and estimated value of LDA between Second Respondent and University College London Hospitals NHS Trust	1 April 2014	62-63
16.	Award date and estimated value of LDA between Second Respondent and Tavistock and Portman Foundation Trust	1 April 2014	64-65
17.	Award date and estimated value of LDA between Second Respondent and Great Ormond Street Hospital for Children NHS Trust	31 March 2014	66-67

HILL DICKINSON

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Date: 10 October 2016

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Please ask for Orla French

By email: Tess.Callaway@timjohnson-law.com

Dear Sirs

Re: **Dr C Day v Lewisham & Greenwich NHS Trust and Health Education England**

Thank you for your letter dated 30 September 2016.

It is correct that the joint whistleblowing guidance issued by HEE and the BMA acknowledges that there is a gap in the law for junior doctors unless the decision in this case is successfully challenged or proceedings against HEE are successfully brought by a different legal route. However, that is the result of the position of HEE not being an employer of postgraduate trainees and you will be aware of the comments of Langstaff J in the EAT in this respect.

However, as the guidance goes on to say, this is exactly what the HEE/BMA agreement seeks to address in reaction to the request of the BMA and the appreciated perception of some junior doctors. The purpose of the agreement is to provide junior doctors in England with legal protection if they are subjected to detrimental treatment by HEE as a result of whistleblowing.

The agreement grants trainee doctors express third party contractual protection against whistleblowing detriment, providing a contractual right to bring proceedings in the County Court or High Court to enforce the relevant provisions of the ERA 1996, thereby effectively closing the 'gap' in whistleblowing protection for junior doctors. We note your comments regarding the financial implications should a trainee doctor have to bring parallel proceedings in the High Court/County Court and the Employment Tribunal; however, we would remind you that any trainee who succeeds with their claim in the civil courts will be able to recover legal costs.

In addition, we note the Claimant's contention in his Grounds of Appeal that:

"there is another compelling reason why permission to appeal should be granted: if the decision of the EAT is correct, the Second Respondent…..may subject those doctors to the most serious detriments on the ground that they made protected disclosures, without it being held accountable for such conduct."

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Given the contractual protection against whistleblowing detriment by HEE now granted to junior doctors, we consider that this argument has no merit and the Claimant's prospects of being granted permission to appeal to the Court of Appeal are greatly reduced.

For these reasons, we confirm our client will not be withdrawing its invitation that the Court of Appeal refuse your client's application for permission to appeal.

Yours faithfully,

Hill Dickinson LLP

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Lewisham and Greenwich
NHS Trust

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Mr Tommy Greene
Thomasgreene46@gmail.com

19th July 2019

Dear Mr Greene

Request References: RFI-003190 and RFI-003210

I am writing with regards to your two requests for information which were received by the Trust on the 19th June and 28th June 2019 respectively. Your request will now be dealt with under the Freedom of Information Act 2000.

Your Request for information

Your first request for information received on the 19th June 2019:

1) **Which version of the LDA was in use at Lewisham and Greenwich Trust in 2014?**

I can confirm in accordance with S.1 (1) of the Freedom of Information Act 2000 (FOIA) that we do hold the information that you have requested. Please see below.

Our Response

The version of the LDA which was in use at Lewisham and Greenwich NHS Trust in 2014 is enclosed.

Your second request for information

Your second request for information received on the 28th June 2019:

2) **I recently made a query to Lewisham and Greenwich Trust regarding the version(s) of the LDA in effect at the Trust throughout 2014. I was told by a Communications rep for the Trust that: "The 2013/14 Learning and Development Agreement (LDA) predates the creation of Lewisham and Greenwich NHS Trust. The LDA for 2013/14 was between South London Healthcare Trust and the Strategic Health Authority".**

However, several weeks before I made that query to the Trust I had received an FOI response from Health Education England that described the existence of a separate, more specific

version of the LDA contract, which I understand would have come into force at some point in 2014. Is this the case, and if so what month did the new version of the LDA come into effect?

Our Response

I can confirm that the version of the LDA is unsigned and not dated, however, the version enclosed has the printed start date of 1st April 2014.

3) **If this separate version of the LDA contract was in force at some point that year at Lewisham and Greenwich Trust, I imagine it would have been signed by a Trust representative. Was it signed by a representative for the Trust? What was the date on which it was signed?**

Our response

I can confirm that we do not hold the information you have specifically requested. The Trust does not hold a copy of a signed or dated version of the LDA.

4) **Who was the signatory on the Trust's behalf? And which law firm(s) was (or were) involved in advising or representing the Trust in this matter?**

I can confirm that we do not hold the information you have specifically requested. The Trust does not hold a copy of a signed or dated version of the LDA and therefore, we cannot provide the information on the Trust's signatory.

I can also confirm we do not hold the information you have requested on which law firm was involved in advising or representing the Trust in this matter.

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Breach of copyright law is an actionable offence and the Trust expressly reserves its rights and remedies available pursuant to the CDPA and common law. Further information on copyright is available at the following website: http://www.ipo.gov.uk/copy.htm

Internal Review

If you unhappy with your response you can request a formal internal review. All requests must be provided in writing either via email or to the postal address above. This should be done within two months of receipt of your response letter. All appeals must quote the original reference number and provide a reason for the appeal.

Information Commissioner's Office

Should you still remain unhappy with the outcome of your appeal you can write directly to the Information Commissioner's Office to ask for an independent review at the following address:-

The Information Commissioner's Office
Wycliffe House, Water Lane
Wilmslow
Cheshire, SK9 5AF
Website: http://www.ico.org.uk/
Helpline: 0303 123 1113

In general, the ICO will only review cases where all internal review processes have been exhausted.

I hope this answers your request. If you have any further queries about this matter then please do not hesitate to contact me.

Yours sincerely

Belinda Regan
Trust SIRO
foi.lg@nhs.net

HILL DICKINSON

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Your ref: UKEAT/0250/15/RN
Our ref: PAF.RLF.12003202.228
Date: 1 August 2019

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Please ask for Philip Farrar

BY EMAIL

Dear Sirs

Re: **Dr C Day v (1) Lewisham & Greenwich NHS Trust (2) Health Education England**
Case Number: UKEAT/0250/15/RN

We act for the Second Respondent in this matter.

We write in response to the application for wasted costs made by Rahman Lowe Solicitors on 12 June 2019 and in reply to the direction of HHJ Eady on 11 July 2019.

In summary and with respect, the Claimant's application is misplaced in several respects and should not be considered. The overall proceedings to which it relates are concluded and the Judgement doing so was made following an agreement between the parties in October 2018. By prior agreement between the parties there was no order as to costs at the Court of Appeal. The costs of the remitted Employment Tribunal were addressed by consent in May 2018, which followed disclosure of the document of which complaint is made. The overall case is withdrawn with no orders as to costs by consent and the concluded settlement agreement in which the parties agreed terms expressly compromises any costs claims This application is significantly out of time and its premise is incorrect.

The Claimant was a Specialist Registrar in Medical Training who worked under a contract of employment with Lewisham & Greenwich NHS Trust ("Lewisham"). He had, as is common, an overarching training relationship with Health Education England ("HEE") and was placed at Lewisham on a one year rotational placement. He made disclosures about patient safety to Lewisham, and repeated them to HEE, which arranged his training placements and regularly reviewed his progress as a doctor in training. He claimed to have been treated detrimentally by Lewisham and HEE because of these disclosures.

In its response to the claim HEE asserted that the Employment Tribunal did not have jurisdiction to the Claimant's claim against them, as Dr Day was not an employee or worker of HEE the purposes of the extended definition of worker under the whistleblowing legislation (S43K of the Employment Rights Act

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1996). An application was made to strike out this claim on that basis ie that Dr Day was not an employee or worker of HEE.

At that time, the relevant legislation was understood to mean that a worker under s43K was not someone with an employment or worker relationship with another body (see s43K(1): "For the purposes of this Part "worker" includes an individual who is not a worker as defined by Section 230(3)..."). Further, the Claimant was pursuing a claim based on s43K(1)(d) of the ERA, which required the Claimant to be engaged otherwise than under a contract of employment. The Claimant was employed by Lewisham.

A preliminary hearing was listed for 25 February 2015 to hear the Respondents' strike out applications; no order was made requiring disclosure.

At the relevant time, the solicitors with conduct of the case were not aware of the Learning and Development Agreement (LDA) that forms the subject of the Claimant's current application; this relates to the generic, model agreement (as detailed in the response to the Freedom of Information Act request appended to the Claimant's application). A bundle of documents was assembled in liaison with the Claimant and other Respondent. It is not considered that the LDA (whether generic or specific to Lewisham) was relevant and it was not disclosed by the Second Respondent.

The claims against HEE were struck out at the preliminary hearing on 25 February 2015. This decision was appealed to the Employment Appeal Tribunal and then the Court of Appeal Dr Day's appeal was allowed and the application of the legislation above clarified and the case was remitted to the Tribunal to determine whether HEE could be an employer within the extended definition under whistleblowing legislation.

A further preliminary hearing was listed from 14-17 May 2018 to consider this issue. The Employment Tribunal ordered standard disclosure and this was effected, by agreement, in February 2018. The specific Lewisham LDA was part of this disclosure sent on 14 February 2018. It was item 14 in an indexed list of 20 items; we do not understand the suggestion that it was 'buried' within disclosed documents to any extent.

The Claimant, through his then representatives, made detailed submissions in relation to the LDA in the Claimant's skeleton argument. The Claimant's representative expressly referred to seeking costs relating to the alleged late disclosure of the LDA in this hearing and in correspondence. The parties subsequently agreed, by consent, that the preliminary issue (of employment status) was conceded and HEE paid £55,000 towards Dr Day's costs. The preliminary hearing was vacated and the terms were expressly in full and final settlement of that jurisdiction aspect.

At the full hearing in October 2018, the parties agreed, by consent, that the claim was withdrawn with no order as to costs; this is the subject of the Claimants current appeal against the Tribunal's review of that decision. The Clamant entered into a settlement agreement compromising all claims including, expressly, any claim or application for costs against any other party or representative whether in relation to their conduct or otherwise. In this context, the application is wholly unjustified.

The Claimant's application assumes that the content of the relevant LDA was "a highly relevant document" to the issues before the preliminary hearing in 2014 and the issues before the Employment Appeal Tribunal in May 2015 and a "vital document to the case". The importance of this document is overstated. Further it assumes that the LDA was relevant to these proceedings and./or there was a breach of relevant directions or obligations; this is not the case.

Paragraph 21.5 of the EAT Practice Direction 2018 states that an application for a wasted costs order must be made in writing, setting out the nature of the case upon which the application is based and the best particulars of the costs sought to be recovered. The Claimant's application does not quantify the alleged losses nor the causal link between the non-disclosure and such losses.

The Claimant has failed to make this costs application either during or at the end of a relevant Employment Appeal Tribunal hearing, or in writing to the Registrar within 14 days of the seal date of the relevant order of the EAT. The Claimant has had legal representation throughout the course of the majority of these proceedings (including expressly at the salient times) but failed to make the costs application within the required time limits or within a reasonable period thereafter.

It is not accepted that the information provided by HEE in response to the Freedom of Information Act request is sufficient excuse for the delay and, indeed, does not give rise to any new factor in that the Claimant was aware of the specific LDA in any event. This knowledge existed both at the remitted hearing where costs were agreed and at the subsequent substantive hearing where the claim was withdrawn further to a settlement agreement that expressly compromised any such costs applications.

In Wall v Lefever [1998] 1 FCR 605, (1997) Times, 1 August, CA, Lord Woolf cautioned that appeals against wasted costs orders, or the refusal thereof, should not be used to create subordinate or satellite litigation which was as complex and expensive as the original litigation. It further held that the jurisdiction in a wasted costs application should only be exercised in a reasonably plain and obvious case. Courts should think carefully before hearing a wasted costs application in a case in which there is a conflict of evidence to be resolved and where legal professional privilege is engaged.

Should this application proceed, it will require a further complex and costly hearing to address the facts outlined above; the relevance of the LDA to the proceedings; the extent and obligation of disclosure at the relevant times for all parties; the application of Tribunal judgments including as to costs and the application of a concluded settlement agreement. With regard to the overriding objective, this is averred to be wholly disproportionate.

Yours faithfully

Hill Dickinson LLP

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16 August 2019

Dear Sirs,

Dr Chris Day v (1) Lewisham & Greenwich NHS Trust; (2) Health Education England
Employment Tribunal Case Number: 2302023/2014
UKEAT/0250/15/RN

We refer to the Second Respondent's response to our application dated 1 August 2019.

The Second Respondent's representatives make a number of sweeping assertions, which are not supported by any evidence and furthermore, the response is extremely evasive for the following reasons:

1. The Learning and Development Agreement ("LDA"), a copy of which was filed with the Employment Appeal Tribunal on 2 August 2019, was disclosed by the First Respondent, following a Freedom of Information Request by a Telegraph journalist dated 19 July 2019. The Telegraph's request is dated 19 June 2019 and 28 June 2019.

2. The specific Lewisham LDA (disclosed in July 2019) sets out the obligations of the First Respondent ("The Trust") and the Second Respondent in relation to the specialist training programme which the Claimant was undertaking as a Junior Doctor (or as commonly referred to by the GMC a "Doctor in Training" or a "Trainee" as termed by the Second Respondent).

3. The First Respondent confirmed in its FOI response dated 19 July 2019 that the LDA with the Second Respondent is dated "01 April 2014" (please see attached). This document and a model version of this document that was in existence at the material time have never been disclosed to the claimant in this litigation.

4. The 1 April 2014 LDA ("2014 LDA") confirms that the Second Respondent imposed the terms on which Postgraduate Trainees (doctors) were trained and employed by the First Respondent. For present purposes, it is submitted that the LDA evidences the fact that the Second Respondent determines how the Trainee is to be engaged to work, through the LDA. Contrary to the Second Respondent's solicitors' assertion, the LDA is an extremely important and relevant document because it supported the Claimant's case that at all material times, he

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was a worker vis a vis the Second Respondent for the purposes of s.43k(1)(a) Employment Rights Act 1996. The suggestion that the importance of the LDA "is overstated" is disingenuous and patently absurd.

5. The Second Respondent's solicitors allege that *"the specific Lewisham LDA was part of this disclosure sent on 14 February 2018"*. This statement is simply not true. The specific Lewisham LDA was not sent to the Claimant's then solicitors on 14 February 2018 as alleged, because the document that appears in the Second Respondent's List of Documents at item 14 is a "Learning and Development Agreement between London Strategic Health Authority and South London Health Care NHS Trust" dated 01 April 2012 ("2012 LDA"). As the FOI response and disclosure confirms, the relevant Lewisham LDA came into force/is dated 01 April 2014, not 01 April 2012. We attach a copy of the List of Documents for the EAT's consideration.

6. The 2012 LDA that was disclosed in 2018 was an outdated document between predecessor organisations, namely the Strategic Health Authority and the South London Healthcare NHS Trust. In 2013, the Second Respondent took over functions of Strategic Health Authorities and their Deaneries for workforce planning, education commissioning. We understand that none of the predecessor organisations were in existence when the Second Respondent subjected the Claimant to detriments in 2014.

