EMPLOYMENT TRIBUNALS

Claimant:		**Respondents:**
Dr P Leonard	**v**	The Whittington Hospital NHS Trust **(R1)**
		Dr Richard Jennings **(R2)**
		Mr Simon Pleydell **(R3)**

Heard at: Watford **On:** 19 to 30 June 2017, In Chambers 23-25 January 2018, 1 February 2018, 18 and 20 April 2018.

Before: Employment Judge Henry

Members: Mrs A Elkeles and
Mrs I Sood

Appearances
For the Claimant: Ms E Misra - Counsel
For the Respondents: Ms A Mayhew - Counsel

JUDGMENT

1. It is the unanimous decision of the tribunal that the claimant has not suffered any detriment pursuant to section 47B of the Employment Rights Act 1996, on making protected disclosures.

2. The claimant's claims are accordingly dismissed

REASONS

1. By a claim form presented to the tribunal on 2 September 2016, the claimant presents complaints for detriment on having made protected interest disclosures.

2. The claimant commenced employment with the first respondent on 6 April 2009, and has been continuously employed for seven years.

The issues

3. The issues for the tribunal's determination are as follows:

   3.1 What did the claimant say or write? The claimant relies on the following:

3.1.1 Meeting with Mr Pleydell on 10 March 2015;

3.1.2 Meeting with Mrs Davies on 20 March 2015;

3.1.3 Email to Mrs Davies on 7 May 2015;

3.1.4 Meeting with Dr Jennings on 21 May 2015;

3.1.5 Letter to Dr Jennings and Mrs Davies on 8 July 2015;

3.1.6 Email and attachment to Ms Shamima Choudhury (Human Resources) on 15 July 2015.

3.1.7 A list of issues of concerns provided to Mr David Major on 19 August 2015, in respect of the investigation process;

3.1.8 Email to Ms Norma French (Human Resources) dated 2 November 2015;

3.1.9 Statement of case, provided to the disciplinary panel ahead of the hearing, on 24 February 2015;

3.1.10 Letter to the Chair of the Trust board, Steve Hitchins, on 27 September 2015;

3.1.11 Letter to Steve Hitchins on 14 December 2015;

3.2 In any, or all of these, was information disclosed which in the claimant's reasonable belief, tended to show one of the criteria set out at paragraph 43B(1) of the Employment Rights Act 1996. The claimant relies on subsection (b), that; a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject; and subsection (d), that; the health or safety of any individual has been, is being or is likely to be endangered. (and as subsequently amended, to include section 43B(1)(f) that information tending to show any matter falling with in any of the proscribed criteria under sections 43B(1)(a) to (e) of the ERA, has been, or is likely to be deliberately concealed).

3.3 If so, did the claimant reasonably believe that the disclosure was made in the public interest?

3.4 If so, was that disclosure made to the employer or to another person whose conduct the claimant reasonably believed related to the failure or any other person who had legal responsibility for the failure?

3.5 If not, was it made in circumstances where:

3.5.1 It was made other than for personal gain; and

3.5.2 The claimant reasonably believed that the information disclosed, and any allegation contained in it, was substantially true; and

3.5.3 It was reasonable for her to make the disclosure having regard to the identity of the person to whom it was made, its seriousness, whether it was continuing, the action which had been, or might have been expected to have been taken and any procedure which was authorised by the employer; and

3.5.4 Where it was likely that she would be subject to a detriment by the employer, or that evidence would be concealed by the employer, if the disclosure was made to them; and

3.5.5 The employer had failed to respond appropriately to an earlier disclosure.

3.6 If protected disclosures are proved, was the claimant, on the ground of any protected disclosure found, subject to a detriment by the employer or another worker, in any of the following:

3.6.1 The conduct of Mr Pleydell at the meeting on 20 May 2015, as more particularly set out at paragraph 35 of the claim;

3.6.2 The decision not to pursue mediation to resolve the matters, as more particularly set out at paragraphs 39 and 40 of the claim form;

3.6.3 The appointment of Dr Jennings and Ms Davies, as case managers, having a conflict of interest, as more particularly set out at paragraph 43 of the claim form;

3.6.4 The commencement of a formal investigation into the claimant's conduct or behaviour, as more particularly set out at paragraphs 45 and 70 of the claim form;

3.6.5 Retaliation from Ms Phillips of raising complaints, wanting a formal investigation process, in response to the claimant raising queries, and then escalating concerns about the Savene incident to the Trust, which directly implicated Ms Phillips, as more particularly set out at paragraph 46 of the claim form;

3.6.6 The response email from Ms French on 23 November 2015, which concluded by threatening the claimant with disciplinary action, as more particularly set out at paragraph 49 of the claim form;

3.6.7 The claimant being sent the investigation report on 23 December 2015; the timing of which (just before Christmas) was particularly vindictive or at least hugely inconsiderate and

inappropriate, given the delays to date, as more particularly set out at paragraph 54 of the claim form;

3.6.8 The disciplinary process and its instigation was high-handed and oppressive, as more particularly set out at paragraph 60 of the claim form;

3.6.9 The disciplinary sanction, insofar as it was on the ground of the claimant having made one or more protected disclosures, as more particularly set out at paragraph 62 of the claim form;

3.6.10 Dr Jennings deliberately excluding and undermining the claimant because of the protected disclosures she had made by then, as more particularly set out at paragraph 66 of the claim form;

3.6.11 The claimant suffering the ongoing detriment of having to work in an uncomfortable environment, in which she did not feel "safe" as a whistle-blower, and was under the cloud of a disciplinary warning, as more particularly set out at paragraph 73 of the claim form.

Evidence

4. The tribunal heard evidence from the claimant, and the following witnesses on her behalf:

- Ms Ophelia Ponteen, Administrative Service Manager
- Ms Patricia Booth, Clinical Nurse Specialist for Lung Cancer and Acute Oncology
- Ms Helen Taylor, Clinical Director for the Clinical Support Service (Head of Pharmacy – 2015).

5. The tribunal also heard evidence from the following witnesses on behalf of the respondent:

- Dr Richard Jennings, Executive Medical Director
- Mr Simon Pleydell, Chief Executive
- Mr Stephen Bloomer, Chief Finance Officer
- Ms Philippa Davies MBE, Director of Nursing and Patient Experience
- Ms Norma French, Director of Workforce
- Ms Carol Gillen, Chief Operating Officer
- Mr David Major, Director of Ibex Gale Limited – Employee Relations Consultancy
- Ms Karen Phillips, Macmillan Lead Cancer Nurse

6. The witnesses' evidence in chief was received by written statements upon which they were then cross-examined. The tribunal had before it a bundle of documents of some 3,000 pages (Exhibits R1).

7. From the documents seen and the evidence heard, the tribunal finds the following material facts.

Facts

8. The claimant is a consultant oncologist, having been employed by the respondent Trust from 6 April 2009. She was the Trust's acute oncology lead for the Lung Cancer Multidiscipline Team (Lung MDT) Clinic Chemotherapy Service, and also the Trust's lead cancer clinician; a role from which she resigned, in 2016.

9. The second respondent, Dr Jennings, is the Trust's Executive Medical Director. Dr Jennings held overall responsibility for doctors working at the Trust, overseeing issues of performance, quality and standards. He is also the responsible officer, along with the Director of Nursing, for patient safety at the Trust.

10. The third respondent, Mr Pleydell, is the Trust's Chief executive. He is the organisational head of the Trust, and holds overall clinical, managerial and financial responsibility for the Trust, overseeing all areas of the Trusts management and day to day operations, holding overall responsibility for the safe operation of the trust and implementation of internal policy. All senior clinicians within the Trust are accountable to him, via their respective clinical directors and integrated care units.

11. Ms Karen Phillips, was the Trust's lead cancer nurse, joining the respondent Trust in January 2014, an appointment in which the claimant had participated, and had been impressed by Ms Phillips.

12. The tribunal pauses here, to set out the reporting structure of the Trust, which is material for an understanding of the working dynamics and the interplay between the material characters.

13. Ms Phillips, Lead Cancer Nurse, reported to Ms Deborah Clatworthy, Head of Nursing and Cancer and Surgery, who in turn reported to Ms Philippa Davies, Director of Nursing. The claimant reported to Dr Harper, Clinical Director for Oncology.

14. In the claimant's role as Lead Cancer Clinician, she was part of a triumvirate, working closely with the Lead Cancer Nurse (Ms Phillips) and the Cancer Services Manager in delivering cancer services to local patients.

15. The Trust board, consisted of the Chief Executive Officer, Mr Simon Pleydell, and the following further executive officers:

    - Dr Jennings, Medical Director;
    - Ms Daniella Peter, Head of Integrated Risk Management;
    - Ms Fiona Isacsson, Director of Operations, Surgery, Cancer and Diagnostics;
    - Ms Norma French, Director of Workforce;
    - Ms Siobhan Harrington, Deputy Chief Executive Officer, Director of Strategy;
    - Ms Carol Gillen, Chief Operating Officer;
    - Ms Philippa Davies, Director of Nursing.

16. It is not in dispute that historically, the trust's Lung Cancer Multidiscipline Team (Lung MDT team) had been dysfunctional, for which an externally-led mediation process took place on the 4 and 5 November 2014, and by which a confidential agreement was reached between the members, being a total of 14, and to which Ms Phillips had been a party, together with the claimant.

17. It is here noted that, Ms Phillips was not a formal member of the Lung MDT team, but had been brought into the process as she had covered the Lung CNS (Clinical Nursing Specialist) during periods of sickness. It is also here noted that the claimant had challenged Ms Phillips' participating in the mediation process.

18. The tribunal also here notes and records that, shortly after Ms Phillips had joined the respondent Trust, relations between the claimant and her deteriorated, it being the claimant's evidence, that:

> "When Ms Karen Phillips joined the Trust in January 2014, as lead cancer nurse, I set up a weekly one-to-one meeting with her as she was new to the Trust and had not held a lead cancer position before. I wanted to ensure she had senior support as well as to develop a good professional relationship in order for us to manager the cancer service. I also shared some advice on how I worked to avoid any team or relationship problems. I shared how I didn't entertain corridor gossip and valued prompt feedback if I said or did things that made her feel uncomfortable. After six weeks of these meetings, Ms Phillips informed me that she could no longer attend our weekly meetings due to pressure on her time from the senior nursing team as it was now expected she took part in visible leadership. This decision to no longer attend made me feel sad as I believed by building a professional relationship and working through issues together outside larger meetings would help us both to deliver the agenda for the wider Trust. It also gave me the impression that Ms Phillips did not see our roles as lead cancer clinician and lead cancer nurse as complementary.
>
> It was around this time, I felt there were some issues that Ms Phillips had with our working relationship and this in turn impacted on our need to address the issues on the agenda for Trust-wide cancer services. Ms Phillips was becoming more involved in the day-to-day running of the chemotherapy service and unavailable for team meetings as she claimed she was needed as a third nurse on the chemotherapy unit. This meant she prioritised covering the chemotherapy staff sickness, and did not attend the senior weekly cancer team meetings, as well as missing key period review meetings where her presence was quite essential. I raised this concern with Deborah Clatworthy, her line manager, as I felt she was making unilateral decisions on the functioning of the chemotherapy unit that were outside her remit, leading to confusion in the team and negatively impacting on the other services with whom I had built up good working relationships. … Ms Phillips continued to work in isolation from me and our working relationship became more strained. … I felt I was making a real effort but my adapted working style did not impact positively on our working relationship. It seemed that Ms Phillips' behaviour towards me was becoming increasingly more obstructive and encounters were at times quite hostile, not only to me but to others too."