7. In any event, the 2012 LDA between the Second Respondent's predecessor (South London Health Care NHS Trust) and the First Respondent's predecessor is still relevant, and one must question why the 2012 LDA was concealed and not disclosed until 14 February 2018. We should also mention that whilst the 2012 LDA appears in the Second Respondent's List of Documents dated 14 February 2018, the 2014 LDA that was attached to the FOI and recently served and filed with the EAT was not disclosed at all during the course of these proceedings. Whilst the 2014 LDA was in force at the time that the Claimant made his protected disclosures to the Second Respondent and when he suffered detriment, the document was only disclosed on 19 July 2019 (in response to Mr Greene's FOI request). In fact, neither the model 2014 LDA or the Lewisham and Greenwich 2014 LDA was disclosed in the litigation. We submit that the failure to disclose highly relevant documents that were within the Respondents possession and control constitutes unreasonable conduct.

8. We attach for the EAT's information a copy of the Second Respondent's List of Documents, that was served on the Claimant's previous solicitors on 14 February 2018 (see item 14). We also attach properties information from a model LDA which confirms that a specimen LDA was created by an ex-partner of the Second Respondent's solicitors, namely Mr Stephen Lansdowne on 14 April 2014. Whilst Mr Lansdowne is no longer employed by the Second Respondent's solicitors, the suggestion that *"the solicitors with conduct of the case were not aware of the Learning and Development Agreement (LDA) that forms the subject of the Claimant's current application: this related to the generic model agreement"* is not plausible. As stated in the Claimant's application for wasted costs against Hill Dickinson, we received a copy of the 2014 LDA that is specific to Lewisham (following Tommy Greene's FOI request). A copy of the 2014 LDA was recently filed with the EAT. It is submitted that relevant parts of the LDA (whether generic or specific to the First/Second Respondent) are likely to have been drafted and/or at the very least reviewed by solicitors from Hill Dickinson's employment department and in particular, the sections relating to employee/worker status/those that govern the relationship between the Trust and the Trainee (eg, clauses dealing with education and training, among others).

9. As stated in the Claimant's application, Hill Dickinson were paid a significant sum of money for drafting the LDA, including a model version of the LDA, which appears to have been populated and tailored for the benefit of NHS Trusts around the country. The evidence filed with our letter dated 02 August confirms the multi million pound value of the LDAs at various NHS Trusts across the UK. It is likely that in addition to the £13,048 paid for the model LDA substantial fees were paid for each of the multi-million pound contracts.

10. It follows, therefore, that the relevant 2014 LDA was within both the Second Respondent and its solicitors' possession and control, but not disclosed during the course of these proceedings. As stated, both the model 2014 LDA and the 2014 LDA specific to Lewisham which the Claimant received in April 2019 and July 2019 respectively were not disclosed at all by the Respondents during the course of the ET and/or EAT or Court of Appeal proceedings.

11. Given the multi million pound value of the LDAs, it is submitted that the solicitors with conduct of the case, which included a senior partner in the employment team, knew or ought to have known about the 2014 LDA (whether generic or specific to Lewisham). Moreover, the Claimant's case has attracted considerable national media attention including several national newspapers, ITV News at Ten and specialist legal and medical journals. Therefore, the suggestion that the solicitors with conduct were not aware of the existence of the LDA is perverse. On behalf of the Second Respondent, Hill Dickinson were also involved with the BMA in drafting a contractual clause in the new junior doctor contract that dealt with the lacuna in whistleblowing law caused by the decision in this case that HEE was not an employer. The Second Respondent accepted during the course of the litigation that there "is a gap in the law for junior doctors" (see HEE/BMA Joint Whistleblowing Guidance dated 29/10/2016).

12. In the circumstances, the Claimant reiterates that significant legal costs of approximately £150,000, at the expense of much needed public funds have been incurred in defending the claim, and a further a sum of around £200,000 has been incurred by the Claimant, as a result of the Second Respondent's solicitors improper, unreasonable and/or negligent acts and/or omissions.

13. As stated above, whilst the Second Respondent disclosed the outdated 2012 LDA, it failed to disclose the 2014 model LDA and the April 2014 LDA that was specific to the First Respondent at any stage after the date of creation in April 2014. Accordingly, it submitted that the Second Respondent and/or its representatives failed to comply with its disclosure obligations and in particular, the obligation to disclose documents which adversely affect its own case or documents that support another party's case. The document was within the Second Respondent and its representatives' physical possession but was withheld from disclosure at the material time. The Claimant has and had a right to inspect the 2014 LDA or take copies of it but was deprived of the right to do so until July 2019, when the document was disclosed following a FOI request from a Telegraph journalist. Similarly, the Claimant had a right to inspect the 2012 LDA, which was only disclosed in a List of Documents in February 2018.

14. We respectfully refer the EAT to the decision of the Court of Appeal in the case of *Al Fayed v The Commissioner of Police of the Metropolis EWCA CIV 780* [2002], and in particular paragraph 46. Clarke LJ said: "*standard disclosure is an important aspect of any action. It is an important part of the duty of any solicitor to put in place a system to ensure that it is carried out properly and with care*".

15. It is submitted that the Second Respondent's solicitors failed to put a system in place for disclosing the LDAs and that the Second Respondent's disclosure obligation was not carried out properly and/or with reasonable care and skill. Even the outdated 2012 LDA clearly exposed weaknesses in the Second Respondent's case, hence the settlement at the Hearing in October 2018, including a partial payment of costs. The LDA was necessary for the fair disposable of the Claimant's Employment Tribunal claim but not disclosed early on in the proceedings. The failure evidences the contention that the solicitors (the architects of the LDAs) acted improperly and/or negligently and/or unreasonably in defending these proceedings. It is submitted that if the LDAs had been disclosed a lot sooner, the Claimant would not have incurred significant costs and other expenses in relation to these proceedings. Similarly, the Respondents would not have incurred significant legal costs and early disclosure would have resulted in a saving to the public purse. The Claimant further submits that his application for wasted costs is of considerable public interest and for the reasons mentioned, it would be reasonable to expect the representatives to pay the costs incurred in these proceedings.

We confirm that we have copied this letter to the Second Respondent's solicitors today.

We thank you in advance for your kind assistance in this matter and look forward to hearing from you.

Yours faithfully,

Rahman Lowe Solicitors

RAHMAN LOWE SOLICITORS

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07968836551

8 July 2020

Regional Secretary

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Surrey

CR0 2RF

By email only: LondonSouthET@hmcts.gsi.gov.uk

Dear Sir /Madam

Re: Case Number 2302023/2014

I am the Claimant in these proceedings. I write in response to the Employment Appeal Tribunal's email dated 6 July 2020 that requests an update in respect of my wasted costs application by no later than 20 July 2020. I thought it may be helpful to provide the Employment Tribunal with a similar update.

My wasted costs application centres on the methods and funding used to argue the nation's junior doctors' careers outside of statutory whistleblowing protection by the denial of a worker/employer relationship between them and the only NHS organisation with ultimate power over their recruitment, career progression and long term employment.

1. **Representation**

I will make every effort to ensure that I am represented at hearings but in order to save on costs, I have decided to handle the 'non-hearing' aspects of the conduct of my case myself.

Please can I ask that the tribunal and respondents communicate with me directly on the above email address and if required the following telephone number (07968836551).

2. Significance of the Court of Appeal decision

As the Tribunal is now aware, my extensive attempts to set aside the settlement agreement in my whistleblowing case were finally exhausted with the recent refusal of my application by the Court of Appeal by Order of Simler LJ dated 18 June 2020.

The Second Respondent's representatives, in their response to my wasted costs application, rely on a very unique clause that was inserted into the settlement agreement at clause 2.2. A clear purpose of this clause is to attempt to protect all lawyers on all sides from wasted costs arising from their conduct in this case.

> *" This Agreement is also in full and final settlement of all or any claim or application for costs or expenses that any of the Parties may have against any other Party or Party's representative, whether in relation to the Claims or their conduct or otherwise."*

Hill Dickinson assert this as an absolute barrier to me making an application for wasted costs over their conduct in this case and that it should succeed in preventing the Tribunal's scrutiny of their conduct in this case.

I oppose this position for the following reason. At the time that I agreed to the settlement agreement in October 2018, the existence of the undisclosed LDA contract between the First and Second Respondent in these proceedings, that was drafted by Hill Dickinson in 2014, had not yet been discovered by the Telegraph Journalist Tommy Greene. This contract plainly proves Health Education England's employer status alongside the First Respondent. It is this document that is at the heart of my wasted costs application.

Mr Greene's discovery occurred in July 2019 with the help of a BMA whistleblower. Mr Greene also found that the the likely signature of the contact was the investigating officer of my whistleblowing case, Mr Plummer. Had the Respondent's lawyers been open with this document and information, I clearly would not have agreed to protect all the NHS lawyers in this case from wasted costs. It also would have surely assisted me proving the misconduct/detriment that I have been subject to by the Respondents.

In any event to assist the Tribunal I decided to apply for a stay in the wasted cost proceedings pending the Court of Appeal's decision on setting aside the settlement agreement. Had I succeeded in setting aside the settlement agreement, the significance of the clause 2.2 point would have fallen away.

Given the recent decision in the Court of Appeal, the issue of whether or not clause 2.2 of my settlement agreement bars me from making a wasted cost application is now of material significance.

Please can I request that this point be decided as a preliminary issue. If the tribunal sides with the Second Respondent's lawyers on clause 2.2 there is no need for the Second Respondent's lawyers to respond to the substance of my wasted costs application set out in the Rahman Lowe Solicitors letter dated 16 August 2019. I would be forced to accept that despite the merits of my application for wasted costs that I am barred from pursuing it as a result of my settlement agreement.

Other than the point the Respondent makes about the clause 2.2 point, their response does not even begin to deal with what is set out in the letter from Rahman Lowe Solicitors to the tribunal dated 16 August 2019.

3. A Wasted Costs Application of the Tribunal's Own Initiative

Rule 82 of the Employment Tribunal Rules state,

> *"A wasted costs order may be made by the Tribunal on its own initiative or on the application of any party"*

A similar power is set out in the Civil Procedure Rules at Practice Direction Rule 46.8;

> *"5.3 The court may make a wasted costs order against a legal representative on its own initiative."*

If the Tribunal determines that clause 2.2 of my settlement agreement is an absolute bar to me pursuing an application for wasted costs, I submit that the Tribunal would still have the power to make a wasted costs order of its own initiative. Such an action would not be prevented by the settlement agreement and nor could it be.

To assist the tribunal in deciding whether or not it should make such an order of its own initiative I would like to draw the tribunal's attention to the following;

1. On 3 July 2029, 2 MPs challenged HEE and Hill Dickinson's conduct in this case in a debate in the House of Commons. Mr Madders and Sir Norman Lamb are both former employment lawyers. The relevant quote from Hansard is as follows (which I also enclose);

   Justin Madders

   As the right hon. Member for North Norfolk mentioned, junior doctor Chris Day was a prominent example of someone who blew the whistle and was treated appallingly. He raised legitimate concerns about staff ratios, then lost his job. The tribunal action that followed resulted in a lengthy and, in my view, wholly unnecessary legal battle in which Health Education England effectively sought to remove around 54,000 doctors from whistleblowing protection by claiming that it was not their employer. Four years and hundreds of thousands of pounds later, it eventually backed down and accepted that it should be considered an employer after all.

   Norman Lamb;

   Is the hon. Gentleman aware that the contract between Health Education England and the trusts, which demonstrates the degree of control that Health Education England has over the employment of junior doctors, was not disclosed for some three years in that litigation? It was drafted by the very law firm that was making loads of money out of defending the case against Chris Day. I have raised this with Health Education England, but it will not give me a proper response because it says that the case is at an end. Does the hon. Gentleman agree that this is totally unacceptable and that it smacks of unethical behaviour for that law firm to make money out of not disclosing a contract that it itself drafted?

2. A complaint to the Solicitor Regulator Authority from Sir Norman Lamb and the Journalist Tommy Greene which I enclose. I also provide letters from the CEO of the Solicitor

Regulation Authority to Sir Norman Lamb confirming investigations into both firms of solicitors acting for both NHS Respondents in this case and a BMA trade union lawyer.

3. A letter exchange between Sir Norman Lamb and the Second Respondent's CEO which encloses a letter written by me to Hill Dickinson that adds yet further context to Hill Dickinson's actions in respect of Mr Plummer (the HEE investigating officer) who is the likely signature of the LDA contract between the First and Second respondent. The letters clearly show;

    - Damaging statements about me and my protected disclosures being falsely attributed to a senior HEE doctor by Mr Plummer in a formal report.

    - Hill Dickinson pleading the false statements despite the relevant HEE senior doctor writing to HEE to say she did not say the statements and was baffled by them (this email was not disclosed for some 4 years). Astonishingly Hill Dickinson then falsely attributed the same false statements to one other HEE senior doctor despite her also sending an email to rejecting the position attributed to her. The already misleading Plummer report that was then further distorted by Hill Dickinson in the pleadings. The Plummer report was even criticised by the Second Respondent's own witness in their witness statement;

        > *"The notes made by Mr Plummer contain short phrases without giving their context and by stringing the phrases together I feel it gives an exaggerated or distorted impression... Upon reading the report, I was very surprised to find various phrases in inverted commas, seemingly quoting me, when I could not recall saying those phrases."*

    - False statements about the important patient safety issues

    - A failure by the Second Respondent's lawyers or HEE to respond to the above allegations even when asked to by an MP.

Many people would question why one junior doctor's whistleblowing employment tribunal has required £700k of public money despite it not progressing to final judgment or involving the cross examining of any of the Respondents' 14 witnesses. That is to say nothing of the 5 years of my life and £250k that has been required from me and my supporters to progress my side of the litigation.

Sir Norman Lamb captures the position of many of the thousands of backers that have supported my case in his speech on 3 July 2019 in the House of Commons;

> *"Dr Chris Day, a brave junior doctor working in a south London hospital, raised safety concerns about night staffing levels in an intensive care unit. It is in all our interests that brave people should speak out about safety concerns in any part of our health service, but perhaps particularly in intensive care units.*
>
> *What happened to Dr Day, because he spoke out, is wholly unacceptable. He suffered a significant detriment. His whole career has been pushed off track, and his young family have been massively affected. Junior doctors in that unit were put in the invidious position of being responsible for far too many people compared with national standards, so he pursued a*

claim against both the trust and Health Education England. The NHS spent £700,000 of public money on defending the claim and, in large part, on attempting to deny protection to junior doctors who blow the whistle against Health Education England. Lawyers, disgustingly, were enriched.

Late last year, the tribunal that eventually heard Dr Day's case ended early after he was threatened with a claim for substantial costs. He and his wife could not face the prospect of losing their young family's home, so he caved in. That is surely scandalous treatment of a junior doctor. He was defeated by superior firepower. We have the grotesque spectacle of the NHS, of all organisations, deploying expensive QCs to defeat a junior doctor who raised serious and legitimate patient safety issues."

I would respectfully submit there is more than enough material for a tribunal to be on very solid ground making a wasted cost order of their own initiative in this case.

I have been surprised over the years but perhaps particularly over the last two years that it is not more of a problem for the various judges how badly they have been misled on this case.

Conclusion

I do hope myself and Hill Dickinson can agree to the clause 2.2 point being handled as a preliminary point in the London South Employment Tribunal to allow the relevant facts to be found. This approach will save everyone including the EAT time and cost.

For the reasons set out in this letter, I believe my position is not only reasonable but in keeping with the public interest and overriding objective of the Tribunal. I hope it can be understood as such by the Tribunal.

I confirm that I have copied this letter to the Respondents.

Yours sincerely,

Dr Chris Day

The Rt Hon Sir Norman Lamb MP

Member of Parliament for North Norfolk

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Mr Paul Philip
Chief Executive
Solicitors Regulation Authority
The Cube
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Please quote our reference in all correspondence with this office

Our Ref: NL32666-JK

9 September 2019

Dear Paul Philip,

Re: Hill Dickinson

I write formally to request that you investigate the conduct of Hill Dickinson in relation to their failure to disclose a key contract between Health Education England and the Lewisham and Greenwich Trust, drafted in early 2014. This was in respect of litigation brought in the employment tribunal by Dr Chris Day against both the Trust and Health Education England in late 2014. The contract plainly shows Health Education England imposing the terms under which junior doctors were employed by the Trust. Indeed, a similar contract is deployed with all Trusts where junior doctors are employed at the instigation of Health Education England. Each of these contracts has a value of tens of millions of pounds paid to Trusts from Health Education England in return for NHS Trusts' compliance with the terms set out in the contracts.

in the litigation brought by Dr Chris Day, Health Education England sought to argue that they had no substantial influence over terms in which doctors were engaged, were therefore not an 'employer' and so the claim brought against them by Dr Chris Day in respect of whistleblowing legislation could not proceed because they did not fall within the legislative framework. The case was dismissed as a result of HEE's arguments denying their substantial influence over terms. HEE's arguments were made without disclosing either the contract between Health Education England and Lewisham and Greenwich NHS Trust or a model contract that was adapted for other NHS Trusts in England. The effect of these arguments was to remove the doctors below consultant grade from statutory whistleblowing protection in English hospitals for over 4 years. It also prevented Dr Day's whistleblowing case about serious patient safety issues being heard by a tribunal.

The initial tribunal decision to dismiss the case without a hearing ended up going all the way to the Court of Appeal on this preliminary point. Despite Dr Day's pursuit of the point now being described as a public service, Dr Day was threatened for costs for litigating the point in the Employment Appeal Tribunal. Eventually the appeal succeeded in the Court of

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Appeal. However as a result of HEE's failure to disclose the relevant contracts, the case had to be remitted to a fresh tribunal to examine HEE's influence over terms, which caused a further year delay.

Shortly before the remitted Tribunal hearing, a year after the Court of Appeal victory, an outdated version of the contract referred to above involving HEE's predecessor organisation, was disclosed. It rendered the argument made by Health Education England impossible to sustain because it pointed to the likely degree of control that Health Education England had in respect of the working arrangements for junior doctors at the Trust indicating an employment relationship between Health Education England and the junior doctor. Dr Day was offered £55k of costs to prevent the details of this coming out in open tribunal.

It took a Freedom of Information Request in 2019, from a freelance journalist, Tommy Greene, to obtain the actual contract between Health Education England and Lewisham and Greenwich NHS Trust. Initially, only an unsigned contract was disclosed under FOI. It took persistent work by Tommy Greene to eventually uncover signed versions of this contract at other Trusts. I am deeply concerned that there may have been discussions between HEE, their legal representatives, Hill Dickinson, and the Trust with regard to how to respond to the FOI requests. What has subsequently emerged, due to the work of Tommy Greene, is that Hill Dickinson prepared the contract in the first place for Health Education England in 2014 (for a fee of £13,000) as well as acting on behalf of Health Education England in the litigation brought by Dr Chris Day the same year (for which they have been paid, from the public purse something in the region of £150,000). The failure of Hill Dickinson to ensure disclosure of this contract seems to me to be an extremely serious matter. I know that Tommy Greene has raised the question as to whether this amounts to an offence of fraud. It has also suggested that their failure to disclose this contract, central as it was to the question of whether the Whistleblowing legislation applied to Hill Dickinson's client, Health Education England, may amount to a contempt of court.

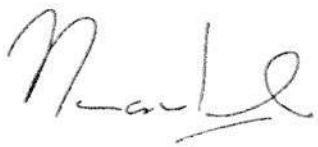
I enclose a copy of Tommy Greene's letter to the SRA for your assistance.

I note from Tommy Greene that dozens of people have made complaints to the Solicitors Regulation Authority in respect of Hill Dickinson but the SRA has not initiated an investigation. It seems to me to be incumbent upon the SRA to now undertake a full investigation of these complaints including my own complaint as set out in this letter. I am not able to identify the specific lawyers at Hill Dickinson whose conduct should be investigated but I am absolutely clear that this is an important test for the SRA. If your organisation continues to ignore complaints alleging very serious misconduct by lawyers at Hill Dickinson then we run the very serious risk that public trust in your organisation's ability to hold lawyers to account and to uphold high standards of conduct will be fatally undermined.

The final point I would reiterate is that Hill Dickinson has made very substantial sums of money from the public purse as a result of litigation which would not have been necessary had they made proper disclosure. That in itself is a very serious matter.

I look forward to your full response as soon as possible.

Yours sincerely,



The Rt Hon Sir Norman Lamb MP
Member of Parliament for North Norfolk
Dictated by Norman Lamb

Gmail

Chris Day <chrismarkday@gmail.com>

copy of my letter to the SRA

Tommy Greene <thomasgreene46@gmail.com> Tue, Sep 10, 2019 at 10:49 AM
To: Chris Day <chrismarkday@gmail.com>

Dear Chris,

Since Norman Lamb has referred to my complaint in his own letter that he sent the SRA this week, I felt it may be useful for you to see a copy of the text yourself. Please do let me know if you plan to use it in any way:

Good afternoon,

As you may be aware, I am a reporter who has covered and been investigating Dr Chris Day's case for some time now (see the articles from: The Sunday Telegraph 2nd December 2018 and Private Eye 8th January 2019): https://www.telegraph.co.uk/science/2018/12/02/nhs-whistleblower-forced-withdraw-claims-threatened-life-changing/; http://54000doctors.org/reports/private-eye-whacking-the-whistleblower-jan-2019.html?fbclid=IwAR10dZCGk2UHfc5N9Uo73yux5v5dVsj5Rnh_n_KSRzF7x4_AFbYY6xmkomY.

You may also be aware that I have been investigating serious concerns raised around a key contract in Dr Day's case (I uncovered this via FOI), where there was a failure to disclose said contract which led to Dr Day's claim being struck out before years of wrangling in lower courts and hundreds of thousands of pounds of crowdfunded support brought his case back to Employment Tribunal last October (see: December Telegraph report). What I have found with respect to this contract in recent months is extremely worrying and I believe merits investigation.

Firstly, I uncovered this Learning Development Agreement (LDA) contract through a FOI request earlier this year. As you may know, HEE's success in striking out Dr Day's claim in 2015 rested on its argument that it could not legally be considered his, or for that matter, any other junior doctor's employer. Much was written about this controversy at the time: https://www.newstatesman.com/politics/health/2016/02/how-government-leaving-whistleblowing-doctors-twist-wind.

However, this undisclosed LDA contract (in both its generic model form and the specific agreement between HEE and Lewisham and Greenwich Trust) clearly sets out an employment relation between Dr Day and HEE (I can provide detail along with the documents if needed for this). In light of this recent discovery, HEE's legal team and its failure to disclose the 2014/15 LDA must therefore be considered a potential case of fraud.

Section 3 of the 2006 Fraud Act states a person or body is found to be in breach if he "dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and intends, by failing to disclose the information - (i) to make a gain for himself or another, or (ii) to cause loss to another or to expose another to a risk of loss".

It seems to me that there was both a clear duty to disclose the LDA and that the failure to do so may have constituted several breaches under the 2006 Act, since the failure to disclose this key contract facilitated considerably the success of the position advanced in the 2015 legal hearing which essentially deprived junior doctors of statutory whistleblowing protections - a position eventually reversed years later in the Court of Appeal and at a great cost to both Dr Day and the taxpayer (upwards of £700,000 in total).

I later discovered through further FOI requests that the law firm advising HEE in the case, Hill Dickinson LLP, was also the firm that drafted the LDA (and was paid over £13,000 for its services here). How it could not disclose a multi-million pound contract it had directly undertaken work to shape and create (as far as I know, it was the only legal firm involved in this work) seems incredible to me, looking in from the outside.

Even more concerning is the suggestion that Hill Dickinson intentionally (and illegally) ran up costs by failing to disclose this contract to their own considerable financial gain (I have discovered through FOI that the firm was paid at least £150,000 for its work on the Day case).

Hill Dickinson is one of a handful of firms that deal with almost all of the NHS's employment-related legal work. That it is alleged to have run up costs illegally here at great expense to the British taxpayer is shocking. Moreover, that the consequence in legal terms of this failure to disclose the LDA was to deny the country's doctors under consultant level statutory whistleblowing protections, and indeed to claim this gap in the law was created as a "conscious choice" of Parliament (something later denied and debunked by MPs and lawmakers), is nothing short of a scandal.

I believe these considerations have prompted outrage not only from medics, but also from other lawyers (as per the solicitor's letter to Private Eye referred to in my recent FOI) and MPs such as Norman Lamb and Justin Madders who

21

raised these exact issues in Parliament last month: https://www.parliamentlive.tv/Event/Index/a6bf1e8c-2c5c-4c69-b122-246dd673d5f7; https://twitter.com/drcmday/status/1163159323637428225. You will note Norman Lamb tells the House Hill Dickinson's series of actions with respect to the LDA "smacks of unethical behaviour".

More recently, I have sent in a series of FOIs to NHS Trusts in London. Lewisham and Greenwich Trust, along with Bart's Trust (whose Deputy Director for Education was a HEE witness in Dr Day's case), are so far the only two Trusts that have denied me a copy of the signed 2014/15 LDA for the reason they claim they do not have one (or records of one). These contracts are worth tens up to hundreds of thousands of pounds individually and millions when added together. They don't strike me as the kind of document an NHS Trust just loses.

Among the South London Trusts - most of which have now responded to me, but not all - a pattern seems to have emerged with respect to the HEE signatory of the undisclosed 2014/15 LDA contract. They all appear to have been signed by HEE's then Director of Organisational Development and Human Resources, an individual called Malcolm Plummer. This is significant in the context of Day's case.

It has already been shown that Plummer, the Chief Investigating Officer in Dr Day's case, misattributed statements to one of HEE's own witnesses, Dr Chakravarti, in Day's case (proof of this can be provided if necessary). Given this, and the severity of the allegations surrounding both HEE and Hill Dickinson, I feel the SRA has a duty to investigate not only this aspect of Hill Dickinson and HEE's alleged misconduct, but also the other concerns raised in this mail. I obviously understand that Hill Dickinson, and not HEE, falls within the SRA's remit as a regulator - however, a comprehensive investigation would of course involve scrutiny of the two bodies and their interaction over the concerns raised.

I have instructed a solicitor to provide advice as to what areas or grounds of investigation there could be with respect to these findings. The solicitor highlighted: the fraud point raised as per s3 of the Fraud Act (for failure to disclose the 2014/15 LDA contract); breach of a party's obligation of disclosure/frankness in legal proceedings (a potential contempt of court or similar?); misconduct in public office (this came up, you will recall, in the recent attempt to prosecute Boris Johnson over the Brexit bus claims: https://www.cps.gov.uk/legal-guidance/misconduct-public-office); an issue should the costs of the employment case come up for settlement (which I understand they now have) - who pays whom how much for what legal work, begging the question of whether one side ran up their own or others' costs inappropriately and/or illegally (in this case, well into 6 figures of public money); conceivably other offences (like perverting the course of justice).

Finally, I find it astonishing that it has taken my efforts as a freelance journalist in 2019 (over 4 years after this all took place) to both uncover this contract, to investigate some of the extremely serious concerns and allegations raised about it and to hold some of those involved to account.

At what point would the SRA consider investigating a case like this? I am continuing to look into this as best I can. However, as a freelance writer the resources available to me are considerably limited by comparison with those of your own organisation.

I hope to hear back from you soon regarding my query.

Kind regards,

Tommy

Solicitors Regulation Authority

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From the Chief Executive

Our ref: CDT/1275535-2019
Your ref: NL32666-JK

Mr Norman Lamb MP
Unit 4, The Garden Centre
Nursery Drive
Norwich Road
North Walsham
NR28 0DR

20 September 2019

Dear Mr Lamb,

Dr Day's whistleblowing case

Thank you for your letter of Monday 9 September 2019 and for drawing this case to my attention.

Dr Day, and a number of other doctors, brought concerns to us in May 2019. I think it is clear that we did not, initially, appreciate some of the potential issues in the matters raised. Dr Day has however been in communication with us for some time and has been providing helpful information that we are reviewing. As a result of this, we advised Dr Day that there are issues that we need to better understand and explore and that may well give rise to regulatory issues. Our work on this is ongoing and we continue our correspondence with Dr Day and keep him updated.

Turning to another matter – and your concern that there is potential for conflicts to arise in our work, that I know you have mentioned on Twitter, I can confirm that Hill Dickinson is not a firm on our panel of legal advisers. Capsticks is, but I think I should make it clear that we would not instruct a panel firm on any matter where there is a conflict or any likelihood that a conflict could arise.

I hope the above is helpful. I would be happy keep you updated on the matter concerning Dr Day, if this would be of interest to you. We would, of course, need his consent to this.

If you have any questions or concerns in the meantime, do please let me know.

Yours sincerely,

Paul Philip
Chief Executive
Solicitors Regulation Authority

From the Chief Executive

Our ref: CDT/1275535-2019
Your ref: NL32666-JK

Solicitors Regulation Authority

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Rt Hon Sir Norman Lamb
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Norwich
NR4 6SH

Sent by email only to: npl consulting ltd@gmail.com

22 May 2020

Dear Sir Norman

Re: Dr Day's complaints about solicitors

Thank you for your letter of 13 May 2020.

As you are aware Dr Day's complaints involve a number of firms of solicitors and a number of concerns. We are looking into these issues and we are gathering the information we need from all parties. In doing this we have served production notices on Hill Dickinson LLP, Capsticks Solicitors LLP, and an in-house solicitor at the British Medical Association in order to obtain specific information and key documents.

As you will, I am sure, understand in an investigation such as this, there is a significant amount of material to review and it will take some time to do this appropriately and to the level of detail that such serious issues demand. Unfortunately, we have been hampered a little as one box of documents came to us just as we closed our offices following the government's health advice in March. But we have since been able to scan this onto our systems for review.

Having said this, and although there are the obvious difficulties of the current situation, our legal team meets regularly (remotely) with our investigation team and continues to work through the issues and documentation as we pursue this investigation.

In the light of this ongoing work, we will provide a substantive update to both you and Dr Day in July. At this time, we will set out the regulatory issues we have been exploring, set out the issues upon which we have formed an initial view, and set out any areas where we have identified the need for further information/investigation. We anticipate concluding matters and reaching a formal decision by September/October.

I hope the above information is of help. If you have any questions in the meantime, do please let me know.

Yours sincerely

Paul Philip
Chief Executive
Solicitors Regulation Authority

The Rt Hon Norman Lamb MP

Member of Parliament for North Norfolk

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Professor Ian Cumming
Chief Executive
Health Education England
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West One
Duncombe Street
LS1 4PL

Please quote our reference in all correspondence with this office

Our Ref: NL32666-JK

13 May 2019

Dear Ian Cumming,

Re: Chris Day

I write with regard to the legal dispute between HEE and Dr Chris day.

I have taken a close interest in this case and have been extremely concerned by the way in which Dr Day has been treated by the NHS generally and by HEE and the Trust where he worked, Lewisham and Greenwich, in particular.

I am also deeply concerned about the amount of public money spent on defending a position against a whistleblower. I believe that this undermines any assertion that the NHS is an open organisation which enables individuals to speak out about patient safety concerns.

You will be aware that the claim brought by Dr Chris Day was settled part way through a tribunal hearing in October last year. Dr Day asserts that the settlement followed threats made to him via his legal team that he would face a significant claim for costs if he continued with his claim. Dr Day and his wife felt that they could not contemplate the possible loss of their home as a result of any award of costs and so very reluctantly Dr Day agreed to the settlement.