19. The claimant maintains that this situation endured until an incident in August 2014, which was addressed by Ms Clatworthy at the material time, and in respect of which she gave an explanation of circumstance to the claimant on 26 August, which is here set out in detail, as it sets in context, events which

underpin later events, and the material incidents for the tribunal's determination:

> "Perhaps it would be helpful Pauline if I outlined the lead up to my discussion with Richard.
>
> I was actually on the unit when the PT was in. Karen discussed her case with me as I commented on the fact that she was young. She, at this point, mentioned that there was a possibility that she had been given some treatment which may not have been indicated for her disease type and asked if this was the case, would it have been recordable as a medication incident, to which I replied yes, probably. She stated that you and she had had a brief discussion and thought that you would complete the datix form. We did not discuss it further.
>
> As I have shared responsibility with Nick and Fiona for risk and governance in the division, I am copied in to all medication incidents when they are put on datix and have a regular medication incident report from Claire in Pharmacy which goes to the Quality cmte for discussion.
>
> As I did not see this incident recorded on the report or had not had an alert from Datix, I asked Nick if he was aware of the incident, which he was not. I then asked Karen if it had been recorded and also where chemotherapy incidents are discussed as they are no *[sic]* discussed specifically in the Quality cmte as I assumed they would form part of a discussion in unit meetings. There are no minutes to my knowledge that feed into the overall pt safety or Quality cmte and this has been highlighted across the division when we have been reviewing and uploading evidence for CQC. This would have been around the time you were on your leave so could not ask you directly.
>
> My conversation with Richard was an opportunistic meet on the stairs. I chose to speak to him as I thought he may be able to look at the case and advise me if it was an incident or not (as I do not have the knowledge base to do this myself and Nick also felt he could not advise) and also because Richard is the Chair of the Pt Safety Cmte and having worked with him in the past on pt safety matters, I value his opinion and experience as to what forum it would be better to discuss such incidents in the future as it concerned me that the division may have a gap in its assurance if chemo incidents (particularly high risk) were not being captured and discussed at divisional level. Richard assured me he would discuss it with you on your return from leave which I was happy with as I was going on leave and would have not seen you to discuss it with you directly.
>
> I am sorry if I have offended you in any way, but I would like to reiterate that my discussions with Richard were as a result of trying to establish a way forward with a potential incident and to ensure that if it was an error, there was learning from it."

20. It is the claimant's evidence that, having returned from annual leave, she was visited by Dr Jennings who wanted to discuss a clinical incident brought to his attention by Ms Clatworthy, which had been raised by Ms Phillips, the claimant stating that, she was surprised to learn this clinical incident had been escalated as a medication error and an investigation had taken place at the time when she had addressed and settled the issue fully with the patient and her employer three months earlier in May 2014, the claimant writing to Dr Jennings, following the meeting, in these terms:

> "… I am unhappy at the process which led to your involvement and whilst I completely accept the principles of openness and transparency and that if any

> member of staff has a concern, you have an open door policy, in this instance I do feel the process was not in keeping with the principles I have just outlined.
> …
> I brought this incident up in our monthly chemo meeting which Karen attends as shared learning and also stated my intention was to DATIX it and share the event with Dr Mohamed when she returned from maternity leave.
>
> I am not clear why Karen chose to share it with Debbie as a "drug error" and I am not clear why Debbie chose to approach you before checking out the concern with me on my return from leave.
>
> I am afraid the process which led up to you coming to see me today does not fill me with confidence that our team is "Being open".
>
> I would have liked Karen to share her concern with me first - I do not recall her raising her desire to escalate this issue as a drug error in our monthly chemo meeting.
>
> I would have liked Debbie to approach me to find out more facts before approaching you.
>
> To conclude, I took full responsibility for this error as one of my team interpreted the result incorrectly. I accept this incident highlights our current checks and balances are not good enough and so Helen and I will address this.
>
> I have now DATIX'd the incident.
> …."

21. The claimant in evidence to the tribunal, states: *"I began to feel very worried about the situation. I felt as if Ms Phillips had tried to cause a serious problem for me by wrongly representing the situation and my actions and escalating this to senior management".*

22. It is Ms Phillips' evidence that, following this incident, the claimant's and her relationship went downhill quickly, and that despite trying to resolve their issues in September 2014, this had not been successful, for which she then emailed her line manager, Ms Clatworthy on 10 September 2014, advising that she could not work like this for long, and that the claimant's actions were petty with no thought for patients.

23. In respect of the poor relations between the claimant and Ms Phillips, the tribunal notes the following correspondence from Ms Clatworthy, to Dr Jennings on the 9 September 2014, in respect of correspondence received from the clamant; the clamant having raised issue about Ms Phillips' performance for Ms Clatworthy to address. Ms Clatworhy's correspondence provided:

> "I feel, and with HR advice, that I have attempted to offer a solution to the "difficulties" Pauline seems to be experiencing with the lead cancer nurse…. I understand from Karen that Pauline has now asked to meet with her one-to-one and she is understandably quite anxious…
> I continue to be concerned that the fact that I highlighted an incident seems to have caused such a problem and a string of daily emails. The incident is mentioned in every email from Pauline even though the subject is Karen's performance. In my email of 26 August to Pauline

with you copied in, I thought I had made it very clear the sequence of events and rationale for my action regarding the incident.
I am finding this stressful and time-consuming as I am worried about responding directly without taking HR advice which is not a healthy environment to work in.…"

24. Following the mediation process, above referred, taking place on the 4 and 5 November 2014, the claimant and Ms Phillips agreed to draw a line under preceding events, for which the claimant, on 6 November, wrote to Ms Phillips, in the following terms:

> "When you are ready, let me know so we can begin to rebuild our professional relationship?
>
> Thank you for your feedback about my behaviour and the impact it has had on you since your arrival – I am truly sorry.
>
> I have withdrawn all of my complaints and concerns about you and I have let Debs know.
>
> I do value your skills. However, I appreciate I have not shown you either personally or professionally how much I have appreciated what you have brought to WH Cancer Services and how much you have improved the quality of my life - THANK YOU!!!!
>
> This will be my last ever email to you.
>
> I didn't intend to write today I anted *(sic)* to say sorry in person>However (*sic*) but I couldn't bear the thought of leaving you without this knowledge until your return especially when you are caring for your sick daughter
>
> Try and have a restful and peaceful day
> Take care
> My warmest regards.
> Pauline"

25. On 10 December 2014, an incident occurred during a patient's chemotherapy, in which the chemotherapy drug leaked into surrounding tissues, known as an extravasation.

26. At the material time, the respondent's protocol for treating chemotherapy extravasations was to contact the plastic surgery team at the Royal Free Hospital, and send the patient urgently, in a taxi, to the hospital. The plastics team would treat the extravasation by using the "flush out" technique; a process of flushing with water.

27. In medical terms, the extravasation is a clinical emergency, as the chemotherapy drug can cause serious damage to surrounding tissue. Aside from the flush out technique, there is an antidote drug, called Dexrazoxane (known as Savene, being its brand name), but which drug is only effective if given within a window of six hours after the incident.

28. At the material time, Savene was not stocked by the respondent Trust.

29. With regard to drug Savene, the tribunal heard evidence that Ms Phillips had some months earlier, in March 2014, invited a Savene representative to give a presentation to the respondent's chemotherapy group, to include; the claimant, the chemo nurses and Trust pharmacists. It is Ms Phillips' evidence that, everyone was in agreement that funding should be applied for, to stock the drug, the lead pharmacist being tasked therewith, but which had not been completed before that pharmacist left the Trust, in September 2014.

30. On the extravasation occurring, Ms Phillips contacted the patient's treating consultant, Dr Spurrell (consultant oncologist) and informed her thereof. It is Dr Spurrell's account of the events, as furnished as part of the subsequent investigation into the incident, that:

> "It was a patient of mine. I was in clinic at the time and was called to be told that the patient had an anthracycline extravasation. It can cause necrosis in the area it has extravasationed into.
>
> KP said: "I want to give Savene and I can get it from the Marsden." I went to see the patient and there was an anthracycline extravasation and it looked like a fair few mills. This is a rare extravasation that I had not been called to one before, so I agreed.
>
> DM: So this was your decision.
>
> ES: although I think… KP is trained in extravasation and in particular Vesicants so I was guided by what she thought was the best course of action at that moment. There was a little bit… One of the things she did say to me was "I have seen this before in a previous Trust where they could have got to the Savene and they didn't, so there was a little bit of pushing but ultimately I agreed.
>
> DM: To what extent were there any written protocols or guidance in place at the time regarding the use of this drug, as far as you are aware?
>
> ES: We don't have any here.
>
> DM: Did an "off-protocol form" need to be completed in this case, and if so, was it completed?
>
> ES: It should have been done but it was not done. I think there were procedures that weren't followed that day.
>
> DM: Who should have done that?
>
> ES: Ultimately it should have been me. …"

31. It was Ms Taylor's (Head of Pharmacy) evidence to the tribunal in respect of this incident that, after making enquiries as to whether Ms Phillips had experience using Savene, she had advised that she needed a consultant to make the request as they would take responsibility for the prescribing, as per the non-formulary process. Ms Taylor then received a call from the consultant oncologist, Dr Spurrell, who advised that it was the right drug to use and verbally requested the non-formulary drug Savene. On that basis, Ms Taylor ordered the drug as a matter of urgency.

32. The incident was subsequently reported later that day on the DATIX system, a copy of which is at R1 page 665-669.

33. On 21 January 2015, at a team meeting, as part of a discussion about whether the drug, Savene, should be stocked at the Trust, and on discussing clinical incidents, the incident of 10 December was raised.

34. It is the claimant's evidence that, she was immediately concerned thereby for a number of reasons, namely: (1) It had been six weeks since the incident in question and that was an unreasonable period of time before something that serious was brought to her attention, as the Head of Clinical Chemotherapy Service; (2) The drug was not on a formulary and therefore the purchase should have followed an agreed protocol which appeared not to have been the case; (3) The cost of the drug was £10,000.00; and (4) There were no competency records to demonstrate the staff were trained in using Savene, rather than to refer the patient to the Plastic Surgery Unit at the Royal Free Hospital as per protocol, which the claimant states on the patient suffering a 7cm scar, there was then actual patient harm in this case, in her view. The tribunal notes that in respect of the scar, it was clarified during the hearing that it was a burn due to the extravasation which was expected to heal over time but was not an effect of the Savene drug.

35. The claimant following the meeting, sent correspondence to Ms Phillips, Dr Spurrell and Ms Nuray, advising:

> "Dear All
>
> Having reflected on the discussion this morning, I feel that I am uncomfortable that I learned about this for the first time at today's monthly chemo meet.
>
> As Head of the Chemo Service, I feel I should have been consulted prior to the decision to purchase this drug without DT&C approval.
>
> Was Mike Kelsey consulted?
>
> May I have some more details on the process and procedure that enabled this drug to be brought over from RMH?
>
> Nuray, you mentioned a purchase order – who approved this?
>
> Karen are we really talking about a cost of £10,000?
>
> I would value prompt responses, please."

36. Dr Spurrell responded on 22 January, timed at 7:53 am, advising:

> "Dear Pauline
>
> You are right, I should have called you on the day. The team called me from Clinic about 3pm that day and I reviewed the patient and agreed that there had been a likely extravasation of Epi. I therefore agreed the plan for Savene. The patient has a fair-sized burn on forearm which could have been so much worse. I think the team were very proactive that day to the benefit of the patient. I take full responsibility for the process.

I did, however, discuss it with you since, as you shared with me a plan for a shared stock at that time.

Fortunately, this is a very rare event – never had to use Savene before in this context. As time was of the essence, I did not think to call you first, my fault.

BW
Emma."

37. At 8:06 am, the claimant responded, advising:

"Thanks Emma for the update.

Whilst I completely agree the patient must come first and I accept the clinical effectiveness of Dexrazoxane, the product was not approved locally – it has not been funded and this leaves me feeling rather vulnerable as Head of Chemo Service if such major decisions are being made without my involvement.

Does that mean you authorised the purchase order?

Which manager was involved?

I would really like us to ensure robust processes are in place to manage such emergencies especially with new unapproved and very expensive products.

You did indeed tell me after the event how expertly your patient was managed by Karen and the team but I had no idea of the significant cost and arrangements.

I want all our patients to have the best evidence-based treatment but we cannot afford to run a service where we can purchase items ad hoc.

For such occurrences, Chairman's action of the DTC needs to be sought – even as Head of the Chemo Service, if I want to use a combination not approved, I need to request Chairman's action.

We cannot make such big decisions in isolation.

I would really like to see the paper trail and all involved in the decision making as this does need to be flagged up to Nick, Divisional Director and Mike Kelsey ASAP."

38. Dr Spurrell responded at 8:12 am, stating:

"Regarding the paperwork, I must admit that I did not sign anything so I cannot answer that part of your query."

39. The claimant subsequently wrote to Dr Spurrell seeking a face to face meeting, stating:

"I have real concerns about this and who is accountable."

40. On the claimant furnishing a request for information to Ms Phillips, Ms Phillips forwarded the correspondence to Ms Clatworthy, it being Ms Phillips' evidence to the tribunal, that:

> "We would not expect to contact the claimant about the incident in question as she was not the treating physician and because, in the type of work we do, we regularly deal with distressed patients. The implication of her email was that we were withholding information from her and I felt that the subtext was that the nursing team had not handled the incident properly…"

41. Ms Phillips further advised that, she had sent the email to her manager, Ms Clatworthy because, whilst the email:

> "might look quite trivial when viewed in isolation, but I was receiving so many emails each containing small criticisms that "to me it signified a return to (her) old bullying behaviours. I had picked up the claimant email on my iPad that night and I had been in tears because the ongoing criticism was grinding me down. I felt that the claimant's behaviour was having the same impact on my team as, when I arrived at work the next morning, Ms Rowicka told me that she also had not slept and had been crying following the claimant's email. I asked for a meeting with Ms Clatworthy and Dr Jennings to discuss how the claimant's behaviour was making me feel."

42. On the 9 February 2015, a heated telephone call was had between the claimant and Ms Phillips, regarding a request for nurses to scan triage sheets, the claimant stating that, Ms Phillips was rude and abrasive to her, accusing her of things that she had not said regarding the request. It was Ms Phillips' evidence that, the matter having been discussed on a previous occasion, the claimant then was pressing the issue until she got her way. As a consequence hereof, the claimant wrote to Ms Phillips, stating:

> "I found that telephone conversation with you very unprofessional and upsetting. I find it very upsetting and inaccurate when you accuse me of saying things I simply did not say but you felt you heard. If we do not address this soon, I feel it will lead to a breakdown in our professional relationship again.
>
> Which is a shame as I thought we had begun to develop a more collaborative way of working together.
>
> I would like to request a meeting with you and Richard Jennings and Deborah Clatworthy to ensure we both understand our respective roles and responsibilities to deliver the best care for our patients with good working relationships with our staff."

43. Ms Phillips responded:

> "Agreed. There is a lot to discuss and Richard and Debbie should be there as soon as possible I feel."

44. The claimant thereon wrote to Dr Jennings and Ms Clatworthy, seeking a meeting, stating:

> "I would value a meeting with you both present to look at our roles and agree individual responsibilities to ensure we are both optimising our clinical skillset for the greater good of WH patient and staff."

45. Dr Jennings then made enquiries of Mr Harper, Ms Isacsson and Ms Clatworthy, as to dealing with this matter, writing to the claimant on 12 February, advising:

> "I view this as a divisional matter.
>
> I have spoken to Nick Harper and Fiona Isacsson who agree, and will take matters forward.
>
> In making constructive progress with this, I believe the mediation agreement that you, Karen and Fiona and I signed on 5 November 2014 will be both a helpful and necessary guide."

46. Ms Isacsson, equally wrote to the claimant and Ms Phillips on 12 February, advising:

> "In support of a mediation agreement, I will arrange a meeting face to face. I understand you are on leave next week Pauline so will work round this to get a convenient date.
>
> To be transparent, I would like to know what the issues are form all parties so that we can get resolution.
> …"

47. The claimant responded advising that, she was on leave for the period 16 February to 23 February, and that she wanted the professional issues arising between herself and Ms Phillips resolved as soon as possible.

48. On 13 February 2015, the claimant furnished Ms Isacsson with the specifics of her concerns with Ms Phillips, being; (1) Behaviour in respect of the telephone call of 9 February; and (2) Roles and responsibilities, in that, Ms Phillips believes she had a distinct and definite role in running the Chemo Unit which was interfering with team functioning and process. The claimant then stated:

> "I find her lack of respect that I am both Head of the Chemo Service and the Acute Oncology Service unsettling for staff as they believe Karen knows (sic) manages the unit so all decisions have to be agreed with Karen. I have personally found Karen's behaviour obstructive when it comes to further developing the service. I do not believe she appreciates the service was developed by a team with my leadership and any changes to improve it are not Karen's sole decision but a team discussion and my ultimate approval as head of service. When I challenge Karen about team functioning or process she does not engage in a professional way but gets irritate (sic) with me stating. "It is your way or the highway" this is not how I conduct myself or how I developed teams and services.
> I am concerned that Karen over-stepped her role in asking Dr Spurrell to authorise a very expensive drug £10K which had not gone through due process and was not a formulary. Whilst I know she did it for the best outcome for the patient as she has not responded to my call to understand the process, I am concerned this behaviour of *[sic]* left unchallenged will set precedence *[sic]*. I am not clear if a DATIX has been submitted or if an off-protocol request has been submitted to the DT&C."

49. Ms Phillips on 23 February, furnished her concerns, advising:

> "My only concerns to raise would be overall communication."

50. The tribunal here notes that, unsuccessful efforts were then made to arrange a date for this meeting.

51. On 25 February 2015, Ms Isacsson suggested that there be a get together for the last 30 minutes of the cancer services meeting, noting the difficulties being had, in trying to arrange a meeting time.

52. It was the claimant's evidence to the tribunal that, *"I was unhappy to see that such a serious meeting was being played down and so I declined to attend."* The claimant advised Ms Isacsson that she would escalate her concerns to Mr Pleydell.

53. On 4 March 2015, the claimant chased Ms Phillips for a response to her correspondence of 21 January 2015, with regard to the Savene incident, stating:

> "I have not yet received a reply from you about this request – please you (sic) complete the off-protocol form and return to me by close of play tomorrow.
>
> Did you complete a DATIX?
>
> Have you started the formulary request process for the next DT&C?
>
> I have met with both Helen Taylor, Head of Pharmacy and Kavita and they have agreed to absorb the cost of this purchase against the savings we have made for vial sharing. Helen Taylor has agreed to be the manager who signed off this acquisition.
>
> Moving forward I would really like a reassurance that you will not act alone without involving me in future - I would also like to be reassured out *[sic]* extravasation policy was followed prior to you making a decision to purchase this product from the Marsden.
>
> I have no doubt you acted in the best interests of the patient but I am keen that a precedence *[sic]* is not set and that such significant decisions are made with the correct personnel involved."

54. Ms Phillips forwarded the claimant's message to Ms Isacsson, advising:

> "I am not happy for this to go on. Please can we meet at your earliest convenience. Karen."

55. Ms Isacsson then responded, advising Ms Phillips that the matter had been:

> "escalated to the CEO Medical Director and COO that we have been unable to meet. I am as keen to get resolved as you are. I will keep you appraised."

56. On 5 March 2015, Ms Isacsson wrote to the claimant advising that, she and Mr Harper were aware of the Savene case, via the SCD Quality Board over the last few months, further stating:

> "I also understand you have asked Dr Spurrell and Karen for information. It was also mentioned today at Cancer Board.
>
> I have checked the DATIX… and it has been completed and also, I understand that Dr Spurrell and Pharmacy are working together to get a process in place so we can get access to this pharmaceutical both timely and in an economic way in the future. This will need to go to DTC and also the SCD Quality Board I am sure.

> Is there anything else you need regarding this that I can help with?"

57. The claimant challenges Ms Isacsson as to why she was furnishing this information, in that the claimant had not requested it of her.

58. On 10 March 2015, a meeting was held between the claimant and Mr Pleydell, following the claimant's request for the meeting, asking:

> "Please can I book a 1:1 meeting Simon to discuss concerns about team behaviours and the impact on the Cancer Service?"

59. In respect of this meeting, the claimant furnished notes which she had prepared for the meeting, which notes are here set out in full, as they form the basis of the claimant's first disclosure. R1 Page 733a.

"Meeting notes with Simon Pleydell 10.3.15

Working with Karen Phillips (KP) Lead Cancer Nurse – Issues to discuss

Made significant differences to Mentoring CNSs/introduction of eHNA/ Survivorship package – work she enjoys and is good at

Concerned she works to her own agenda not a shared agenda for the cancer service

Have weekly meetings scheduled with Mark Rose, Cancer services manager, Maureen Blunden General manager for cancer and me present. She doesn't always attend – doesn't send apologies in advance to whole team but to Maureen Blunden only. She does not look comfortable in meetings and I do not feel supported by her to deliver cancer care for the organisation

Specific issues

1. Behaviour
   a. Karen Phillips
      i. Rude
      ii. Disengaged from agenda other than her own
      iii. Not truthful/inconsistent explanations
      iv. "Hears the negative" in what I say rather than what I say
      v. Selective answering of e-mails
      vi. Over-steps her role i.e. Dexrazoxane
      vii. Cosy relationships with DC/FI/LM who I feel "protect her"
      viii. Bringing in her 11 yr old daughter to work – three times in last 6 months X sick so looked after by chemo staff (5.11.14)

2. Professional role of KP
   a. Lead cancer Nurse
      i. I do not feel confident she embraces her role in this regard
      ii. Toxic impact on Chemo service – acts like a "shop-steward" rather than lead nurse with me
      iii. I feel unable to develop cancer services as no professional relationship to manage dialogue, passionate debate or constructive feedback
      iv. Overt conflict between both KP & me is impacting on wider team."

60. It is the claimant's evidence to the tribunal that, *"Mr Pleydell said he was glad to help me and asked me to describe my concern. I handed him a copy*

of the specific concerns I had, including my concern in relation to the Savene incident and the arising patient safety issues." The claimant thereon states that, Mr Pleydell spent most of the meeting with his head in his hands rocking back and forth in his chair, occasionally looking up at her whilst she took him through her prepared list of specific examples.

61. It is the claimant's further evidence that, the meeting concluded with Mr Pleydell thanking her for bringing her concerns to his attention confirming that he would help.

62. For completeness, the tribunal here records that on 18 March 2015, Ms Phillips raised a further issue regarding the claimant's behaviour towards her, stating that the claimant's action *"makes her feel like every positive has to be ruined by [the claimant]*".

63. On 20 March, a meeting was held between the claimant and Ms Davies, Director of Nursing and Patient Experience, being a re-scheduled meeting that had earlier been cancelled on 9 March 2015; the issues to be addressed being those as were presented to Mr Pleydell by the claimant's list of concerns on the 10 March, supra.