Since then, Dr Day has sought to set aside this settlement and I have supported his efforts to achieve this.

On 5th April, Dr Day wrote two letters to Ms Rachel Spink of Hill Dickinson. I enclose copies of both of those letters for your assistance.

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Rachel Spink has written to Dr Day stating that she is no longer dealing with this case and that someone else within the firm will respond. However, Michael Wright, a partner of Hill Dickinson, has since written to Dr Day to state that all of the matters that he raised were addressed in the tribunal and that there will be no further response. I enclose a copy of his e-mail of your assistance.

I believe that it is of critical importance that both of these letters dated 5th April receive a substantive response. If your lawyers are unwilling to respond then, as a public body, it is incumbent upon you to respond, particularly given the amount of public money that has been incurred in fighting a procedural point all the way to the Court of Appeal (and then losing) on the basis of a failure to disclose a key contract.

I hope very much that you will reply in substance to both of these letters and I look forward to receiving your full response as soon as possible.

I should also make clear that I intend to raise these issues in Parliament. I am seeking a debate on the treatment of whistleblowers and your responses will help to inform that debate.

Yours sincerely,

The Rt Hon Norman Lamb MP
Member of Parliament for North Norfolk
Dictated by Norman Lamb

chrismarkday@gmail.com

5 April 2019

Ms Rachel Spink

Hill Dickinson

Rachel.Spink@hilldickinson.com

Dear Ms Spink,

Case Number; 2302023/2014 B

I write to request explanation about the pleadings in this case advanced by Hill Dickinson in 2015. There are examples of content in the pleadings that have since been shown to be false as a result of the last minute disclosure of documents by HEE/Hill Dickinson in 2018.

Certain emails dating back to early 2015 were only disclosed in 2018 just before the exchange of witness statements.

The disclosed emails raise serious questions about the HEE Director of Human resources Mr Plummer. These concerns were repeated by HEE's own witness Dr Chakravarti in her 2018 tribunal statement. I raised similar concerns to the board of HEE in 2014/15 which Angus Moon QC established during my evidence at the Tribunal.

False Pleadings

Please can the Second Respondent justify the following excerpt in their ET3 at paragraph 30-32, 34 and 41 when they describe the way I made my protected disclosure to the ARCP panel on 3 June 2014. My protected disclosure was about serious safety issues in respect of an Intensive Care Unit's staffing, airway support and 2 Serious Untoward Incidents (SUIS) involving the deaths of patients. The following statements in the pleadings need to be justified in light of recent disclosure and Dr Chakravarti's witness evidence;

> *"The claimant accepted that an 'Outcome 5' was the only outcome he could have received as he had failed to complete the relevant training and evidence. At the conclusion of the panel meeting, the Claimant disclosed to the panel his concerns regarding patient safety and staffing in the ICU at QEH which he had raised in August 2013 and January 2014. It is denied that these statements amounted to protected disclosures. The panel noted how the Claimant appeared to 'live the experience physically shaking whilst he recounted the patient safety issues and the Trust's alleged treatment of him.. The panel noted how the Claimant appeared to lack confidence in his own ability...The unanimous view of the panel was that he would benefit from support services"*

The HEE Plummer Report is the obvious source of the above pleadings. The following statements were attributed to the ARCP panellist Dr Chakravarti in the Plummer Report when describing the way I made my protected disclosure;

"in the grip of angst";

"continued to live the experience physically shaking as he recounted the patient safety issues and alleged treatment";

"This behaviour on the day alone does certainly appear to have raised questions for the panel about his `state of mind'."

On 5 January 2015 Dr Chakravarti sent an email to HEE saying she was; "baffled by the various quotes attributed to [her]" in the Plummer report. This email was disclosed by HEE days before the exchange of witness statements for the October 2018 hearing.

In 2015, HEE's Director of HR, Mr Plummer made no changes to the report following Dr Chakravarti's email and his reply to Dr Chakravarti is very revealing about the Second Respondent's conduct in this case;

"We are reasonably hopefully that it will be 'struck out' on the grounds that we (HEE) are not his employer and that the Public Disclosure Act therefore does not apply to the relationship that existed between him and HEE which will be the end of it for you (and me)".

Dr Chakravarti took no further action to correct the damaging statements falsely attributed to her in a formal HEE report and waited 4 years to give her true view on the Plummer report. This was after I had made it clear that I would be obtaining a witness order for her and that covert audio would form part of my evidence. She stated in her tribunal statement;

"The notes made by Mr Plummer contain short phrases without giving their context and by stringing the phrases together I feel it gives an exaggerated or distorted impression.". Upon reading the report, I was very surprised to find various phrases in inverted commas, seemingly quoting me, when I could not recall saying those phrases. I did not feel that the report portrayed the situation as accurately from my perspective as I would have wanted."

In an email dated 5 December 2014, another of the ARCP panellists Dr Umu-Etuk, described her view of my protected disclosure to ARCP/appraisal;

"I do not recall you to be visibly shaking but did form the opinion that the hospital in question failed to provide you enough support out of hours.. I remember that you had sole responsibility for ITU which seems to beyond the expected competency of a Ct1/2 doctor. I was of the opinion that you came across as assertive and confident"

This email from Dr Umu-Etuk was ignored and excluded by the Plummer investigation and clearly contradicts the pleadings above in the Second Respondent's ET3 and the damaging content about me in the Plummer Report. Mr Plummer took 3 months to complete his investigation and in that period he failed to interview Dr Umu-Etuk. He offers this justification in his report "Regrettably I haven't been able to establish contact with the last member of the panel Dr Umu-Etuk". Mr Plummer also says in his report another ARCP panellist Annette Figuerido stated she "was unable to recall this particular ARCP." It follows that it was impossible in 2015 for Mr Plummer or Hill Dickinson to have pleaded truthfully the unanimous view of the ARCP panel in relation to my ARCP.

My clinical supervisor report from the consultant that actually supervised me for 6 months was excluded and ignored by the Plummer report and the HEE legal team. This directly contradicts the damaging findings of the Plummer report pleaded in the ET3;

"He is a competent and confident trainee with a skill set which exceeds the expectations of someone of his level of training.

It is clear that Mr Plummer and the lawyers that wrote the pleadings have ignored key evidence from both my supervisors and the ARCP panellist Dr Umu-Etuk and pleaded statements as the unanimous view of the ARCP panel that they knew had been falsely attributed to only one panel member by Mr Plummer. Dr Chakravarti clearly disowned the statements in her in her 5 January 2015 email to Mr Plummer. The content was also directly contradicted by emails from Dr Umu-Etuk later in 2014. Annett Figuerido stated to Mr Plummer that she could not remember my ARCP.

It is clear that the reality of Mr Plummer's false and damaging statements about me have been further distorted by the Second Respondent's lawyers when they are falsely claimed as the unanimous view of the ARCP panel. The ARCP panel was made up of influential and senior doctors and the sharing of the Plummer report within the profession has caused lasting damage to my credibility and reputation.

Content of the Protected Disclosure

Hill Dickinson's actions relating to the false pleadings are made worse when the content of my protected disclosures are considered. They included concerns about ICU staffing, airway support and Serious Untoward Incidents involving the deaths of patients.

The safety issues disclosed to the ARCP panel on 3 June 2014 were supported at the time by ICU Core Standards and an email excluded from the Plummer investigation from the ARCP panellist Dr Umu-Etuk. My protected disclosures about the ICU were later verified in 2017 by a Peer Review. In 2014, both Respondents explained them away in the formal Roddis investigation. This position was repeated and endorsed at the 2018 Tribunal by the Respondents;

> *"Dr Day (as an ACCS CT2 in Emergency Medicine) was expected to cover the 18 bedded ICU, ward outliers, A&E and ward ICU assessments as a resident SHO in QEH a district general hospital. In my opinion this was acceptable in light of his experience and skills at the time. The Core Standards say that in general the consultant/patient ratio should not exceed between 1:8 and 1:15 and that anything in excess of 1:14 is deleterious to patient care and consultant well being. The core standards say that ICU the ICU Resident should not exceed 1;8. These ratios are therefore not absolute..*
>
> A recent Deanery [HEE] visit concluded that the staffing levels (unchanged since January 2014) were safe and there were no concerns about supervision highlighted by them."

The covert audio shows the HEE Post Graduate Dean, Dr Frankel giving a very different view of the situation in our 2 September 2014 meeting that he left out of his tribunal statement;

> *"The Trust know that we have concerns, we've raised concerns. They're having to produce an action plan to all the red flags in the GMC survey. You clearly were not the only person who had concerns about it. It was raised in the ACCS GMC survey."*
>
> *"What you described to me is totally unacceptable for me to have trainees in a situation that you were in. In the ICU where you are non-- You are not trained for intubation and airway care and you're in charge of 19, never mind all the other issues. It's totally unacceptable. The whole thing, what you've described, is unsafe"*

Dr Frankel further criticised the Trust in a document he wrote and sent to Right Hon Norman Lamb in January 2019;

"A quality management visit was planned for the QEH site specifically to look at the ACCS programme. This was undertaken on 15 October 2014. The visit confirmed the issues raised by Dr Day in relation to his disclosures.. Progress was slow and a further visit took place on 15 March 2015 because of this and also because of the outcome of a CQC visit...the ICU was reviewed and unfortunately only limited improvement had occurred in this area."

Dr Frankel's true view of the safety issues contained in my protected disclosure and the Trust's response were not included in his tribunal statement. This also needs to be explained especially given the patient deaths in the SUIs.

Conclusion

I am keen to represent this situation accurately, please can you advise me if there is anything in this letter that you think is not correct and clearly explain why you think this.

It seems to me that I have set out an attempt by Hill Dickinson through false pleadings to mislead the tribunal into believing that when I made my protected disclosure to the ARCP panel that I was "physically shaking," "gripped with angst" and that the ARCP panel unanimously felt this and that they had concerns about my state of mind. This was obviously a deliberate attempt to discredit me and my protected disclosure.

The Tribunal were also misled into believing in relation to my disclosure about serious ICU staffing and airway support/supervision that *"the staffing levels (unchanged since January 2014) were safe and there were no concerns about supervision highlighted by them."*

The actions of HEE and Hill Dickinson have not only damaged me but ultimately resulted in the serious safety issues that I first raised in 2013 not being acknowledged until a Peer Review several years later in 2017. This described the ICU in the following terms;

"A complete lack of medical leadership, low consultant staffing levels, inadequate clinical governance and poor culture"

Please can the Second Respondent indicate whether they stand by all their pleadings and the content of the Plummer Report in light of their own witness evidence and disclosure.

Yours sincerely,

Dr Chris Day

NHS
Health Education England

Chair and Chief Executive's Office

2nd Floor, Stewart House
32 Russell Square
London
WC1B 5DN

[redacted]

22nd May 2019

The Rt Hon Norman Lamb MP
Member of Parliament for North Norfolk
Unit 4, The Garden Centre
Nursery Drive
North Walsham
NR28 0DR

VIA E-MAIL: norman.lamb.mp@parliament.uk

Dear Mr Lamb,

Re: Chris Day

I write in reply to your letter dated 13th May 2019, in which you refer to the circumstances of Dr Day and his ongoing litigation against Lewisham and Greenwich NHS Trust and HEE. You will be aware that his case was heard in the Employment Tribunal in October 2018 and that, following the presentation of his own evidence, and with express advice from his Counsel, Dr Day agreed a formal settlement and withdrew all his claims.

Part of this agreement was the following public statement agreed by all parties:

- *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.*

HEE believed that this agreement with Dr Day, including him withdrawing all claims and agreeing what the likely outcome of the Tribunal was going to be based on his evidence, brought the matter to a close, formally concluding all aspects of these proceedings and their conduct.

As you state, Dr Day then sought to set aside the Tribunal's judgment. The Employment Tribunal rejected this application, so he has now applied to the Employment Appeal Tribunal to overturn this decision. The response of the Appeal Tribunal is awaited.

In addition, Dr Day has now issued further proceedings in the Employment Tribunal claiming compensation for new alleged detriments, part of which arise from meetings at which you were present. As you will appreciate, it would therefore not be appropriate for me to comment on any issue or claim which is subject to ongoing legal claims by Dr Day.

Yours sincerely,

Professor Ian Cumming OBE
Chief Executive

Gmail **Chris Day <chrismarkday@gmail.com>**

EAT/0250/15/RN Day v 1) Lewisham and Greenwich NHS Trust; 2) Health Education England

LONDONEAT <londoneat@justice.gov.uk> Tue, Sep 15, 2020 at 7:28 AM
To: "Philip.Farrar@hilldickinson.com" <Philip.Farrar@hilldickinson.com>
Cc: "chrismarkday@gmail.com" <chrismarkday@gmail.com>, Rachel Luddem <Rachel.Luddem@capsticks.com>

Dear Sir

Please provide the second Respondent's comments in relation to the matters set out in the Appellant's letter dated 9 July 2020 within 14 days of the date of this email.

Yours faithfully

Mr Robert Newton

for Registrar

Employment Appeal Tribunal | HMCTS | 5th Floor, 7 Rolls Buildings, Fetter Lane | London | EC4A 1NL

Phone: 020 7273 1031

Web: www.gov.uk/hmcts

For information on how HMCTS uses personal data about you please see: https://www.gov.uk/government/organisations/hm-courts-and-tribunals-service/about/personal-information-charter

From: Chris Day [mailto:chrismarkday@gmail.com]
Sent: 09 July 2020 10:20
To: LONDONEAT <londoneat@Justice.gov.uk>
Subject: Re: EAT/0250/15/RN Day v 1) Lewisham and Greenwich NHS Trust; 2) Health Education England

Dear Sir/Madam,

Please see attached update as requested in respect of my wasted costs application.

The matters raised have been discussed in the House of Commons. An MP and journalist have made reference to possible fraud and contempt of court in respect of the matters raised in my application for wasted costs. They have also clearly explained their basis for their assertion.

For these reasons, can I have written confirmation that my wasted costs papers have been put before the President of the EAT.

Yours,

31

Gmail **Chris Day <chrismarkday@gmail.com>**

2300819/2019

2 messages

Chris Day <chrismarkday@gmail.com> Wed, Sep 16, 2020 at 11:46 AM
To: LondonSouthET@hmcts.gsi.gov.uk, philip.farrar@hilldickinson.com

Dear Sir/Madam

I attach a document which may provide further assistance to the judge considering the wasted costs issue.

Yours,

Dr Chris Day

Capsticks26March.pdf
7714K

LONDONSOUTHET <londonsouthet@justice.gov.uk> Wed, Sep 16, 2020 at 11:52 AM
To: Chris Day <chrismarkday@gmail.com>

Thank you for your email which has been received by the London South Employment Tribunal. If you have been allocated a case number it will aid us to link your email with your file if you include the case number in the subject box in future email correspondence.// When sending any correspondence to the Tribunal (except when making a request for someone to give evidence at a hearing) you must also send a copy to all other parties and ensure that this is made clear to the Tribunal in your correspondence. If you have not copied the other parties in to your correspondence, you should say that to the Tribunal, and explain why. The Tribunal will then consider your explanation, and let you know if you need to take any further steps.// We aim to deal with new claims within 3-5 working days. Please note that any Claim or Response forms will need to be checked before they are accepted and this reply is only confirmation of receipt. We aim to respond to other correspondence within 10 working days; however, if your correspondence is in relation to a hearing due to take place within 10 working days it will be treated as a matter of priority.// Productions for hearings cannot be accepted by email and therefore must be provided in hard (paper) copy. Parties must also ensure that sufficient copies of paper productions and indeed any other documents are available for the hearing, and should not be sent into the office in advance of the hearing.// If your enquiry relates to the details of your claim, then please contact the relevant Tribunal office on 0208 667 9131. For general enquiries on the claims process or for information on how Employment Tribunals operate, Guidance can be found at https://www.gov.uk/employment-tribunals. For information on the services provided by ACAS please phone the helpline on 0300 123 1100.