64. It is the claimant's evidence that, she shared with Ms Davies, that she needed advice as to how best to address professional differences between her and Ms Phillips, and of the impact Ms Phillips' behaviour was having on the wider team, stating:

> "I explained my concerns about the Savene incident and Ms Phillips' role in not following the usual protocol which had meant the patient came to harm. I detailed how I felt that Ms Phillips' actions could have had an effect on performing her role in a manner which was in the best interests of the Trust and our patients".

65. The respondent challenges the claimant's account of what was said, and has taken the tribunal to the notes of the meeting, which are at R1 page 734. From a perusal of these notes, it is evident that the claimant there raised issues as to the personal relationship between her and Ms Phillips. The tribunal does not however, find that the claimant there raised issue as to patient safety as she now submits before the tribunal; there is nothing by the notes referencing patient safety being raised. Despite this, on the matters being raised, the tribunal accepts that it is possible to read into those issues matters of safety, however, from the tenor of the notes, patient safety was not an issue focused on, which the tribunal finds would have been the case had patient safety been raised, and that some record would have been made thereof. This was not the case.

66. Following the meeting, it was agreed that a tri-partite meeting should be held between Ms Davies, Ms Phillips and the claimant.

67. The tribunal pauses here, and makes reference to correspondence from Ms Clatworthy to Dr Harper, in respect of the situation between the claimant and Ms Phillips, existing at this time, Ms Clathworthy advising:

> "Thanks for speaking to Richard - something really has to be done soon. Karen is very experienced and strong but she has now been put on antidepressants by her GP

> which is a direct result of PL's campaign of harassment towards her. It can't be right that we, as a Trust, let this go on without taking action. Particularly when we know this is lead nurse number 4 that has had the same issues.
>
> Not to mention the effect it's having on Cancer Services which with Karen on board is going from strength to strength. I have already told Fiona that if Richard takes no action within two weeks, I will be writing to him formally and speaking directly to Simon. As a HON, I can't stand by and see senior nursing staff be treated in this way and I feel Richard has plenty of examples and has had time to address this. …"

68. As a result of the issues raised by Ms Clatworthy, the matter was addressed at senior management level; Ms Isacsson and Dr Jennings seeking to have a meeting to resolve the issues, Ms Isacsson advising:

> "Karen is now off sick and us not resolving this issue although this has been going on for a while is causing me concern about the dynamics in the cancer team.
>
> As we have already discussed, please can we progress with immediate effect to address this issue for all concerned."

69. It is here noted that, in addressing the issue, management sought reference to the MDT mediation agreement, above referred.

70. The tribunal is not clear of the circumstance or chronology of events at this time, by which a meeting was scheduled for 20 April 2015, between the claimant and Ms Davies, as a follow up to their meeting of 20 March, which meeting was cancelled on the day at short notice by Ms Davies. The claimant also sought a meeting with Mr Pleydell, corresponding with his secretary and by correspondence of 31 March 2015, the claimant sought a one to one meeting with him, sighting two matters, stating:

> "Firstly can you let Simon know that I have just found out the Trust board is tomorrow, not mid-month as led to believe so plan to send him a draft of the cancer strategy by 17 April so he can feed back so we can have a final version by Trust board on 6 May. Secondly, could you book a 1:1 meeting when convenient to catch up key issues from our last meeting?"

71. Exactly when the meeting was then arranged the tribunal is not certain, which meeting was also arranged for 20 April.

72. In respect to the meeting with Mr Pleydell, by the agenda as presented by the claimant, the items there identified were as to, a follow up from the meeting of 10 March, in respect of; working relations with Ms Phillips, as to; professional behaviour, clinical incidents and line management, and secondly, cancer strategy and cancer outcomes dataset.

73. It is the claimant's evidence, which the tribunal accepts, that on holding the meeting, Mr Pleydell interrogated her as to aspects of the cancer service and that he scolded her when she was unable to provide facts and figures, informing her that she needed to be prepared when meeting with him to save wasting his time. On the claimant raising with him, that the meeting was a follow up meeting to that of 10 March, the tribunal further accepts the claimant's evidence that he got irritated, stating that, he understood that she had met Ms Davies and that she was dealing with it.

74. A note of the outcome of the meeting was prepared by the claimant, which is at R1 page 761. With regards to the matters raised regarding Ms Phillips, the note provides:

> "PL to reschedule meeting with Philippa Davies as cancelled by Philippa on morning 20/4/15 to follow up from meeting on 20/3/15 discussing working with Karen Phillips (KP) Lead Cancer Nurse.
>
> A key action still outstanding on how to address unprofessional behaviours."

75. There is then reference to cancer strategy and cancer outcomes dataset matters.

76. What is here relevant, is that by the follow up record as produced by the claimant, of the issues raised in respect of Ms Phillips, there is raised nothing in respect of safety issues.

77. The tribunal pauses at this juncture, and here records for completeness that, at this point in time, there were discussions being had regarding a merger between the Whittington Hospital and the University College London Hospital, Lung Multi-Disciplinary Team, which the claimant was against. The tribunal addresses this issue further, infra.

78. Further for completeness, the tribunal here notes that on 22 April 2014, Ms Phillips raised further issue with Ms Clatworthy, for which Ms Clatworthy raised issue with the Head of HR, Surgery Cancer Diagnostic and Central Services, Ms Pattison, asking for it to remain confidential, advising:

> "I am just concerned that some of the behaviours we have seen in the past from Pauline are resurfacing with yet another lead cancer nurse. The context is irrelevant in some ways, but this, and another incident last week and Pauline's response to it, has raised some concerns that we have a repeated pattern of behaviour that is causing upset."

79. On the claimant raising concern as to her meeting with Ms Davies of the 20 April having been cancelled, on 27 April 2015, the claimant chased Ms Davies for the re-scheduled meeting in respect of the follow up to their meeting of 20 March 2015, advising that, it had been 11 weeks since she had first asked for a meeting with Dr Jennings and Ms Clatworthy, and five weeks since she had met with Ms Davies, stating that, she hoped her concerns were being taken seriously and that she receive a reply within the next 48 hours.

80. The claimant was responded to later that day, being advised that Ms Stewart, who was back from leave that day, would address the issue that afternoon. The claimant was subsequently written to with the date of the 14 May 2015, proposed for a meeting. The claimant advised that she could not make that appointment, asking how they could secure a mutually convenient time, for which she was advised on the 29 April, that Ms Davies would contact her the following day.

81. On 29 April, the claimant sought an urgent meeting with Ms Davies in respect of an incident occurring that morning, between herself and Ms Phillips.

82. The incident in question arose on Ms Phillips preparing a meeting room for a "Help Overcoming Problems Effectively" (HOPE) course, being a six-week programme aimed at helping people to take back control and get on with their lives following a cancer diagnosis and treatment. The course aims were to help patients, friends and family cope emotionally, psychologically and practically, therewith. This course was to follow on from a meeting held by the claimant, being an acute oncology service meeting, and in respect of which, Ms Phillips had sought to set up the room prior to the claimant's meeting and before her HOPE course, it being Ms Phillips' evidence that, the claimant's meetings often overran and therefore to maximise time, she would set up the room prior to the claimant's meeting, for her HOPE course.

83. In setting up for this course, an altercation occurred whereby Ms Phillips was challenged as to her professionalism by the claimant, which on Ms Phillips seeking to take their discussion into a separate room away from the people in the meeting room, Ms Phillips states that the claimant refused, and that when Ms Phillips sought to pack up and leave the room, she was told by the claimant that if she left, she would consider Ms Phillips' behaviour as unprofessional. Ms Phillips subsequently raised the issue with Ms Isacsson, advising:

> "… I really enjoyed our HOPE session patients are so positive about how these sessions are supporting them. It has helped take away earlier stress, but cannot carry on everyday working life like this. Life is too short to hate coming to work and being constantly nervous about her next move. Meeting Debbie tomorrow will tell her about both incidents. Hope we can resolve this as soon as possible, I am here to do my best but this is impossible at present."

84. On the claimant seeking a meeting with Ms Davies, as stated, the claimant was advised that Ms Davies was unable to meet that day or the following day, but would contact her on 30 April.

85. There does not appear to have been any further contact from Ms Davies for which the claimant, on 7 May, raised a further issue, chasing up a meeting, advising:

> "Dear Philippa
>
> Eight days have passed since I requested an urgent meeting with you to discuss the serious concerns I have raised about probity and unprofessional behaviour of our lead cancer nurse, Karen Phillips.
>
> Seven weeks have elapsed since I first met you on 20 March to discuss the issues in a constructive way.
>
> Since then I have had no feedback, no further meeting scheduled and I am left feeling that you do not take my concerns seriously.
>
> In addition, I feel isolated and unsupported as lead cancer clinician by you as Director of Nursing as over 12 weeks have elapsed since I raised my concerns

> directly with Karen and latterly with both Richard Jennings, Medical Director, and Deborah Clatworthy, Head of Nursing.
>
> I am at a loss as I believe in the light of the Francis report our organisation cared about openness, transparency and accountability.
>
> I hope to hear from you soon."

86. Ms Davies responded later that day, advising that they were currently taking professional advice as to the best way forward, and that once that had been done, they would get in touch to arrange a meeting, further advising the claimant that they were indeed taking the matter seriously at executive level.

87. The claimant responded advising that, she was disappointed to learn of management's action without her being involved, asking that a meeting be held to explain to her what had been learned and why they had taken a decision to proceed in the way they had stated.

88. The following day, 8 May 2015, the claimant requested a meeting with Mr Pleydell, stating: *"Can you arrange a meeting with Simon ASAP please."* A meeting was thereon arranged for 20 May 2015.

89. On 11 May 2015, Ms Davies wrote to the claimant in respect of her further correspondence of 7 May, advising:

> "You will shortly be invited to a meeting which will cover the next steps to be taken, including your concern that you are not supported as the lead cancer clinician.
> I must rebut, for the avoidance of doubt, the inference in your letter that your concerns have not been taken seriously. Your account indicates that there are problems in the current professional clinical working relationships which should support excellent service delivery. Our next steps will improve cancer services by dealing with the continuing issues within this service and will be handled appropriately and fairly to all parties. …"

90. On 12 May 2015, a meeting was held between Dr Jennings, Deborah O'Dea, (mediator) and Helen Gordon, regarding the Lung MDT mediation and the claimant and Ms Phillips relationship, the notes of which the tribunal here sets out in full, as it sets out the position then going forward.

> "Deborah O'Dea attending to advise regarding interpretation of, and actions arising from, Lung mediation agreement – her advice was confined to this issue.
>
> D O'D advises:
> Go through agreement line by line to see if everyone has actioned what they should have done, especially Trust.
>
> Re PL and KP – agreement indicates Fiona Isacsson (FI) and Chyan Kolvekar (SK) may offer to mediate/facilitate – Trust should consider offering this.
>
> Re PL and KP – assemble timeline – either internally or (if Trust so desires) via external person, so that everything is fairly and objectively documented, so that adherence or otherwise to agreement can be fairly and objectively considered and judged.

> If investigating who, if anyone, between PL and KP, has kept/not kept to agreement, investigation should be external.
>
> Trust should note whether individuals, including PL and KP, were offered the pastoral/support the agreement says people could be offered, and whether they accepted.
>
> Helen Gordon and RJ noted:
> A facilitation/mediation between PL and KP, involving FI and SK, would both be in accordance with the agreement and potentially mitigate criticism later if legal dispute arises.
>
> An external investigation of who, if anyone, between PL and KP, has kept/not kept to agreement, could proceed simultaneously with facilitation/mediation between PL and KP, involving FI and SK, and this would be good practice to avoid inappropriate prolongation.
>
> Documents such as emails, for timeline, should be assembled.
>
> A well-documented timeline is an essential risk mitigation for any possible subsequent legal dispute.
>
> RJ and HG will update LM, PD and SP, with a view to agreeing these next steps."