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chrismarkday@gmail.com

26 March 2019

Ms Rachel Luddem

Capsticks LLP

Rachel.Luddem@capsticks.com

Dear Sir/Madam,

CASE 2302023/2014

I am astonished to learn that in the months leading up to the final hearing of my whistleblowing case, Ms Montraghi, junior counsel for Lewisham and Greenwich NHS Trust, was instructed by the doctors trade union, The British Medical Association to form a disciplinary panel with a Consultant Physician also from Lewisham and Greenwich NHS Trust to deal with a complaint made against the BMA Council member Professor Allyson Pollock. The complaint related to her support of my whistleblowing case and a BMA Council vote to support my case going forward.

I understand that the complaint was made by the former BMA JDC Chair Johann Malawana who has a track record of undermining my Court of Appeal litigation that succeeded and was widely commended, being accepted even by the Respondents in my tribunal as a public service.

The outcome of the disciplinary procedure was written by Ms Montraghi and was sent to Prof Pollock on 20 September 2018 less than two weeks before my employment tribunal was due to commence. Ms Montraghi's disciplinary decision finds against Prof Pollock and makes references to my name on more than 20 occasions.

Professor Pollock has been publicly critical of various BMA actions in relation to my whistleblowing case and successful Court of Appeal litigation that safeguarded junior doctor and agency worker whistleblowing protection.

On 13 September 2017, Professor Allyson Pollock, as a member of BMA Council sent an email to the BMA Chair, Dr Chaand Nagpaul and others on BMA Council calling for an independent formal investigation into my case, appeal to the Court of Appeal and my complaints against the BMA. Soon after Professor Pollock had multiple complaints made against her.

In an appeal statement by Professor Pollock sent to the BMA HR Officer, Orla Tierney on 4 November 2018, Professor Pollock describes her view of the BMA disciplinary process against her,

"Last year repeated complaints were lodged against me as a means to silence me, after I had raised concerns in Council about the BMA's handling of the Chris Days' whistleblowing case. My expulsion on new charges of bullying and harassment of staff is a final attempt to silence me on whistleblowing and to cover up the gross failings and disregard for governance within the BMA."

Professor Pollock has confirmed that during one of her disciplinary hearings that Ms Montraghi attempted to put pressure on her to sign a confidentiality undertaking to prevent her telling anyone about her disciplinary process. Professor Pollock refused to do this.

Given the nature of the complaints against Professor Pollock it is obvious a mile off that it is not appropriate to form a trade union disciplinary panel made up of a consultant from Lewisham and Greenwich NHS Trust and the barrister representing the same Trust in my whistleblowing case.

It is also clear to me that if Prof Pollock had been dealt with properly by the BMA leadership and disciplinary/complaints process there is every chance my case and my appeal to the Court of Appeal would have had BMA support.

I enclose the following to demonstrate the seriousness of the the matters raised by Prof Pollock;

1. Prof Pollock's email to the BMA Chair dated 13 September 2017 calling for an independent investigation into BMA actions in respect of my case.
2. Relevant excerpts from my evidence given on invitation to an independent inquiry into BMA Members Services
3. Paper/Press Release from Public Concern At Work criticising the BMA

Please can the following be answered to confirm that my understanding of this situation is correct.

1. Is it true that the Lewisham and Greenwich barrister in my case, Nadia Montraghi of Old Square Chambers, was instructed by the BMA to sit on a disciplinary panel with a Lewisham and Greenwich Consultant against Prof Pollock?

2. Did the disciplinary process chaired by Ms Montraghi concern anything to do with my whistleblowing case or a BMA Council vote to support my whistleblowing case?

3. Did Nadia Montarghi and or the panel ask Prof Pollock to sign a confidentiality undertaking relating to the disciplinary process or any agreement that would have prevented her speaking openly about the process to anyone?

4. Was the CEO of Lewisham and Greenwich NHS Trust aware of Ms Montraghi's BMA instruction and or Dr Helen Fidler's involvement in the disciplinary panel?

5. Please can Ms Montraghi offer explanation as why she felt able to accept this instruction from the BMA?

GMC Referral

In addition to the ordinary, wasted costs threats and reference to a legal regulator referral made by the Respondent's Counsel at my final hearing. My former counsel Chris Milsom has informed me that whilst I was under oath that Ms Montraghi made reference to referring me to the medical regulator the GMC. The Trust have denied knowledge of this or instructing her to do this in public statements.

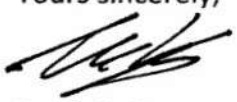
> "the Trust and our legal representatives: Did not threaten referring Dr Day to the GMC and have no intention of doing so."

Please can Ms Montraghi clarify her position on this.

Conclusion

I will be sending this letter to the Regional Employment Judge and will happy to forward your response when I get it.

Yours sincerely,



Dr Chris Day

t 020 7383 6225 | www.bma.org.uk

BMA House, Tavistock Square, London WC1H 9JP

From: Chaand Nagpaul [mailto:chaand.nagpaul@gmail.com]
Sent: 15 September 2017 21:20
To: Allyson Pollock <allyson.pollock@gmail.com>
Cc: Clare Gerada <c.gerada@btinternet.com>; Clive Peedel <clive.peedell@btinternet.com>; david wrigley <dgwrigley@doctors.org.uk>; J S <jsbamrah@aol.com>; louise irvine <louise.irvine@runbox.com>; Wendy Savage <wdsavage@doctors.org.uk>; stephen and elizabeth watkins <sjande.watkins@gmail.com>; jacqueline davis <drjcdavis@hotmail.com>; Kevin O' Kane <kevinpjokane@hotmail.co.uk>; Fidler Helen (LEWISHAM AND GREENWICH NHS TRUST) <helen.fidler@nhs.net>; Nicky Jayesinghe <NJayesinghe@bma.org.uk>
Subject: Re: rather URGENT follow up

PS I have passed on your email to Nicky accordingly

Chaand

Sent from my iPhone

On 15 Sep 2017, at 21:18, Chaand Nagpaul <chaand.nagpaul@gmail.com> wrote:

> Hi Allyson
>
> Just to say I acknowledge this email.
>
> Given the nature of your concerns, I feel it would be most appropriate for Nicky Jayesinghe to look into this, and respond to you thereafter.
>
> Best wishes
>
> Chaand
>
> Sent from my iPhone
>
> On 13 Sep 2017, at 23:45, Allyson Pollock <allyson.pollock@gmail.com> wrote:
>
> > Dear All,
> >
> > Chaand, David and I were sent this email and audio of Nov meeting today before the meeting. I have only now read his email and listened to the audio -it accords with my own memory and records. There appear to be three major discrepancies in the accounts given by Keith Ward and BMA legal as reported in Appendix 7 and 8 in document C 19, and in the email I was sent by Keith Ward - which I have pasted below.
> >
> > **1. The injunction** The allegation was that the BMA claimed they cannot discuss the Day case due to an injunction... The response in Appendix 7 (Injunction) was that the doctor concerned may have used the incorrect legal term and misspoken and was not authorised to make the statement in question. (see Appendix 7 Injunction)

According to Chris Day below an email sent 6 April 2017 by the junior doctor conference chair to a BMA member proposing a motion stated .

"When the CAC met last week, it was our understanding that an injunction had been received from Chris Day's lawyers prohibiting us from discussing his case - we thought at that stage that the motion should be withdrawn, but before we withdrew it I did check again with the legal dept for final confirmation.".

In what capacity was the JDC writing if not for the BMA? What was the motion that was withdrawn?

2. Legal Ombudsman: Viv du Feu infers that Mark Porter misspoke in Nov 2016 Council when he said that the BMA was exonerated by the Legal ombudsman (on almost every issue ...except for the address) . He states that this was excusible because it was impossible to expect a non-lawyer to get every detail correct...

However the audio makes clear that Mark Porter repeatedly sought support from BMA legal for his statements on multiple occasions and no attempt was made to remedy the false information we were given. (he mentions the nods, and verbal agreement is audible, Gareth speaks to agree)

Would we not expect BMA legal reps to correct misleading information especially when asked if the statements were correct? Why did they not do so and leave Council with the wrong impression?

3. Dismissal of Staff . Keith Ward writes below in response to the alleged dismissal of staff ' I can also categorically assure you that the member of staff in question was not dismissed' .

When pressed, Mark Porter in the Nov audio appears to tell Council the staff member was dismissed for .gross misconduct (and ties it quite clearly to the Chris Day case).

It would be help to have a greater understanding of why Chris Day's case having passed the merits case subsequently failed the merits test on two occasions and the chronology of Chris Day's complaints. We do need to see that QC opinion into the merits of the Court of Appeal case that we have so far been refused, although it was being read out in a Council meeting when the reading was stopped because of concerns about leaking.

Given these serious discrepancies it would be helpful to have an independent formal investigation into these matters.

BW

Allyson

On Wed, Sep 13, 2017 at 2:24 AM, Chris Day <chrismarkday@gmail.com> wrote:

Dear Dr Nagpaul,

37

"I conclude that the BMA has worked to assist you within our rules of engagement and in relation to the terms of membership, but that regrettably your case did not fulfil our criteria for legal support in the claim to the employment tribunal or the employment appeals tribunal. It is sometimes frustrating that where a potential remedy lies in a court or tribunal it is only available within the framework allowed by the law; and the law does not provide the level of support that many think it should. I appreciate that this is difficult to accept but as far as the BMA is concerned there is no further support that we can offer on this matter and we will now close your case."

Undermining /Misleading/ derogatory BMA Statements relating to me and my case

42. The public profile that has come from my case being crowdfunded by 4,000 individuals has put the decisions of NHS and BMA leaders in respect of my case under the spotlight. The BMA in particular have been forced to justify the entirely separate decision it made from my individual case, not to support the now successful appeal to safeguard junior doctor whistleblowing protection after first spending a year denying the problem.

43. BMA leaders have released misleading statements about my appeal and my individual case that have included personal smears that have attempted to undermine me and confuse the issues.

44. On 30 November 2016 my Solicitor, Tim Johnson, wrote a letter to the BMA challenging their breaches of my right to confidentiality and several statements released to BMA committee members about my case that were not true (Page xxxx). The content was shared externally. The following material was forwarded to me which alerted me and my solicitor to the situation.

    a) An audio transcript leaked out of the BMA of 16 November 2016 BMA Council meeting (exhibited as evidence with this statement),
    b) An email from the then BMA Chair that he encouraged junior doctors to share dated 1 November 2016 with responses from BMA Committee members (Page xxxx)

Releasing statements that contradict an order of the Court of Appeal and encouraging them to be shared.

45. On the 7 October 2016, Lord Justice Elias granted leave for me to appeal to the Court of Appeal. His order stated (Page xxxx);

    "This case raises the question of the proper construction of Section 43K Employment Rights Act 1996. <u>This is a matter of some importance. The grounds raised in the appeal are clearly arguable"</u>

46. On 1 November Dr Porter emailed all members of the Junior Doctors Committee with an email directly contradicting the above order's description of the importance and prospects of my appeal (page xxxx).

    "I hope you will forgive a comment from me about the status of current legal cases...The one that is about statutory protection afforded to junior doctors in their

interactions with Health Education England... The case currently being appealed remains lacking in merit in a wider political sense is no longer relevant..."

47. On the same day several members of the Junior Doctors Committee asked if they could share the content of Dr Porter's email publicly. Dr Porter responded by saying that "the information given was not restricted." This resulted in me and my case being further undermined on social media by members of the BMA Junior Doctors Committee.

48. The BMA response to my solicitor's fair criticism of Dr Porter's statements was to instruct Capital Law to write a letter dated 9 December 2016 threatening my solicitor personally with defamation (Page xxxx).

> *"The comments made in your letter are completely without merit and amount to a wholly unwarranted and damaging imputation of impropriety against our client and the chair of council. We have taken advice from specialist Counsel. It is clear that these criticisms are defamatory and we request that you retract these statements immediately."*

49. My Solicitor, Tim Johnson wrote back to Capital Law in a letter dated 12 December 2016 (Page xxxx),

> *"You have criticised us for referring to what Lord Justice Elias has said but what he said when giving permission to appeal was that Dr Day's appeal raises an important point and is clearly arguable. The point we are making is that it is misleading of Dr Porter to characterise the appeal as simply lacking in merit when it is known at the time that a Lord Justice of Appeal determined it to be clearly arguable and raising an important point of law.*
>
> *You make an issue over the fact that Dr Day is not named in Dr Porter's email. It is obvious who he is referring to. If it wasn't obvious why would Dr Porter have sent the email to make the points he does.*
>
> *Once again we ask the BMA to reconsider its position. Instead of threatening defamation proceedings it should be supporting Dr Day's appeal to the Court of Appeal. If the BMA doesn't support an appeal to the Court of Appeal which affects the whistleblowing rights of junior doctors across England and has been determined by a Lord Justice of Appeal to raise an important point of law and be clearly arguable, what litigation will it support?"*

Falsely Claiming Exoneration for the BMA on Serious Allegations from the Legal Ombudsman

50. The audio of the BMA Council meeting on 16 November where my case was discussed was leaked outside of the BMA from an anonymous email address. It was forwarded to me and shows the following dialogue about my case. I exhibit the audio as evidence and a letter dated 11 March 2017 sent to the BMA Council Chair and Chair of the JDC containing the relevant excerpt (Page xxxx). The dialogue starts with the following question from Dr Sundeep Grewal, a member of BMA Council;

> *"In the C32 document, there's mention about Dr Day failing the merits assessment.. Dr Day is saying that actually he did pass a first merits assessment, and that*

subsequently, a second merits assessment done several months later, on that he failed. And that he was extremely close to some sort of legal deadline. I'm not privy to the details of that but there's also a worrying accusation about the BMA destroying notes and also that another BMA rep who had detail was excluded or left under a gagging clause. Now, I'm essentially asking for some direction as to how I am meant to respond to that because these questions are being put to me and not just by 1 or 2 people."

51. Dr Grewal explicitly asks the BMA Council Chair and Gareth Williams the BMA Lawyer present how the members of BMA Council should respond publicly to the following points about my case;

    a) The BMA withdrawal from my case on 17 October, 5 working days before a deadline

    b) "Worrying accusations about the BMA destroying notes"

    c) My BMA IRO being "excluded or left the BMA under a gagging clause"

52. The BMA Council Chair, Dr Porter responds;

    "The best thing to do is not to engage with this. There is no answer that could conceivably satisfy Dr Day that he will not turn around into some evil plot that the BMA has perpetrated. In terms of what has just been mentioned, I think probably the most pertinent fact to mention to members of Council is that Dr Day did complain to the Legal Ombudsman. Dr Day did complain to the Legal Services Ombudsman about a number of aspects of the case at the time we were, the BMA were, representing Dr Day. The Ombudsman report exonerated the BMA.."

53. The BMA Solicitor Gareth Williams endorses what Dr Porter says and then smears my integrity and refers to his experience of me despite never either having met me or communicated with me directly in writing;

    "That's entirely correct. He does have a tendency of misrepresenting facts in my experience and I would say that it's better not to engage also."

54. Another member of BMA Council, Professor Allyson Pollock, then asks Dr Porter and Mr Williams for more information,

    "I just wanted to make sure we've answered Sundeep's questions in full, so can we go through them again, in particular the one on the gagged.."