91. The claimant's meeting with Mr Pleydell duly took place on the 20 May. The tribunal has not been furnished with any particulars as to the agenda for the meeting. It is the claimant's evidence that, on meeting with Mr Pleydell, Mr Pleydell was visibly irritated with her from the outset of the meeting, stating that, *"He didn't see why I was coming to see him about what he described as a relationship issue between Ms Phillips and me"* for which the claimant further states: *"He started pacing up and down the room on his side of the table,"* which on the claimant enquiring as to information he had received, Mr Plydell stated that he had seen emails which had led him to believe that her behaviour was called into question, the claimant stating that, she thereon felt that *"she no longer had his support or shared her concerns, but was viewing her as being unreasonable based on the correspondence he had seen".*

92. It is further the claimant's evidence that, on questioning Mr Pleydell as to the assistance he had promised her from their meeting of 10 March, and that she specifically asked what he was doing about serious patient safety issues, for which he questioned what patient issues, the claimant states that he subsequently conceded the point and stated that he would arrange for Dr Jennings to meet her as soon as possible, the claimant further stating that Mr Pleydell had at that meeting, leaned forward and reminded her that he was the CEO at Whittington and she was an employee. The claimant here states that, by this posturing, it was non-verbal behaviour to demonstrate that he was in charge.

93. Mr Pleydell disputes this encounter and does not accept that he was irritated at this meeting or otherwise. It was Mr Pleydell's evidence to the tribunal, that:

> "I have never spoken in this way to any employee of any NHS Trust that I have worked at. I can say unequivocally that I would not use words like these. I certainly

> would not have sought to deliberately intimidate the claimant. If I did react in this way to employees raising issues with me, it would entirely undermine a culture that I have sought to create and which is embedded in the Trust's values; fundamental components of which are being compassionate and respectful. There is no reason at all why I would wish to endanger the very culture I have worked so hard to embed at the Trust."

94. The tribunal on a balance of probabilities prefers the evidence of Mr Pleydell, that he had not responded to the claimant in the way she alleges.

95. In respect of the above meeting, it is Dr Jennings' evidence that, he had held a meeting with the claimant following the claimant's previous meeting with Mr Pleydell on 10 March, on Mr Pleydell asking him to look into an issue that the claimant had raised with him regarding the purchase of the drug, Savene. It appears that this was a casual discussion and no detail was provided, Dr Jennings stating that, on speaking with the claimant, she did not disagree with the clinical treatment which the patient had received and that her concerns appeared to be that the Savene drug had been ordered "off-protocol" and her main issue was that she felt that Ms Phillips had not followed the correct procedure for this purchase. Dr Jennings here states that, he at that stage did not understand the claimant to be raising an issue about patient safety and that the claimant had been clear that she did not regard Ms Phillips' practice as being unsafe.

96. The claimant disputes having such a meeting. The tribunal has received no documentation in respect of this meeting, albeit that, Dr Jennings is adamant that this meeting did take place. From the evidence before the tribunal, and giving regard to the earlier matter of the August 2014 incident, where Dr Jennings raised the issue with the claimant, informally, on the claimant having returned from leave, there was no documentation raised in respect thereof by Dr Jennings; no notes or otherwise record, was made by Dr Jennings. This would appear to be Dr Jennings' approach in addressing issues, having casual discussions on point.

97. Giving consideration to Dr Jennings' practice, the tribunal on a balance of probabilities, accepts that there was an informal meeting between the claimant and Dr Jennings, where the issues identified were cursorily raised, for which no formal action followed and no records kept, and to this extent, the tribunal does not believe the claimant would have acknowledged it as having been a formal meeting in respect of her concerns raised; as at this time, the claimant had not been informed that Dr Jennings would be pursuing such matters with her for her then to be alert to such a discussion being relevant to her concerns, for her to note the same.

98. Following the claimant's meeting with Mr Pleydell on 20 May, Mr Pleydell asked Dr Jennings to further discuss any concerns he might still have about the Savene incident, with the claimant, it being the case that the matter having been raised and apparently addressed, the claimant was still raising the issue. It was Mr Pleydell's evidence to the tribunal that, he was then considering whether he had misunderstood the claimant's concerns and that there were some unresolved patient safety concerns that needed consideration, albeit this had not been raised by the claimant. Arrangement was thereon made for the claimant to meet Dr Jennings for 21 May.

99. It is Dr Jennings' further evidence on this point that, on meeting the claimant, the claimant had reiterated that she did not take issue with the medical care or treatment which the patient had received, but that her concerns were that the drug Savene, had been ordered without her involvement and without due process being followed. Dr Jennings here states that, he got the impression that the claimant held Ms Phillips responsible for this perceived lack of process and she saw the Savene incident as an extension and example of her interpersonal issues with Ms Phillips. Dr Jennings further here accounts that, the claimant's focus at the meeting was very much on her working relationship with Ms Phillips which she felt had deteriorated and was negative for the whole team, which is reflected in the claimant's notes of her meeting with Dr Jennings at R1 page 937. The tribunal notes that by this document, there is referenced nothing in relation to patient safety.

100. It is the claimant's evidence that, having taken Dr Jennings through the extravasation protocol and copies of the patient notes, demonstrating shortcomings in due process, she had informed him of her concerns as to how, not investigating a serious clinical incident was very worrying, as well as being at odds with the incident he chose to investigate in August 2014 when she was on leave, after it was brought to his attention by Ms Phillips and Ms Clatworthy. Dr Jennings does not accept this account.

101. The tribunal prefers the evidence of Dr Jennings, in this respect.

102. On 27 May 2015, further to Ms Davies' correspondence of 11 May to the claimant, as to their arranging a meeting, a meeting was held between Ms Davies, Dr Jennings and the claimant.

103. The evidence presented to the tribunal in respect of this meeting, whilst the general context of the meeting is agreed, the particular emphasis of matters discussed is in dispute. The account of events are set out in the claimant's statement at paragraphs 57-59, at paragraphs 54-56 of Dr Jennings' statement, and paragraphs 23-26 of Ms Davies' statement. From the evidence before the tribunal, the tribunal is satisfied that the correspondence to the claimant of 13 July, addressed further herein, reflects the tenor of the meeting, for which the tribunal finds that the claimant was apprised of the fact that both herself and Ms Phillips had raised concerns about the others' behaviour towards one another, that the issues raised were serious in nature and needed to be formally investigated, and that the issues could not be dealt with informally given the apparent severity of the breakdown in relationship between them, and the impact it was having on the cohesive working of the team.

104. Having discussed matters, the claimant was advised that it had been determined that there were potentially a number of applicable Trust procedures relevant to the issues, and to avoid a number of independent investigations under different procedures, a decision was taken to carry out an overarching investigation under a number of the relevant Trust policies, further informing the claimant that in addition to the investigation, mediation

between her and Ms Phillips would run concurrently. Ms Davies' evidence being that;

> "I was concerned, however, that we needed a formal process to run alongside this because otherwise the concerns raised by each of them would continue to prevent the formation of a cohesive working relationship".

105. The claimant was not satisfied with the approach being adopted by the respondent,

106. Following the meeting with the claimant, Ms Davies and Dr Jennings held a similar meeting with Ms Phillips.

107. On 5 June, Ms Phillips raised a further issue concerning the claimant, acknowledged by Dr Jennings, stating:

> "I fully appreciate the next steps we discussed yesterday, but feel you should also know the constant pressure we continue to feel with unreasonable changing demands outside of recognised procedures and pathways."

108. Following these meetings, issue then arose between the claimant and Ms Phillips over roles within the validation of SACT data, for which on 19 June 2015, Ms Phillips wrote to the claimant:

> "To clarify, I have never felt in competition with anyone within the Trust.
>
> I believe mediation is being set up and I do not feel the need for any additional meetings outside of that at this time."

109. The claimant responded:

> "Are you saying you do not wish to meet me to address roles and responsibilities and effective team working?"

110. Ms Phillips responded thereto:

> "Not at all, simply I feel this will be addressed as part of our mediation."

111. The claimant on 8 July 2015, then wrote to Dr Jennings and Ms Davies chasing action, "*Re: Concerns raised about the unprofessional behaviour of Karen Phillips",* which is here set out in full as it is a disclosure relied on by the claimant, the correspondence stating:

> "Exactly six weeks have passed since I met you both to share my concerns about the lack of progress in addressing the concerns I first raised on 9 February 2015 (21 weeks ago).
>
> I understood that I would be receiving a written explanation of the investigation undertaken to date along with recommendations from you both for the next steps.
>
> I am very concerned that my original concerns regarding Karen's unprofessional behaviour towards me and the concerns I have raised about her probity have been left unaddressed by you as a senior team for an unacceptably long time that patient safety issues are now an added concern.

> I have acted in a constructive and policy-based way to date as I take my role as lead cancer clinician very seriously. I have factual evidence to support my concerns around her performance and probity so strongly believe these are important issues for the Trust to address.
>
> I hope to hear from you by the close of play on 17 July otherwise I will escalate my concerns formally as I believe the whole service is exposed to potential harm from lack of adherence to due process and not supporting an accountable lead clinician in an open and transparent way with the safe running of the cancer service."

112. On 13 July 2015, the claimant was written to, being advised that the concerns that both she and Ms Phillips had raised, were of a serious nature, confirming the plan they had proposed at the meeting with her, and that an investigation would be implemented to consider the concerns raised against one another, advising:

> "We have considered carefully the concerns that both you and Karen Phillips has raised. Following consideration of these concerns which are of a serious nature and having taken advice from HR, we can confirm that, as we explained to you in that meeting, that it is our decision that an investigation is implemented to consider the concerns both you and Karen have raised regarding each other.
>
> We are now providing for your information the terms of reference (ToR) of this investigation together with the following Trust policies:
> - Bullying and Harassment Policy…
> - Grievance Procedure
> - Conduct, Performance and Ill health Procedure for Medical and Dental Staff…
> - Disciplinary Procedure…"

113. The correspondence then identified that an external investigator, Mr Major, had been appointed, and that Ashleigh Soan, Medical Directorate Portfolio Manager would be in contact to set up a meeting with Mr Major, and that:

> "…a copy of the mediation agreement dated 5 November 2014, from the Lung MDT mediation session has been disclosed to Mr Major. The reason for this is because it is necessary to provide the case investigator with the relevant background to the investigation. Also that it is necessary for the case investigator to understand the terms of the agreement as the investigation may reveal that the Trust should take steps to enforce the terms of the agreement. You will see from the ToRs, that we will need to decide on receipt of the investigation report whether you and/Karen have/has acted incompatibly with the terms of the mediation agreement."

114. The correspondence then advised that she would be written to separately, regarding the offer of mediation between herself and Ms Phillips in line with the provisions of the mediation agreement.

115. With regards the investigation, the claimant was also informed that, both Dr Jennings and Ms Davies would be the managers of the case.