55. Dr Porter interrupts Professor Pollock,

    "Ok, so Allyson, I believe I gave as fuller answer as is appropriate to give by talking about the fact that all of these items were complained about to the Legal Services Ombudsman who exonerated"

56. Professor Pollock then asks,

    "Including the gagging and the BMA rep?"

57. Dr Porter replied again,

"There was an issue with one of the BMA reps who (am I allowed to say why he was dismissed) Ok what the hell, there was one BMA rep who was associated with the case, he was dismissed for gross misconduct. You can draw your own conclusion about whether that misconduct was anything to do with what Dr Day is complaining about."

58. On 21 February 2017 I forwarded this false dialogue from the BMA to the Legal Ombudsman and asked for their response (Page xxxx). The Legal Ombudsman confirmed by email dated 9 March 2017 (Page xxxx);

> *"The Legal Ombudsman found poor service against Gateley LLP and directed that they provide financial remedy.*
>
> *The Legal Ombudsman investigated the service of Gateley LLP and did not investigate the service or actions of the BMA or its staff including the circumstances in which your BMA representative was dismissed from the BMA."*

59. The following criticisms were made by the Legal Ombudsman of Gateley;

> *"Following my investigation of this complaint, I intend to recommend to the Ombudsman that the firm should pay compensation of £150 for incorrectly listing his training record, delay in responding to emails, failing to separate ACAS forms and for incorrectly sending the 22 August letter to one of his neighbours*
>
> *Whilst I recognise Dr Day's contention that a law firm should not rely on a non-legal body's understanding of legal matters, the body would be expected to have some familiarity with whether a particular education department was a standalone legal entity"*

60. The Legal Ombudsman adds,

> *"This office is a lay organisation and in considering complaints of poor service, we are unable to review Dr Day's case papers here and provide a second opinion on the merits of his case and comment on whether they were assessed correctly or not."*

61. BMA committee members on numerous occasions have shared content similar to Dr Porter's deliberately false misrepresentation of the Legal Ombudsman report into my case (Page xxxx). The report should have remained confidential to me and Gateley LLP.

62. On 23 March 2018 the BMA finally apologised for Dr Porter's dialogue about my case in the November 2016 BMA Council meeting. However, on the evening of Sunday 25 March 2018, the BMA published an addendum to FAQ's that they had published on their website about my case (Page xxxx). The BMA FAQs had attracted criticism from the whistleblowing charity Protect (Page XXXX). The addendum had an astonishing title (Page XXXX);

> *"Is it true that the BMA have apologised to Dr Day as to comments made about his whistleblowing case and if so why are the BMA seeking to keep this confidential?"*

63. The FAQ's with the addendum were circulated by the BMA's Chief Officers Dr Andrew Dearden and Anthea Mowat on social media. Dr Dearden's tweet consisted of a screen shot of the addendum with the word "Facts". The current BMA interim Treasurer Dr Trevor Pickersgill did a Facebook post promoting the FAQs (Page XXXX)

64. The FAQ's contained misleading statements about the November 2016 meeting and my complaint about it. I include one of several examples below;

> "Dr Day also alleged that a past staff member assisting him was dismissed. Our investigation showed this was not true"

65. This is an example of the BMA deliberately seeking to give the false impression that it was me rather than the BMA Chair, Dr Porter claiming that my BMA IRO was dismissed for gross misconduct. It is clear from the audio of the November 2016 Council meeting it was Dr Porter who made this allegation. The clear effect of the BMA's wording is to publicly make me seem dishonest.

Support from BMA Committee Members

66. I have received support and kindness from two former BMA Committee members that have both now been excluded from their roles in the BMA. Professor Allyson Pollock served as a member of BMA Council and Dr Aaron Borbora was deputy Chair of the Junior Doctors Committee.

Professor Allyson Pollock

67. On 13 September 2017, Professor Allyson Pollock, in her capacity as a member of BMA Council, sent an email to the BMA Chair, Dr Chaand Nagpaul and others on BMA Council calling for an independent formal investigation into my case, appeal and complaints against the BMA. (Page xxxx);

68. Professor Allyson Pollock was later excluded from the BMA by a disciplinary process. One of the disciplinary panels was chaired by the same barrister, Nadia Montraghi that has been representing the NHS Trust in my whistleblowing case. In this role, I understand, Ms Montraghi had sight of material relating to the BMA's handling of my case and a statement produced by me in support of Professor Pollock.

69. The conduct of the Lewisham and Greenwich Trust's legal team in respect of the way my whistleblowing case settled is under scrutiny. I have lodged an application that states either a mistake or misrepresentation was responsible for an ordinary costs threat, wasted costs threat and the threat of regulator referrals for both me and my lawyers (Page xxxx). The CEO of the Lewisham and Greeinwich Trust denies making or instructing any of these threats. My legal team have confirmed the threats. The risk to our house associated with the costs threat was the reason my and wife I decided to enter into a settlement agreement on 15 October 2018 in respect of my whistleblowing case which included an agreed statement that indicated that the respondents had acted in good faith towards me.

70. As far as I am aware the independent investigation into the issues raised by Professor Pollock and her BMA Council colleague about the 16 November 2016 BMA Council meeting has not been initiated by the BMA.

Dr Aaron Borbora

71. Dr Borbora as a former Deputy Chair agreed to be witness in our jurisdictional litigation to establish junior doctors as workers of Health Education England and in order for them to enjoy statutory whistleblowing protection for their career. The BMA's involvement in negotiating the new junior doctors' contract was the focus of his evidence (Page xxxx).

72. Dr Borbora also provided a witness statement outlining what he had been told about my individual whistleblowing case by the BMA's Director of Legal Viv Du Feu. It repeats personal smears about me and denies the important safety issues that have now been accepted (Page xxxx);

> *"Shortly after I assumed office Mr du FEU spoke to all the JDC Officers. He warned us to have no contact with Dr DAY and refer all enquiries regarding him to the legal department. He said that Dr DAY was "hostile" to the BMA and would seek to use people's words against them or the BMA. He also stated that Dr DAY was known to record conversations without consent then use these for his own ends. He was clear that Dr DAY's arguments held no merit and that Dr DAY was a man with a grievance and that the target of that grievance was the BMA.*
>
> *One incident that stands out occurred towards the end of 2016, although with the effluxion of time I cannot be precise about the date. Mr WILLIAMS, Mr du FEU, and I had a coffee in the "Garden Cafe" of the BMA...*
>
> *During this meeting Mr du FEU gave me a précis of Dr DAY's case. He stated that the BMA had supported Dr DAY and through their solicitors, Gateleys LLP, had secured Dr DAY a "very good deal" which would have ensured his return to training. He said that part of the agreement was for Dr DAY to seek treatment for some mental health issues. He went on to say that Dr DAY did suffer from mental health problems and was "a very peculiar" person and that in his opinion the whistleblowing claims were made to cover-up for Dr DAY's own deficiencies. Mr du FEU contended that Dr DAY had acted unreasonably in refusing this deal and that was why the BMA declined to continue to support his case. He went on to say that the BMA had continued to support Dr DAY by giving him various documents, as a gesture of goodwill, which allowed Dr DAY to continue his case.*
>
> *Mr du FEU said that Dr DAY was a serial complainer. He said that Dr DAY had made a multi-part complaint to the Legal Ombudsman who dismissed all but one of the complaints – one regarding an incorrect address on a letter – for which they awarded Dr DAY £150. He said that this vindicated the BMA's handling of the matter.*
>
> *I therefore was of the reasonable belief, based on the advice of Mr du FEU, that Dr DAY lacked credibility and was a mentally unstable individual who was in the habit of making vexatious complaints and was seeking to harm the BMA. I therefore advised*

other JDC members, if I was asked, that the BMA had done nothing wrong and that Dr DAY was a crank who should be ignored.

A further incident occurred on or about 8th September 2016. I was invited to Mr John MAINGAY's leaving party at the Resting Hare Public House. Dr Tim YATES was also in attendance. I spent a portion of the evening talking to Mr WILLIAMS and another BMA lawyer, Anna HENRY. Mr WILLIAMS was garrulous about current BMA matters, including the industrial action that had been recently called off and Dr DAY. He gave his personal opinion of Dr DAY – that he was a "cock" (a derogatory reference to the male external genitalia). He again said that Dr DAY had an axe to grind and was an attention seeker."

73. The BMA have had all the facts relating to the serious safety issues in my case including night time ICU staffing significantly departed from national standards, concerns about airway support and reference to 2 SUI's involving the avoidable deaths of 2 patients. The safety issues in my case are explored in my letter to Right Hon Norman Lamb MP dated 23 February (Page xxxx) and a supplementary draft tribunal statement (Page xxxx).

74. The BMA have also been provided with my supervisor report from the Trust in my whistleblowing case. The Supervisor statement to the Tribunal is provided (Page xxxx). This offers a useful lens through which to view how Mr Du-Feu describes my case to Dr Borbora.

"Dr Chris Day was employed at the Queen Elizabeth Hospital, Woolwich as a CT2 ACCS (EM) in Anaesthesia from February 2014 for six months.

He had no previous anaesthetic experience but rapidly became a very competent anaesthetist at CT level. When he took his place on the on call rota he was able to work without direct supervision where appropriate but was aware of his own limitations and knew when to summon help or advice.

He thought clearly and logically and could prioritise according to clinical need. He functioned well as part of a team communicating effectively with the full range of healthcare professionals as well as patients and their families. He coped well with responsibility and stressful situations.

He participated actively in the audit and teaching

He was very conscientious, absolutely reliable and always attended punctually. He took very little sick leave and was always willing to work flexibly to enable the department to cope with the clinical workload and was unfailingly cheerful and as a consequence a popular colleague."

HILL DICKINSON

Employment Appeal Tribunal

Your Ref: UKEAT/0250/15/MC
Our Ref: 12003208.4.PAF
Date: 29 September 2020

Direct Line: +44 (0)161 600 8615
philip.farrar@hilldickinson.com

BY EMAIL: londoneat@hmcts.gsi.gov.uk

Dear Sirs

Re: **Dr C M Day v (1) Lewisham & Greenwich NHS Trust and (2) Health Education England UKEAT/0250/15/RN**

We write in reply to your letter dated 15 September 2020 in relation to the Claimant's application for wasted costs against this firm as the second Respondent's Solicitors and his letter dated 9 July 2020.

(In his letter dated 9 July Dr Day makes additional points to those set out by Messrs Rahman Lowe in the application which is before the EAT. In addition we do not understand the relevance of the materials supplied by him subsequently relating to the Solicitors for the first Respondent against whom no application is made.

Self-evidently this matter has been outstanding for some time pending the Claimant's endeavours to appeal the Employment Tribunal's (ET) determination of his application to review that Tribunal's Judgment at the final hearing in October 2018.

We trust it assists to provide a summary of the overall circumstances before turning to the specifics of our position, as the. We do so because this position is somewhat involved and, especially, as the Claimant is now acting in person.

The Claimant has indicated his wish to proceed with his wasted costs application, notwithstanding the ultimate decision of the Court of Appeal and previously, the EAT. This is relevant, in particular, because the Claimant accepts that the settlement agreement (October 2018), upon which the withdrawal and dismissal of his claim was based, remains in place.

The effect of the settlement agreement and the other agreements as to costs made earlier in these proceedings remain key issues as set out in our letter dated 1 August 2019.

The Claimant also maintains his equivalent application for wasted costs against ourselves to the (ET) having issued near identical applications in both the ET and in the EAT. We respectfully

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request that the interaction between these wasted costs applications is considered and to that end we refer to the current position before the ET.

The application for wasted costs in the ET has not yet been determined. However, the Claimant has also issued (new) proceedings in the ET for alleged whistle-blowing detriment for incidents following the conclusion of his previous proceedings, albeit based on the same pleaded protected disclosures. These proceedings have no specific directions as yet because the outcome of the review appeals was not yet known when this was considered for directions and it was anticipated that the result might affect these new proceedings. However, in addition the ET made directions in relation to the extant ET wasted costs application.

The ET is to reconsider the 'new' proceedings and the wasted costs application in a PHR, which is listed for 13 November 2020. In relation to this hearing, as he has indicated in his letter dated 9 July to the EAT, the Claimant requests that his ET wasted costs application is considered on the preliminary issue of whether the settlement agreement precludes a claim for wasted costs. Our position is that there are preliminary points to be addressed prior to any detailed assessment of the Claimant's applications and that it would be proportionate to address these as such. We intend to make this representation to the ET on 13 November.

In summary the applications for wasted costs are resisted in their entirety. In relation to those made to this Tribunal (EAT) we respectfully suggest that the consideration of these be reserved until the ET below has determined the application before it because one result might be an appeal and it would be unsatisfactory to have separate hearings at the EAT considering, in the main, the same factual matrix and certainly the same issues as to whether they can be considered at all. Given that the Claimant is now in person, and notwithstanding that these wasted costs applications were settled by his then Solicitors, we are especially conscious that these applications put this firm to an additional costs burden and potential SRA consequences. We seek to avoid any unnecessary duplication of costs irrespective of whether the Claimant might be ordered to pay all or a proportion of those costs. Our position is that the applications have no proper basis and pursuing these, especially following the results of the Claimant's recent appeals, is unreasonable.

Accordingly our submission is that this matter should remain stayed pending the ET's disposal of the application it has to determine and then, subject to whether any appeal is made, it should be listed for directions if it remains pursued.

We confirm we have copied this letter to the Claimant.

Yours faithfully

Hill Dickinson LLP

Cc Dr Day

Chrismarkday@gmail.com

30 September 2020

Registrar

Employment Appeal Tribunal

HMCTS

5th Floor

7 Rolls Buildings

Fetter Lane

London

EC4A 1NL

By email only: LondonEAT@justice.gov.uk

Dear Sir /Madam

Re: EAT/0250/15/RN

I wish to deal with a point made by the Second Respondent's representative in their letter of yesterday's date. In their letter they refer to the relevance of a letter to Capsticks Solicitors dated 26 March 2019. This document was provided to both the Employment Tribunal and Employment Appeal Tribunal by way of email dated 16 September 2020. The Hill Dickinson comment on the letter is as follows,

> "We do not understand the relevance of the materials supplied by him subsequently relating to the Solicitors for the First Respondent against who no application is made"

It seems to me that the relevance of the document would be immediately apparent to the Tribunal but I will set this out in any event.

The letter refers to a 2016 BMA Council meeting where a Professor sitting on the British Medical Association Council challenged the BMA Chair and lawyer present in the meeting on various actions in respect of my whistleblowing case. There is clear overlap with the matters raised in my wasted cost application as the BMA negotiated LDA contracts with the Second Respondent and provided legal advice and derogatory/false public comment on our successful Court of Appeal case on HEE's employer status. The BMA Chair and lawyer present provided objectively false responses to the Professor and those present in the Council meeting to serious issues that were raised about my case.

When there was subsequent further challenge on the issues from the relevant Professor and also on the objectively false information given to BMA Council a disciplinary process was initiated against the Professor. Astonishingly, this was chaired by one of the lawyers representing the NHS Respondents in my case and a senior doctor also from the First Respondent. This process ultimately resulted in the Professor being removed from the BMA. My letter to Capsticks includes a direct quote from the relevant Professor which I repeat;

> *"Last year repeated complaints were lodged against me as a means to silence me, after I had raised concerns in Council about the BMA's handling of the Chis Day whistleblowing case. My expulsion on new charges of bullying and harassment of staff is a final attempt to silence me on whistleblowing and to cover up the gross failings and disregard for governance within the BMA"*

It should be noted that some of the issues raised by the Professor directly relate to the actions by the NHS and BMA on the Health Education England worker/employer point that is obviously relevant to my wasted costs application. The other issues raised by the Professor are equally serious and relate to the alleged gagging and dismissal of the BMA officer that had conduct of the early stages of my case and also the alleged destruction /loss of his notes. I was unaware of some of these issues until an audio of the relevant 2016 BMA Council meeting was leaked outside of the BMA.