116. Ms Phillips was equally written to in the same terms, on 13 July 2015.

117. The settlement agreement report was then anonymised save for reference to Ms Phillips and the claimant.

118. On 15 July 2015, the claimant wrote to Ms Chowdhury, Senior HR Manager (who was in post until 31 July 2015), following a meeting they had had regarding the investigation, which correspondence is again here set out in full, as it is relied on as a protected disclosure by the claimant:

> "Dear Shamima
>
> Re: Notice of Confidential Investigation dated 13 July 2015
>
> Many thanks for your time today explaining what you were instructed to do by Dr Richard Jennings after he informed you that as I had raised a complaint about Karen Phillips and she raised one about me it was considered by both the Medical Director and Director of Nursing that a Confidential Investigation was considered the best way forward.
>
> I agreed to send you a time line of events since 9th February 2015 when I first raised my concerns directly to Karen Phillips about her unprofessional behaviour and how it left me feeling and concerns for running a safe cancer service for our patients if not addressed. She agreed with my suggested way forward of asking her line manager Deborah Clatworthy and Richard Jennings as Medical Director to meet with us both to address our respective roles and responsibilities in an effort to unpick our professional differences.
>
> At the meeting with Richard Jennings and Philippa Davies on 27th May 2015 I was informed that the executive team had concluded the concerns I raised about Karen's behaviour were relational and it was recommended further mediation would be arranged. I enquired what investigations had been undertaken to reach this conclusion. No detail was shared but a repetition that this was the considered view of the executive team.
>
> I specifically asked about the concerns I had raised about the probity of Karen Phillips and the impact her unprofessional behaviour was having on the team and in turn on the safety of patient care. I asked what actions he had taken after reviewing the evidence I shared with him the previous week where Karen had not followed Trust policy and ordered a non-formulary drug costing £8,000 without consulting me as Head of the Chemotherapy service.
>
> He remained resolute in his assertions that this was a relational issue. I told both Richard Jennings and Philippa Davies that I had raised these concerns, as I was genuinely concerned for the safety of our cancer service as our appointed full time Lead cancer nurse refused to engage with me. He maintained his approach that mediation was the considered next best steps. I asked what the role of line managers was if poor professional behaviour had to be managed by external mediators. He accepted this was a good point but admitted his mind would not be changed. I enquired how the Trust would learn from this event, as the outputs from mediation are confidential.
>
> Disappointed that Richard Jennings was not going to change his mind about the "next steps" I requested he put in writing a detailed description of the investigation undertaken which had led to the executive team concluding that mediation was the best "next steps" (Richard Jennings words).
>
> I sent my letter dated 8th July to Richard Jennings and Philippa Davies when after a further 6 weeks no written explanation of the outcome of their investigation was forthcoming.

Contrary to the statement in the joint letter that I was informed during the meeting on 27th May 2015 Karen Phillips had raised concerns about me it was only after reading the letter dated 13th July that I became aware that Karen had raised concerns about me. Karen rarely speaks to me. Since the 9th February she has not raised a single concern to me either face to face or in writing.

As the letter dated 13th July 2015 states… concerns Karen Phillips has raised … given she has not shared them with me before a third party this breaches several of the Terms as laid out in the Settlement Agreement dated 5th November 2014.

Finally the content of the letter dated 13th July sent jointly by Richard Jennings and Philippa Davies was completely unexpected.

I was requesting details of how the executive team reached their conclusion that mediation was the best "next steps".

I have not to date raised a complaint against Karen Phillips either verbally or in writing. I have pursued support and help from the senior management team since 9th February 2015 for a solution focussed approach.

I would like HR to review the evidence submitted with this letter and ensure all relevant Trust policies have been followed to date as I feel I have been unfairly treated by the senior executive team by them.

1. Not listening to my concerns as the clinically accountable Lead Cancer Clinician working for the best interests of the Trust and safe patient care.
2. Not providing the support both Karen Phillips and I asked for to address our professional differences.
3. Allowing an unacceptably long time (22 weeks) to elapse when I first raised my concerns which has left me vulnerable to a counter-complaint.
4. Not adhering to the Trust principle of supporting a culture of openness and transparency where concerns can be raised without fear of reprisal.
5. Not supporting me as the Head of the Chemotherapy service and Lead Cancer Clinician by taking seriously my concerns about patient safety and wanting to learn rather than blame.
6. Being treated by Richard Jennings differently when raising a concern about patient safety as he investigated a concern Karen Phillips raised about the care of one of my patients in August 2014 whilst I was on annual leave.
7. Inaccurately reporting that I had raised a complaint against Karen Phillips in the letter dated 13th July 2015.
8. Not providing me with any notice prior to the letter dated 13th July 2015 that conducting a Confidential Investigation was the intention of the Senior Executive team.
9. Not following the Trust policy of raising complaints as my line manager Nick Harper did not approach me to share the complaint raised by Karen Phillips (as stated in letter 27th May 2015).
10. Not informing me a complaint had been raised by Karen Phillips against me.

I would like answers to all my specific concerns outlined above in writing.

I am also unclear how Terms of reference for an investigation can be drawn up before the complainant is informed?

In addition you may wish to know I went to see the CEO Simon Pleydell on 10th March 2015 to ask for his help in addressing the concerns I had raised with regards Karen Phillips' behaviour as I was not getting any support from Richard Jennings nor

> Deborah Clatworthy and I wanted to avoid finding myself in a similar situation to one in November 2013 when I raised a complaint against a colleague and found myself the subject of a malicious counter-complaint which led to the postponement of my revalidation.
>
> I feel extremely vulnerable and not protected nor supported by the Trust at this time so until I understand precisely what the complaint is against me and what the evidence is for the alleged complaint I have raised against Karen Phillips I will not be accepting any invitations to meetings with any investigators and certainly not without BMA and MDU support.
>
> At your suggestion I have copied in Director of HR Norma French.
>
> Yours sincerely
> Dr Pauline Leonard MD FCRP
> Consultant Medical Oncologist"

119. On arrangements for a meeting between the claimant and Mr Major being made, the claimant refused, advising that she would provide reasons but was seeking clarification from the Trust in order to obtain advice from the BMA and MDU before agreeing to a meeting, and clarification why the respondent had implemented an investigation, stating that she had not to date, been informed that an investigation was going to be implemented.

120. On the claimant being advised that it was important that a date was agreed to meet Mr Major, and of her right to have representation at the meeting, the claimant responded on 16 July to Ms Chowdhury advising: *"As I explained to you in person yesterday – I have not raised a complaint so I am seeking further clarification of why an investigation has been launched",* further advising that she would furnish her concerns in writing, that she was taking advice from the BMA and that she did not wish further requests to meet an investigator as she was then feeling pressurised into a process she did not understand.

121. On 17 July, Ms Choudhury sought information from Dr Jennings and Ms Davies as to the meetings they had had with the claimant and Ms Phillips.

122. Dr Jennings furnished his account that, the meeting between the claimant and Ms Phillips had been the same, both individuals being informed of their being offered mediation, mediated by Chyan Kolvekar and Fiona Isacsson, in accordance with the provisions in the mediation agreement and that they would be arranging an external investigation into the actions and behaviour, of both Ms Phillips and the claimant, displayed to each other with reference to their compliance with the terms of the mediation agreement. Dr Jennings thereon providing:

> "In the meeting with PL, the subsequent discussion was around PL's perception that we were not responding to her concerns in the way that she would wish. PL said that a lot of her concerns were around understanding KP's roles and responsibilities, rather than focusing on the quality of their working relationship. I responded that PL had certainly expressed a large number of concerns that were about the quality of the working relationship, and indeed had expressed such concerns in this meeting. The discussion was thorough and continued in total for approximately one hour at the conclusion of which PL still did not agree that the way in which matters were being handled was the right way, but did understand that was what the Trust intended to

> do. PL asked that she get sent a letter explaining what the Trust was planning to do and I and Philippa Davies agreed. …"

123. For completeness, the tribunal records Dr Jennings' account of the meeting with Ms Phillips, that:

> "there was a subsequent discussion about how very distressing KP had found the situation. KP explained how much she felt PL had upset her, how difficult she found it to come to work because of this and how much she felt this had impacted on her health and wellbeing. KP reminded me and Philippa Davies of the Trust's obligation to look after her health and wellbeing and pointed out that any prolongation of the current situation placed considered *[sic]* additional strain on her which she was experiencing which was almost intolerable. We discussed the ways in which she could access pastoral and occupational support and acknowledged the great strain that she was under. KP expressed some scepticism regarding how much might be achieved by mediation, but was clear that she was willing to engage with the process that the Trust was offering and had decided upon."

124. On the respondent further trying to arrange a meeting between the claimant and Mr Major for August 2015, Mr Nigel Redman, Head of HR (until February 2016), wrote to the claimant on 31 July encouraging her to meet with Mr Major, advising that, should she fail to do so, she would be failing to participate in the investigatory process which had partly been set up to address her concerns, further advising that the Trust intended to carry out a full and detailed investigation based on the information provided to the investigator, and therefore it was in her interests to discuss her concerns with the investigator, asking for the claimant to confirm her attendance by 5 August.

125. The claimant was also advised that by her correspondence of 15 July, in which she had raised a number of concerns about the process followed from 9 February 2015, these would be reviewed.

126. On 6 August 2015, further to the respondent's correspondence of 13 July, advising as to the claimant receiving notice regrading mediation, the claimant was written to and offered mediation pursuant to the Lung MDT agreement, to be facilitated by Ms Isacsson and Mr Kolvekar in accordance therewith, which was to take place separate to the investigation process, asking for the claimant's agreement to participate therein.

127. A similar letter was sent to Ms Phillips.

128. With regards the investigation, the claimant met with Mr Major on 11 August 2015, accompanied by her BMA representative, Mr Kuku, notes of which are at R1 page 1018-1034. For completeness, it is here recoded that Mr Major interviewed Mr Phillips on the 24 July, notes of which are at R1 page 995-1014

129. On 18 August, Mr Kuku raised objection to Dr Jennings being a joint case manager for the investigation, advising:

> "Please find attached a copy of Dr Leonard's letter to Shamima Choudhury (Trust HR) dated 15 July. The grounds for the breach alleged against you (and the senior executive team) are very competently presented in that letter. A cross-reference with

clause 19 of the settlement agreement stands as an example of one of the terms breached. We expect any meaningful investigation to cater for the issues within Dr Leonard's letter, however, in doing so you will inevitably be required to engage with the investigation as both a witness and subject of concerns/complaints. You cannot play that role and remain case manager without a conflict of interests. We must therefore request that you consider your position within the case."

130. On 19 August 2015, Mr Major furnished a preliminary investigation report to Dr Jennings and Ms Davies, attaching signed statements of concerns, complaints and issues provided by Ms Phillips and the claimant, together with a written record of interviews, advising that he would then commence stage 2 of the investigation.

131. By the claimants signed statement of concerns and complaints, the tribunal here sets it out in full, as the claimant relies on this as a further protected disclosure.

"Dr Pauline Leonard, Lead Cancer Clinician and Consultant Medical Oncologist Statement of concerns, complaints and issues in connection with Karen Phillips, MacMillan Lead Cancer Nurse

Note: It is assumed that Karen Phillips (KP) and Dr Pauline Leonard (PL) will be witnesses to all incidents and events described below.

1. KP telephoned PL on 9 February 2015 to discuss triage sheet for the 24/7 toxicity line and PL's request that nurses scan and email the triage sheets to the Acute Oncology Team. In the course of this telephone conversation, KP "ranted" and "barked" at PL, talked over PL, misrepresented what PL had said and was rude, abrasive and disrespectful towards PL.

Witnesses: No specific individuals identified.

2. At a Chemotherapy Team meeting around March or April 2015, PL became aware that KP had been involved in the authorisation of an expensive drug – Dexrazoxane – costing around £10,000 without informing, or seeking authorisation from, PL or complying with relevant Trust protocols. Furthermore, KP failed to respond to PL's subsequent request for an explanation of the circumstances in which this drug had been authorised and used.

Witnesses: Nuray Temiz; Fiona Isacsson; Dr Emma Spurrell.