These matters and more are now subject to 3 separate Solicitor Regulator Authority investigations that have been progressing since September 2019. Some of the issues have also been discussed in Parliament.

The wider context of the wasted cost application is important for the Tribunal to consider when the explanation of the Respondents' and their lawyers is considered and particular if an explanation of genuine error or honest mistake is advanced in response to my wasted cost application.

It is clear that the actions of the lawyers representing the NHS in this case were deliberate and co-ordinated, which one would expect from lawyers charging £700k. The fact one of the lawyers representing the NHS in my case was instructed by the medical trade union to discipline the relevant Professor raising serious issues about this case is a powerful example. The fact the same issues are now subject to an SRA investigation makes the actions against the Professor even more significant.

I would also repeat that the Tribunal has the power to make a wasted cost order of its own initiative which could also include Capsticks Solicitors if the Tribunal felt that was appropriate.

I have copied this letter to the Respondents and the London South Employment Tribunal. I hope I can be forgiven for not writing separately to the employment tribunal. I am currently a locum A&E doctor with a heavy clinical workload as a result of the pandemic.

Yours Sincerely,

Dr Chris Day

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Whistleblowing

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03 July 2019

Volume 662

4.26 pm

Norman Lamb (North Norfolk) (LD)

I beg to move,

That this House calls for a fundamental review of whistleblowing regulation to provide proper protection for a broader range of people.

I thank the hon. Member for Stirling (Stephen Kerr) for his support in making the application to the Backbench Business Committee and all the other MPs who supported the application. I also thank the Backbench Business Committee, the Chair of which is sitting in front of me, for enabling this incredibly important debate to take place. I want to start by telling four brief stories to illustrate why facilitating whistleblowing is so important.

I was the Minister in the then Department of Health who initiated the review led by James Jones, the former Bishop of Liverpool, of the horror of what happened at Gosport War Memorial Hospital. In his report from June last year, the very first chapter deals with the nurses who tried to speak up in 1991 about what was happening in that hospital. However, the report refers to the silencing of those nurses' concerns and to a patronising attitude towards them, although they were trying to do the right thing. The consequence of not listening to those nurses is the extraordinary and horrifying conclusion of the report, which is that over 450 older people died following the inappropriate prescribing of opioids. These old people had gone in for rehabilitation but came out dead.

Previous Skip Next

In this context, we can often be talking about life and death situations, so enabling and empowering people to speak up can literally save lives. That, at its most clear and stark, is why this matter is so important. The horrific scandal at Gosport hospital could have been stopped if those nurses have been listened to, but they were not, and that is an outrage in itself.

Scrolling forward to 2013, Dr Chris Day, a brave junior doctor working in a south London hospital, raised safety concerns about night staffing levels in an intensive care unit. It is in all our interests that brave people should speak out about safety concerns in any part of our health service, but perhaps particularly in intensive care units.

What happened to Dr Day, because he spoke out, is wholly unacceptable. He suffered a significant detriment. His whole career has been pushed off track, and his young family have been massively affected. Junior doctors in that unit were put in the invidious position of being responsible for far too many people compared with national standards, so he pursued a claim against both the trust and Health Education England. The NHS spent £700,000 of public money on defending the claim and, in large part, on attempting to deny protection to junior doctors who blow the whistle against Health Education England. Lawyers, disgustingly, were enriched.

Late last year, the tribunal that eventually heard Dr Day's case ended early after he was threatened with a claim for substantial costs. He and his wife could not face the prospect of losing their young family's home, so he caved in. That is surely scandalous treatment of a junior doctor. He was defeated by superior firepower. We have the grotesque spectacle of the NHS, of all organisations, deploying expensive QCs to defeat a junior doctor who raised serious and legitimate patient safety issues.

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Justin Madders (Ellesmere Port and Neston) (Lab)

I pay tribute to the right hon. Gentleman's work on Dr Chris Day's case to get the answers we deserve on how he has been treated. Many whistleblowers face an inequality of arms at tribunals. They have often lost their job by that point, and they face a very difficult situation, with highly paid QCs running rings around them, which is often the result of employers trying to find loopholes in the law to avoid liability.

Norman Lamb

I thank the hon. Gentleman for his support in pursuing the Dr Day case, and I completely agree with the points he makes.

Sir Robert Francis, in his 2015 "Freedom to Speak Up" report, spoke about how NHS whistleblowers who had given evidence to him overwhelmingly experienced negative outcomes, and he talked of a hostile culture of fear, blame, isolation, reprisals and victimisation—in our NHS, for goodness' sake.

Those stories continue. The impact on individuals can be devastating and profound. They can be ostracised, abused and disadvantaged in their career, with dire consequences for their mental health. One nurse who tried to expose wrongdoing said, "I would never put myself in that position again. I would rather leave." What a damning indictment of how we treat people in our treasured and cherished public service.

Share

Mr Andrew Mitchell (Sutton Coldfield) (Con)

The right hon. Gentleman and I have both worked on the general issue of whistleblowing. I pay tribute to his leadership on the matter, along with that of my hon. Friend the Member for Stirling (Stephen Kerr), who I hope will catch your eye later, Mr Deputy Speaker.

The right hon. Gentleman is making some very good points, and we know two things. First, we know there is strong concern across the country about how whistleblowers are being treated. We see it in the west midlands, and he is articulating the point. Secondly, we know whistleblowers help to ensure proper accountability and transparency. In my view, the work that he and others are doing on whistleblowing has not received anything like the amplification it requires.

Share

Norman Lamb

I totally agree with the points the right hon. Gentleman makes, and he makes them well. I will come on to discuss them in a moment.

51

The NHS constitution pledges that NHS employers will support all staff in raising their concerns. As we have heard on a number of occasions, however, that clearly has not happened. Fine words are not enough. Sadly, staff do not have the confidence to raise concerns without fear of repercussions.

The most recent NHS staff survey, in which staff were asked whether they would feel safe raising concerns about unsafe clinical practices, found that only a fifth said that they strongly agreed that that was the case, and three in 10 said that they did not feel safe raising such concerns. When asked whether they were confident that their organisation would address their concerns, just 14.8% of staff strongly agreed with that statement. Given that 17.8% of staff said that they had seen errors, near misses or incidents that could have hurt patients in the last 12 months, it should be deeply concerning to all of us that staff in the NHS do not feel that their concerns are being acted on.

As the right hon. Member for North Norfolk mentioned, junior doctor Chris Day was a prominent example of someone who blew the whistle and was treated appallingly. He raised legitimate concerns about staff ratios, then lost his job. The tribunal action that followed resulted in a lengthy and, in my view, wholly unnecessary legal battle in which Health Education England effectively sought to remove around 54,000 doctors from whistleblowing protection by claiming that it was not their employer. Four years and hundreds of thousands of pounds later, it eventually backed down and accepted that it should be considered an employer after all.

Share

Norman Lamb

Is the hon. Gentleman aware that the contract between Health Education England and the trusts, which demonstrates the degree of control that Health Education England has over the employment of junior doctors, was not disclosed for some three years in that litigation? It was drafted by the very law firm that was making loads of money out of defending the case against Chris Day. I have raised this with Health Education England, but it will not give me a proper response because it says that the case is at an end. Does the hon. Gentleman agree that this is totally unacceptable and that it smacks of unethical behaviour for that law firm to make money out of not disclosing a contract that it itself drafted?

52

From: "Chris Day" <chrisday@doctors.org.uk>
Subject: Re: FW: Emergency Medicine Run Through Training Pilot
Date: Fri, 07 Mar 2014 09:51:15 +0000
To: "EMRunThrough" <EMRunThrough@southlondon.hee.nhs.uk>

Dear Jennifer

Thanks for contacting me yesterday and your explanation

Please find attached run through form

I have accepted the offer of run through training with the intention of taking further OOP periods. If this is not possible I would not be in a position to accept run through training

Kind regards

Chris

On Thu, 6 Mar 2014 11:03:18 +0000
EMRunThrough <EMRunThrough@southlondon.hee.nhs.uk> wrote

Dear Dr Day

As discussed this morning we would like to give you one more opportunity to consider a conversion to run through training.

Please could you complete the attached form and return to this address by close of business Friday 7th March.

If you do not have access to a printer and scanner please just complete the word document with your details and if necessary we can contact you later for your physical signature.

Best wishes

Jennifer Baker
Operations Officer
Health Education South London
Operations Department
Working also on behalf of Health Education North Central and East London and Health Education North West London
Stewart House | 32 Russell Square | London | WC1B 5DN
T: 020 7866 3222
E: ACCS@southlondon.hee.nhs.uk;
Emergencymedicine@southlondon.hee.nhs.uk< >

From: EMRunThrough
Sent: 22 January 2014 11:28
Subject: Emergency Medicine Run Through Training Pilot

Dear ACCS EM trainee,

The General Medical Council (GMC) has formally approved implementation of an Emergency Medicine Run Through training pilot in 2014. Please find enclosed further information describing the run-through training pilot, and the impact for ACCS EM and EM CT3 trainees, and future applicants.

According to our records, we believe you may be eligible to be offered a conversion to run through training.

Please note that if you wish to transfer to a run-through training programme, your training will continue within your current ACCS EM training programme, with ST4+ being within one of the three London LETB regions. The process for continuing into ST4 -6 training placements is being finalised and will be shared with you shortly.

Please could you carefully read the enclosed document, complete the pro-forma (below) and return it to EMRunThrough@southlondon.hee.nhs.uk< > *by 5pm on 28 February 2014.*

Should you have any queries, please do not hesitate to get in touch.

Yours sincerely

Jennifer

EMERGENCY MEDICINE RUN THROUGH PILOT: RESPONSE PRO-FORMA

By completing this pro-forma, respondents are confirming that they have read and understood the guidance **Emergency Medicine Run Through Training Pilot: Arrangements for Offering Run Through Training to Existing Acute Care Common Stem (ACCS) Emergency Medicine (EM) and CT3 Emergency Medicine (EM) Trainees**. In particular, respondents are confirming they understand the eligibility requirements.

Section 1
In line with the guidance, please put 'X' in the box next to the statement which accurately applies to you:

A. I meet the eligibility requirements, and should be offered run through training. [x]

B. I do not meet the eligibility requirements, and as such should **not** be offered run through training. [ ]

If you have ticked the box next to Statement "A", please complete Section 2 and Section 3.

If you have ticked the box next to statement "B", please complete Section 3 only.

Section 2 ***(Only for those who have ticked Statement "A")***
In line with the guidance, please put 'X' in the box next to the statement which accurately applies to you:

A. I am eligible and would like to convert to run-through training within my current training programme [x]

B. I am eligible and would like to remain in core training within my current training programme [ ]

Section 3
I confirm that I understand the guidance and eligibility definition provided in: Emergency Medicine Run Through Training Pilot: *Arrangements for Offering Run Through Training to Existing Acute Care Common Stem (ACCS) Emergency Medicine and CT3 Emergency Medicine Trainees* and that the answers I have provided above are correct.

I confirm I understand that Emergency Medicine Run Through training will continue within my current ACCS EM/CT3 EM training programme and my ST4+ Emergency Medicine training within one of the three London LETB regions.

Name: ____Chris
Day_____

Signature: _____

GMC Number: __7040945_____ 7/3/14 Date:
_____7/3/14_____

Guy's and St Thomas' NHS

NHS Foundation Trust

Medical Human Resources
Guy's Hospital
New City Court
20 St Thomas St
London
SE1 9RT
Tel 020 7188 7188

CONFIDENTIAL

Tuesday, 24 June 2014

Dear ACCS Trainee,

I am delighted to provisionally offer you a current placement of ACCS Trainee at Guy's and St Thomas' NHS Foundation Trust commencing from Wednesday, 6th August 2014. This offer is **subject to clearance, ongoing professional registration and holding a licence to practise, immigration status, and references where appropriate. You will also require an Occupational Health check.**

As a direct consequence, there are several important pre employment procedures that you will need to complete before your appointment can be confirmed. Please read the following carefully and follow the instructions so that we can ensure that there are no delays to starting your employment with the Trust.

1. Criminal Records Bureau checking (CRB)

At Guys and St Thomas' we take our safeguarding responsibilities very seriously and our duty to protect patients is of paramount importance. We therefore require all staff to have the correct level of CRB check **BEFORE** they commence employment. If you do not have the correct level of CRB check this will **restrict your duties or may prevent you from working.**

For professional medical and dental staff you are required to have:
An enhanced CRB disclosure, including both of the following checks:
Protection of Vulnerable Adults / ISA Vulnerable Adults' Barred List
The date of your disclosure must be within 3 years prior to your start date with this Trust

Please send me a copy of your current CRB Disclosure immediately. You can scan and e-mail to me, fax to 020 7188 0812 or post to me at Medical HR, Guy's Hospital, New City Court, 20 St Thomas Street, London, SE1 9RT

If you are already aware that your CRB check does not meet ALL of the above requirements then you should contact us immediately.

Alternatively, you will be contacted by our CRB team to confirm that your current disclosure is of the correct level and up to date, and if necessary they will make arrangements to meet with you in order to complete a new disclosure request. As the disclosure process is often lengthy (up to 60 days) you need to act immediately if a new check is required before you commence employment.

Please remember if you do not have the correct level of CRB check this will restrict your duties or in some cases prevent you from working.

2. Pre employment checks and New starter documents for Medical HR

Enclosed with this provisional offer letter is a link to the following documents which should be completed and returned as soon as possible to the following address: Medical HR, Guy's Hospital, New City Court, 20 St Thomas Street, London, SE1 9RT

- New starter form
- Equality & Diversity form
- P46
- Occupational Health form (complete & return directly to OH at the following address Occupational Health Department, The Education Centre, St Thomas' Hospital Westminster Bridge Rd, London SE1 7EH with any previous immunisation documents.
- Application for Residential Accommodation (complete & return if required)
- Junior Doctor Mess form (complete & return if required)

- NHS Pension Information sheet

We also require a PHOTOCOPY of your passport/VISA (or Birth Certificate), GMC, CRB Disclosure, National Insurance Number (NI card, P45, P60, *previous payslip) and two proofs of address to be sent immediately.*

On the first day of your induction you will be required to produce the following ***original*** *documents so that we may meet our legal obligations.*

- Enhanced CRB disclosure
- Passport or Birth Certificate plus photographic identification
- National Insurance Number (NI card, P45, P60)
- P46 if P45 not yet issued
- GMC licence to practice
- 2 x Document verifying address (recent bill)
- Most recent payslip

3. Induction

All new junior doctors who start in the Trust must complete an online induction programme which contains elements of your mandatory training. This induction package can be completed before you arrive in the Trust by following the instructions below. This online package must be completed by the end of your second day of employment.

If you don't complete the induction by the end of your second day will mean that you are non-complaint with Trust policy and will therefore not be "cleared" to commence work and hence you will not be paid.

There are six modules that must be completed on the online induction;

- Module 1: Introduction
- Module 2: Safeguarding Children
- Module 3: Health and Safety
- Module 4: Fire Safety
- Module 5: Manual Handling
- Module 6: Equality and Diversity

In addition to the Online Induction, all new starters are expected to **attend the induction session** at St Thomas' Hospital (exact time and venue to be confirmed by the Post Graduate Centre nearer the time). Medical HR and payroll will be present at the induction session to view original documentation. You will also be expected to visit occupational health during the induction session to ensure that you are cleared for work

4. Flexible training

If you are a flexible trainee then your London Deanery Flexible Training Approval Form (FTAF) must be fully completed, including final Deanery approval, with a copy sent to the Trust **prior** to your start date. You will not be paid until the completed FTAF is received by the Trust in order to avoid unnecessary overpayments. For further information regarding Flexible training approval please contact Ian Rothwell – ian.rothwell@gstt.nhs.uk or 020 7188 5632.

5. Monitoring hours

You will be asked to complete diary cards during the tenure of your post. These form part of the important process in monitoring junior doctors' hours and you have a legal obligation to complete them. For further information regarding hours of work please contact Ian Rothwell – ian.rothwell@gstt.nhs.uk or 020 7188 5632.

6. Post

The Post Room receives a considerable quantity of insufficiently addressed Doctor's mail that is sent to Medical HR for identification and re-routing. This delays delivery for some time and in some cases re-routing is impossible. To ensure efficient delivery you are asked to minimise use of the hospital postal service. In the event that your correspondents need to write to you, they should use your GRADE and SPECIALITY as well as your FULL NAME and DEPARTMENT.

7. Switchboard

Doctors are requested to let the switchboard know the telephone number of their residence in case they are required in an emergency. On commencement with us you should also collect your Bleep from the Telephone Exchange.

If you need any help or advice with a particular enquiry, please do not hesitate to contact any member of the Medical HR team, as we would be happy to assist.

Please note that, although you have been accepted into a training scheme run by the London Deanery, this letter is the only letter setting out the terms of the Trust's offer of employment subject to the above pre-employment checks. Any previous communication from the London Deanery (or any third party) notifying you of your acceptance into the training scheme, or details of any other employers, was not an offer of employment or contract on behalf of this employer, and does not form part of the terms and conditions of this offer of employment. In particular, the supplementary banding payable on commencement (under paragraph 21 of the national terms and conditions of service) will be set out in your contract. In accepting this employment you agree to all the terms offered, any *employer policies and procedures referred to and the initial pay banding.*

I do hope that you enjoy your appointment with us.

Yours sincerely

Sandra Kadungure
Medical HR Advisor

Return to Sandra Kadungure, Medical HR Advisor, Medical HR, Guy's Hospital, New City Court, 20 St Thomas Street, London, SE1 9RT

I acknowledge receipt of the offer letter dated _____ and confirm that I will be able to take up the placement of _____on _____

I have enclosed the following documents

Completed new starter form	☐
Completed equality & Diversity form	☐
Completed P46	☐
Completed NHS Pension Questionnaire	☐
Completed Application for Residential Accommodation	☐
Completed Junior Doctor Mess form	☐
PHOTOCOPY of my passport/VISA	☐
PHOTOCOPY of my Birth Certificate	☐
PHOTOCOPY of my GMC	☐
PHOTOCOPY of my CRB Disclosure	☐
PHOTOCOPY of my National Insurance Number	
NI card	☐
P45	☐
previous payslip	☐
PHOTOCOPY of two proofs of address	☐

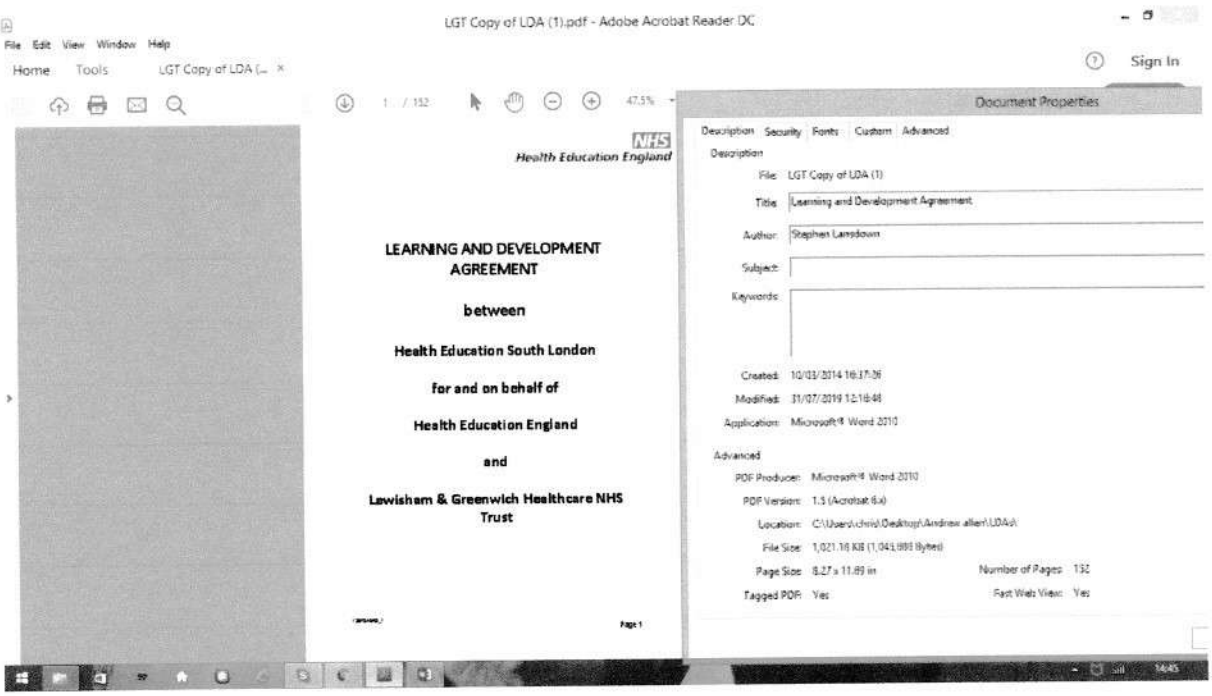
I confirm that I have Completed the Occupational Health form and returned it to OH at: OHAdministrator@gstt.nhs.uk **or**	

Occupational Health Service
The Education Centre
St Thomas' Hospital
Westminster Bridge Rd
London SE1 7EH

Signed_____

Please print name_____

Date _____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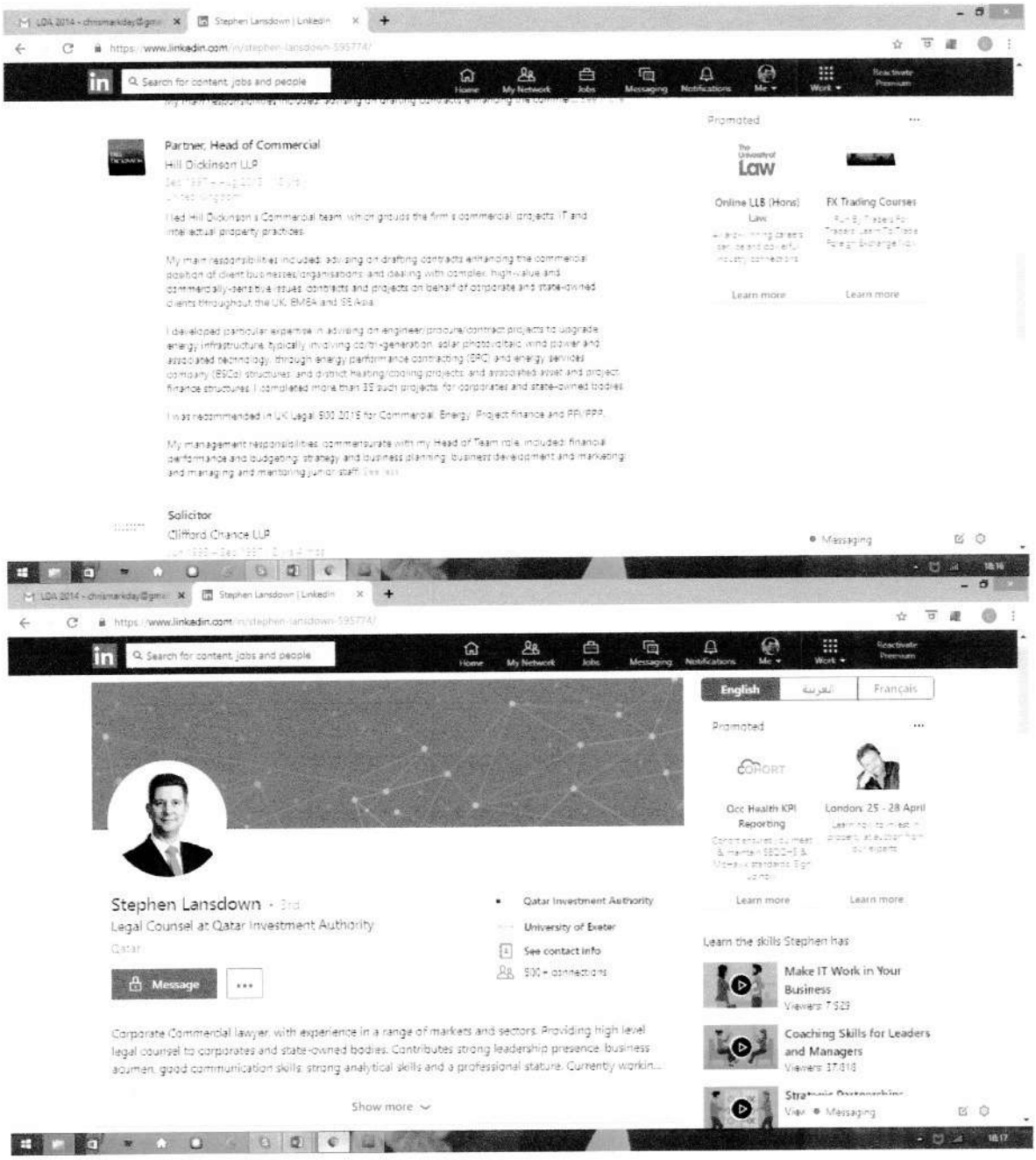
Health Education England
LEARNING AND DEVELOPMENT AGREEMENT
between
Health Education South London
for and on behalf of
Health Education England
and
Lewisham & Greenwich Healthcare NHS Trust
Page 1
Document Properties
Description Security Fonts Custom Advanced
Description
File: LGT Copy of LDA (1)
Title: Learning and Development Agreement
Author: Stephen Lansdown
Subject:
Keywords:
Created: 10/03/2014 16:37:26
Modified: 31/07/2019 12:18:48
Application: Microsoft® Word 2010
Advanced
PDF Producer: Microsoft® Word 2010
PDF Version: 1.5 (Acrobat 6.x)
Location: C:\Users\chris\Desktop\Andrew allen\LDAs\
File Size: 1,021.16 KB (1,045,898 Bytes)
Page Size: 8.27 x 11.69 in
Number of Pages: 152
Tagged PDF: Yes
Fast Web View: Yes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Partner, Head of Commercial
Hill Dickinson LLP
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Stephen Lansdown · 3rd
Legal Counsel at Qatar Investment Authority
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University of Exeter
See contact info
500+ connections
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Promoted
Occ Health KPI Reporting
London: 25 - 28 April
Learn more
Learn the skills Stephen has
Make IT Work in Your Business
Viewers: 7,923
Coaching Skills for Leaders and Managers
Viewers: 37,618
Show more

Learning and Development Agreement between HEE and Barts and the London NHS Trust for Misc education, training & development

The buying process is complete

The buyer is publishing the contract documentation to meet the government transparency commitments.

Created on	17/11/2014
Reference number	HEE/LND/049
Deadline date	31/05/2015
Estimated value	£79,997,749 - £79,997,749
Location where the contract is to be carried out	United Kingdom
Name of the buying organisation	Health Education England (see other contracts from this organisation)

Description of the contract

Learning and Development Agreement between HEE and Barts and the London NHS Trust for Misc education, training & development

Additional information

Additional Notes	N/A
Is it a framework agreement?	No
Awarded on	31/03/2014
Awarded value	£79,997,749

Awarded suppliers

Name	Address

Name	Address
Barts and the London NHS Trust (see other contracts awarded to this supplier)	Glen Road, Plaistow, London, E13 8SL

Who to contact

Contact name	Health Education North Central and East
Address	Stewart House, 32 Russell Square, London, WC1B 5DN

Warning: This is archived data that is no longer being updated.

The Contracts Finder Archive site is currently a beta site. If you notice any issues please contact us.

Learning and Development Agreement between HEE and University College London Hospitals NHS Foundation Trust for Misc education, training & development

The buying process is complete

The buyer is publishing the contract documentation to meet the government transparency commitments.

Created on	19/11/2014
Reference number	HEE/LND/060
Deadline date	31/03/2015
Estimated value	£14,733,317 - £14,733,317
Location where the contract is to be carried out	United Kingdom
Name of the buying organisation	Health Education England (see other contracts from this organisation)

Description of the contract

Learning and Development Agreement between HEE and University College London Hospitals NHS Foundation Trust for Misc education, training & development

Additional information

Additional Notes	N/A
Is it a framework agreement?	No
Awarded on	01/04/2014
Awarded value	£14,733,317

Awarded suppliers

Name	Address
University College London Hospitals NHS Foundation Trust (see other contracts awarded to this supplier)	235 Euston Rd, Fitzrovia, London, NW1 2BU

Who to contact

Email HEE.CentralFinanceContracts@NHS.net

Warning: This is archived data that is no longer being updated.

The Contracts Finder Archive site is currently a beta site. If you notice any issues please contact us.

Learning and Development Agreement between HEE and Tavistock and Portman Foundation Trust for Misc education, training & development

The buying process is complete

The buyer is publishing the contract documentation to meet the government transparency commitments.

Created on	19/11/2014
Reference number	HEE/LND/059
Deadline date	31/03/2015
Estimated value	£42,618,972 - £42,618,972
Location where the contract is to be carried out	United Kingdom
Name of the buying organisation	Health Education England (see other contracts from this organisation)

Description of the contract

Learning and Development Agreement between HEE and Tavistock and Portman Foundation Trust for Misc education, training & development

Additional information

Additional Notes	N/A
Is it a framework agreement?	No
Awarded on	01/04/2014
Awarded value	£42,618,972

Awarded suppliers

Name	Address

Name	Address
Royal National Orthopaedic Hospital NHS Trust (see other contracts awarded to this supplier)	Brockley Hill, Stanmore, Middlesex, HA7 4LP

Who to contact

Email HEE.CentralFinanceContracts@NHS.net

Warning: This is archived data that is no longer being updated.

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Learning and Development Agreement between HEE and Great Ormond Street Hospital for Children NHS Trust for Misc education, training & development

The buying process is complete

The buyer is publishing the contract documentation to meet the government transparency commitments.

Created on	17/11/2014
Reference number	HEE/LND/052
Deadline date	31/03/2015
Estimated value	£6,849,922 - £6,849,922
Location where the contract is to be carried out	United Kingdom
Name of the buying organisation	Health Education England (see other contracts from this organisation)

Description of the contract

Learning and Development Agreement between HEE and Great Ormond Street Hospital for Children NHS Trust for Misc education, training & development

Additional information

Additional Notes	N/A
Is it a framework agreement?	No
Awarded on	31/03/2014
Awarded value	£6,849,922

Awarded suppliers

Name	Address
Great Ormond Street Hospital for Children NHS Trust (see other contracts awarded to this supplier)	Great Ormond Street Hospital, Great Ormond Street, London, WC1N 3JH

Who to contact

Contact name	Health Education North Central and East London
Address	32 Russell Square, London, WC1B 5DN

Warning: This is archived data that is no longer being updated.

The Contracts Finder Archive site is currently a beta site. If you notice any issues please contact us.