3. When asked by PL at a Chemotherapy Team management meeting in or around March 2015 whether a Urology CNS role had been advertised, KP replied categorically that it had not. PL subsequently discovered that KP's reply was not correct and that a Urology CNS role had in fact been advertised three days later. Furthermore, when PL requested an explanation from KP for this discrepancy, KP failed to respond to PL.

Witnesses: Mark Rose; Maureen Blunden; Kavita Kantilal; Maneesh Ghei.

4. On 29 April 2015, when PL tried to discuss arrangement for the HOPE course with KP, KP behaved unprofessionally towards PL and refused to engage with PL in front of other members of staff.

Witnesses: Adam Belton; Patricia Booth.

5. KP has generally claimed that things have been said or done, in particular during meetings, when they haven't in fact been said or done. This has made PL fearful of attending meetings with PL without a third party present.

Witnesses: No specific individuals identified.

6. Generally, KP has demonstrated a failure or refusal to engage professionally with PL, has failed to show the leadership required of a band 8B employee and behaves like a "shop steward" rather than a Lead Nurse. PL finds KP's behaviour obstructive rather than constructive in developing the service. KP unilaterally makes decisions about staff, for example, Renata Rowicka (Lead Chemotherapy Nurse) is now attending a degree course and training for the HOPE program but is not available to work with PL to develop the chemotherapy nursing role to meet CQUINS.

Witnesses: Renata Rowicka.

7. KP regularly arrives late for meetings and regularly fails to engage with, or show interest in, discussions during meetings.

Witnesses: No specific individuals identified.

8. KP propagates untruths, for example that she was not invited to the Christmas Departmental Dinner in November 2014.

Witnesses: No specific individuals identified.

9. KP has brought her 11 year old daughter into work on a number of occasions, which does not model good behaviour to other staff.

Witnesses: No specific individuals identified.

10. KP does not enter her leave dates – study or otherwise – into the team diary and has a lot of unrecorded sick leave.

Witnesses: No specific individuals identified.

11. KP has developed very close relationship with Deborah Clatworthy, Fiona Isacsson, Lee Martin and Nick Harper and inappropriately involves them in interpersonal issues between KP and PL rather than addressing them herself.

Witnesses: Deborah Clatworthy; Fiona Isacsson; Lee Martin; Nick Harper.

12. PL recently set up five meetings relating to the 'proven peer review system', arranging dates so that KP could attend all five meetings. KP subsequently informed PL that she could not attend one of the meetings and a replacement for KP had been arranged. However, KP then failed to attend a second meeting as a result of having booked study leave to attend a course in Manchester (along with Renata Rowicka), which PL considered to be an abdication of responsibility on KP's part on the basis that, as Lead Cancer Nurse, she had a responsibility to attend these meetings.

Witnesses: Renata Rowicka.

13. PL has been made aware of concerns held by other individuals regarding KP's conduct and performance, including: Ali Rismani; Marian Hickey;

> Fiona Patterson; Tristan Tatt; Emma Spurrell; Anna Kurowska; Dr Mulyati Mohamed; Maria Walsh; Lourdes Comlat; Adam Belton; and Patricia Booth.
>
> Witnesses: Ali Rismani; Marian Hickey; Fiona Patterson; Tristan Tatt; Emma Spurrell; Anna Kurowska; Dr Mulyati Mohamed; Maria Walsh; Lourdes Comlat; Adam Belton; Patricia Booth.
>
> I agree that this is a comprehensive and accurate statement of my concerns, complaints and issues relating to Karen Phillips arising after 5 November 2014.
>
> Signed
> Dr Pauline Leonard
> Dated 19 August 2015."

132. On 10 September 2015, both the claimant and Ms Phillips were updated as to progress, being advised that the issues raised by both parties by their complaint statements, had been collated into a composite list of issues, complaints and concerns, for Mr Major to investigate as part of the second stage of the investigation process, furnishing a copy of the list for their reference. The correspondence then set out the process to be followed by Mr Major, and of his producing a report in accordance with the terms of reference, with matters expected to be concluded within four weeks, advising:

> "We have also reflected on the proposed mediation that is due to take place in parallel with Mr Major's investigation. Having considered the composite list of issues for the investigation, we are of the view that it would be better to postpone the mediation until the investigation has been completed and the issues raised have been clarified and resolved. We can then revisit the proposed mediation again once the investigation is concluded. This approach will allow any future mediation to take into account relevant information from the investigation and how the Trust has determined to deal with that issue. This will therefore give any mediation a better prospect of success."

133. The correspondence then set out expectations of behaviour between the two individuals, pending the conclusion of the investigation. A copy of the composite list of issues is at R1 page 1056 – 1060.

134. Equally on 10 September, Mr Jennings and Ms Davies, responded to the claimant's letters of 15 July to Ms Choudhury, and the letter of Mr Kuku of 18 August 2015, apologising for the delay in dealing with her complaint, advising that this had been caused by the complex nature of the issues and their need to determine the best way to take them forward, assuring the claimant that her concerns had never been ignored and that going forward they were committed to ensuring that the matters were resolved as expeditiously as possible. With regards to mediation, the claimant was advised as to it being held in abeyance subject to the investigation and, in respect of the claimant's concern raised as to Ms Phillips ordering non-formulary drugs, identified that this was a subject to be investigated by Mr Major. The correspondence further addressed the claimant as to her being informed at their meeting on 27 May, of Ms Phillips having raised concerns against her.

135. The correspondence then addressed patient safety concerns in the following:

> "Richard has discussed the concern you had about the Karen's ordering of a non-formulary drug when he discussed this issue with you on 21 May 2015. You confirmed at that meeting that you did not consider Karen's underlying practice to unsafe *[sic]*. While we have referred this matter for further investigation, we are not aware that there are any imminent risks to patient safety that need to be addressed arising from this issue. Of course, if that is not the case and you are of the view that there are imminent and very real patient safety risks arising from this or any other issue we are very keen to support you and to address these.
>
> For this reason, we will arrange a separate meeting for you with Richard and the Head of Governance so that any patient safety concerns you have may be identified and considered further. To confirm: this meeting is not intended to be an investigation of issues you have raised in relation to Karen – those will be left to the investigator with whom you were asked to raise any issues and concerns. This meeting will be to identify any imminent patient safety risks you are aware of and to consider steps with your input that we can take to address those. It is important to us that you feel supported and encouraged to raise these issues and we very much value you doing so."

136. The correspondence then addressed the issue of there being a conflict of interest as raised by Mr Kuku, the correspondence advising that they had come to the decision that it would be appropriate for Dr Jennings to continue in the role of co-case manager, giving their reasons as follows:

> "1. The substance of the matters under investigation does not relate to Richard personally, nor is he a major witness to these issues. It is not correct to say as Mr Kuku suggests that Richard is the subject of the concerns which were raised by you with David Major and which are the subject of his investigation.
>
> 2. Since this matter concerns a very senior clinician and nurse, we consider it is important the two of us are involved at this stage overseeing the process. We have said that the current investigation is intended to satisfy the requirements of a number of Trust procedures so that there is no duplication of process or unnecessary procedural delay if any further formal steps are required. One of those procedures is the Trust's Conduct, Performance and Ill Health Procedure for Medical and Dental Staff and your representative will be aware that this procedure requires Richard to be case manager where the issues may relate to a consultant.
>
> 3. To the extent that there may be any perceived conflict of interest, Richard is only one of the case managers. All decisions on this matter will be made by Philippa Davies and Richard jointly and the involvement of the Trust's Director of Nursing in the decision-making process should provide you with a further safeguard against concerns of potential impartiality.
>
> 4. To the extent that you have any concerns about the process to date, we have sought to address these in this letter and we can assure you that nothing raised by you or Mr Kuku has changed Richard's position of impartiality in this matter."

137. The letter concluded further advising that, the claimant would be contacted about arranging a meeting with the Head of Governance to consider any further patient safety issues that the claimant should wish to raise.

138. On 30 September, Mr Kuku on behalf of the claimant, raised issue with Professor Hart, non-executive director, as the non-executive Trust director assigned to oversee the process of the investigation, referencing that Dr Jennings and Ms Davies' letter of 10 September had not addressed his concerns raised by his correspondence of 18 August, stating:

> "We therefore believe we have exhausted our genuine attempt to resolve those concerns with Dr Jennings and we must now present them to you."

asking that Professor Hart address their concerns, advising that Dr Jennings had only addressed the matter of "conflict of interest" leaving extant issues of breach of relevant settlement agreement and non-compliance with relevant Trust policies. Mr Kuku's particular concerns are more particularly set out at R1 page 1133.

139. On 7 October 2015, Professor Hart responded to Mr Kuku, explaining his role within the process to oversee cases and ensure momentum, but did not have an adjudicatory function, thereon setting out his specific response to Mr Kuku's complaints, identifying that if the investigation had been initiated into concerns raised by both the claimant and Ms Phillips about one another, and that it had not been in the contemplation of the investigation that it would be anything other than the concerns raised between the claimant and Ms Phillips, which issues had then been set out for investigation, and that for that reason, there was not seen to be any conflict between the claimant and Dr Jennings, in that he was then not a substantive witness to the matters which had been raised by the claimant or otherwise Ms Phillips.

140. With regard to issues of patient safety, it was identified that Dr Jennings had specifically asked to meet with the claimant as a matter of priority to address any issues of patient safety concerns, asking for the claimant to make appropriate contact.

141. With regard to Dr Jennings being the case manager, Mr Kuku was advised:

> "Unless you have clear evidence that Dr Jennings will not carry out his role properly and fairly, it would not be appropriate to replace him as case manager. His role is mandated by Trust policy and he should only be removed from such a role if there is clear evidence of his inability to carry out the role properly. The concerns you have expressed about Dr Jennings' participation in the process should be alleviated not only by the additional safeguard in this case of a co-case manager, but by the additional safeguards found in the relevant Trust procedures. … Additionally, under that procedure, as you will be aware, the case manager does not ultimately make determinations on matters but must refer them on to an independent panel. This is in addition to the fact in this case there is also an independent investigator. All these safeguards should reassure you that any concern you or Dr Leonard may have about a potential conflict of interests should be mitigated by the process itself. In those circumstances, as I have said, in the absence of clear evidence the case manager is unable to carry out his role fairly, it would not be appropriate to replace him."

142. The correspondence finally addressed the issue in respect of correspondence to Ms French, apologising for the delay in dealing with the matters raised, advising that they were now the subject of Mr Major's investigation, and that: *"It is unclear what more can be done in respect of that matter."* The correspondence concluded, commenting as to the process leading to the investigation, advising that:

> "It is clear that Dr Leonard and Karen Phillips have raised concerns about each other. The Trust considered whether these matters could be addressed by mediation. Ultimately it was felt that mediation would not be successful without the issues Dr Leonard and Ms Phillips have both raised in relation to each other being dealt with formally. The Trust has the right (and a duty) under the various procedures identified to Dr Leonard to initiate such an investigation – it cannot simply ignore the matters raised. In taking the steps they did, both Dr Jennings and Ms Davies sought advice and they have acted upon that."

143. On 13 October 2015, Ms French responded to the claimant's correspondence of 11 September, 25 September and 7 October, advising that in respect of the issues raised by her BMA representative, Mr Kuku, these had been responded to by Professor Hart, and which concerns were being taken up by the independent investigator, Mr Major.

144. Ms French then proceeded to clarify and address the claimant's further concerns raised, advising:

> "We are happy to look into any matters which may fall properly within the Trust's grievance procedures, if you do wish for there to be an investigation of such matters. However, what you wish to be investigated is unclear to me. Your recent correspondence refers to complaints of "due process" in relation to the instigation of David Major's investigation but it is worth considering the numbered points that you raise in your letter of 15 July 2015. … It is not clear to me that these complaints (if they are the ones you wish investigated) are about due process in respect of the Major investigation, nor indeed in some cases what any further investigation could achieve beyond the information you have already been provided with. I hope that you will agree that the Trust's resources are finite and it is undesirable to initiate investigations where those are unlikely to add any meaningful information or to our understanding of how matters currently stand and may simply delay the resolution of the issues that are currently being investigated."

145. Ms French then addressed each of the claimant's concerns as raised, in turn, and are more particularly set out at page 1170-1172.

146. The tribunal however here notes, Ms French's response to the claimant's concern of *"not providing the support both Karen Phillips and I asked for to address our professional differences"* which after addressing the issue and how the respondent had dealt with it, Ms French then advised:

> "To the extent that your complaint of not being supported relates to any other matters outside of David Major's investigation, then of course you are free to raise a grievance about these matters, identifying what they are and when they occurred. We will then arrange for them to be investigated in accordance with the Trust's grievance procedure."

147. Ms French concluded here correspondence, advising:

> "You will see that I have taken some time to review the correspondence with you and to address the points that you have made. Where matters may be capable of constituting grievances I have identified your right to raise these matters as such. I have done this, and gone to some length in this letter, in an effort to demonstrate to you that the Trust has sought to engage with the complaints that you have raised and so we can avoid protracted correspondence about these issues going forward. I would encourage you to engage with the current procedures in a constructive way and in particular, I hope the meeting offered with the Medical Director and the Head of Governance to discuss any patient safety concerns you may have. We value your views on any such concerns you may have and it is only because no such meeting has taken place to date that I have reminded you to attend such a meeting."

148. On 14 October 2015, the claimant wrote to Ms French acknowledging her correspondence, stating: "Thank you very much for your very detailed letter dated 13 October which I received today," further stating:

> "From my perspective up until your letter today I have not felt heard or taken seriously. … I wonder if a face to face meeting is the best way forward as although you have clearly personally taken a great deal of effort to answer my queries – the replies do not answer my specific questions and concerns. … One issue I suspect is that my original letter dated 15 July was sent after I had a face to face meeting with Shamima where I outlined my concerns to her. She asked me to put those in writing so a review of due process i.e. how did this result in an investigation could be understood.
>
> As my concerns were about the behaviour of both Richard Jennings and Philippa Davies, it was not a matter I expected them to be consulted on. I wanted an HR perspective and reassurance that fair play was in place.
>
> I have not been reassured on this front.
>
> I will await a reasonable amount of time for you to say how you would prefer my specific queries to be addressed either face to face or a new more specific written complaint. Is one week acceptable to you?"

149. On 20 October, Ms French responded, advising:

> "I am struggling to understand the exact nature of what we would be meeting to discuss. I need to understand what the concerns are that you feel remain unaddressed. The cross-reference in your correspondence into previous communication and supporting documentation has become confusing, coupled with the parallel communications from your BMA representative to other parties."

150. Ms French then asked the claimant to set out in a single document the following:

> "1. The specific concerns that you feel have not been addressed through the previous correspondence either to you or to Mr Kuku.
> 2. For each concern, please could you specify the date, time and who exactly was involved.
> 3. Where you consider there has been a breach of a Trust policy or other obligation upon the Trust, please identify clearly the relevant policy (and the relevant section within that policy) or obligation which you are concerned has been breached.
> 4. Each of the concerns you have, please state what redress you are seeking.

> If this can be done, as I say, without cross-reference to other communications and as I have said in a single document which is set out as succinctly as possible, then I will be happy to consider how best your concerns may be addressed. I trust that provides a constructive way of dealing with your concerns and I look forward to hearing from you."

151. The claimant responded on 21 October, advising that she would set out her concerns clearly and succinctly with supporting references as requested.

152. For completeness, the tribunal here records that on 21 October 2015, the claimant raised issue querying why, as the Lead of Chemotherapy Service, and an individual who had asked Ms Phillips to address the issue concerning the Savene incident, she had not been named Lead, as to the risk there arising. In respect of the risk arising, the tribunal heard significant evidence as to the severity of the risk on the event of the Savene incident, the respondent having categorised the risk level as being a rating of '9', denoting a moderate risk, which was subsequently raised and entered on the "risk register" by the claimant to a rating of '20', and further increased to a rating of '25,' which the claimant justified in evidence to the tribunal, of her rating the incident at that level, because *"I couldn't get any response from Karen"* and in response to being cross-examined, being asked as to whether this was about patient safety, the claimant thereon responded: *"This is all about me getting Karen Phillips to understand she couldn't act alone in future. She hadn't met with me. I am the accountable Head of the Chemotherapy Service*."

153. A risk rating of '25' represents a risk assessment of being catastrophic, being an incident leading to death, or multiple permanent injuries or irreversible health effects and a likelihood of it almost certain to reoccur or will undoubtedly happen or is expected to occur at least daily.

154. The tribunal does not say further hereon, as it is not a material fact for the tribunal's determination, albeit it is informative of the claimant's stance towards Mr Phillips.

155. On 2 November 2015, the claimant wrote to Ms French providing a summary of her concerns as had been requested by Ms French, numbered A to G, which after making a statement of the concerns, it then referred Ms French to her previous correspondences. The claimant further provided a chronology of events, advising:

> "I have emails, letters and meeting notes to corroborate all of the above statements.
>
> I hope all the above provides clarity for you on all the issues of concern.
>
> I would like a full and formal investigation into the events as outlined above undertaken by an external investigator as the bullying behaviours of three members of the executive team towards me after I raised concerns sets a worrying precedent as it demonstrates we are not a well-led organisation as we are unable to be open and honest in our dealings with colleagues. Instead I find myself the victim of a reprisal and with untrue assertions made by both Richard Jennings and Philippa Davies in correspondence sent from 13 July and now am under investigation with a series of complaints raised by Karen Phillips but all dated from June 2015 which breaks the Lung MDT settlement agreement.

> I would like to understand why it is seen as acceptable that Deborah Clatworthy has not acknowledged nor responded to any written request to meet to discuss Karen's unprofessional behaviour as she is her line manager?
>
> I would also like to raise my real concern about how the findings of the current investigation being undertaken by David Major will be treated given the findings will go to both Richard Jennings and Philippa Davies. I have no confidence that the findings will be accepted but instead there will be some filtering and framing of the events – my concerns are based on the behaviours of both Richard Jennings and Philippa Davies to date.
>
> Please let me know how you would like to proceed."

156. The claimant's correspondence is more particularly set out at R1 page 1221-1224.

157. Ms French responded on the 11 November, advising that:

> "…I asked if you could set out succinctly in one document, without cross-reference to other complaints, the exact concerns that you had which you considered were not addressed in previous correspondence, provide some basic detail (such as when these occurred and which Trust policy you stated there was a breach of) and identifying the redress you sought.
>
> In terms of this letter, perhaps I should have been clear with you in my letter that by redress I meant not the procedural outcome you wished (such as a further investigation) but what remedy you seek at the conclusion of any process if your complaints are upheld (for example an apology or a change of some description). The procedure is simply a means to achieving an outcome that you desire and really it is an end in itself. This is the information on redress I would like to understand from you. Going forward I will refer to it as "remedy" as that may be a better way of putting it."

158. Ms French then set out that, having reviewed the claimant's correspondence in detail, it did not comply with her request, for which she was still struggling to understand the issue that remained to be resolved, advising that her summary referred to other documents and that she would like to understand the totality of the claimant's complaint; that, of the terms raised alphabetically they did not contain the information she had requested, and that by the claimant's chronology, she was unclear whether the matters there set out were intended to be complaints or not, such that it did not then comply with what she had requested.

159. Ms French further noted, referencing the chronology that, were they matters raised as complaints and to be investigated, they appeared to relate to matters that had not previously been raised, for which Ms French questioned whether they were identified "simply for the purpose of your narrative or as separate additional matters that you now wish to raise" further advising that, if those matters had previously been raised, she had been unable to identify them from the claimant's previous correspondence.

160. Ms French concluded her correspondence setting out a Scott Schedule format (tabulated table), to set out; the nature of the complaint, the time and date of the complaint, who was responsible for causing the complaint, the

relevant Trust procedural obligation the claimant considered to have been breached, the remedy the claimant was seeking and whether there was any patient safety risk issue arising, and if so, to identify what they were and any steps to address the risk. Ms French further advised:

> "I have asked you to identify any patient safety issue that may arise from your concerns so that if there are any such immediate implications we can look at prioritising those issues above the other complaints you raised (which is not to say that I will not consider all the matters you raise – I simply need to understand whether you consider any immediate steps need to be taken to protect patients)."

161. On 12 November, the claimant responded to Ms French, stating:

> "I am afraid your request for further information in the style of a table is unsatisfactory and simply prolonging my sadness and not exploring my specific concerns about due process."

162. The claimant then set out a number of issues that she had raised with other individuals, asking whether she had been apprised thereof and of correspondence she had previously written raising her concerns, further stating:

> "I feel extremely let down now by the lack of care and due process you as Director of Workforce are giving my legitimate concerns.
>
> I do not think it is a good use of either yours or my time to write any more letters that you "struggle to follow". Instead, I would like to request a face to face meeting with you so you can listen to my concerns and explore those to gain a clear understanding.
> …
>
> Meanwhile I will raise the specific outstanding complaint relating to patient safety directly with the Head of Governance as sadly the Medical Director who took all the information from me on 21 May did not deal with it as he promised."

163. The claimant then asked that she hear from Ms French within the next two weeks with suggested dates to meet.

164. Ms French responded on 23 November, taking umbrage at the claimant's correspondence which, noting that the claimant was raising her specific issues relating to patient safety directly with the Head of Governance, stated that it was imperative *"that the Trust understands any patient safety concerns she may have in order that it may urgently address them*". She then advised, *"Turning to the remainder of your email, the tone in which you have addressed me is unacceptably rude and inappropriate".* Ms French then set out and explained why she found the claimant's correspondence unacceptably rude and inappropriate.

165. Ms French further added:

> "Having reflected on both the tone and content of your email, my conclusion is that there is little value in meeting at this point. This is because you are unable to articulate clearly in writing exactly what your concerns about due process, or any other matter, are. If such a meeting were able to be a more constructive discussion about how such matters might be addressed and taken forward then clearly it could be worthwhile, at a future date.

> If you are unable to complete the table I have requested, my suggestion is that you raise your points under the appropriate Trust procedures. The HR team can then deal with them in accordance with normal Trust processes. However, if you do still wish to meet with me, then you will need to set out your concerns in the way I have requested as an essential precursor to that. If it is appropriate then, I will be happy to meet with you at that stage to discuss a constructive way forward.
>
> Finally, I reiterate the points that I raised at the outset about the unacceptable tone of your email to me. If there is a repetition of this approach in emails to me, or indeed any other Trust employee, I will request that formal action is taken to address this. I recognise that you do feel very strongly about the current circumstances, which is why, on this occasion, I will take no further action beyond reminding you that it is important to ensure that the tone and content of your Trust emails are temperate and appropriate at all times."

166. The tribunal pauses at this juncture to note, in respect of an event that the tribunal has been referred to, of the claimant on 25 November 2015 approaching David Holt, Non-executive Director (Audit and Governance) for a meeting, the claimant writing, having identified that she had just seen Mr Steve Hitchins in a wheelchair having had a leg amputated, stating:

> "This got me thinking that I would value some advice how and when I follow up my concerns I first raised with Steve as Chair on 27/9.
>
> I have been in contact with Martin Machray from Islington CCG and he has not yet had a response from Richard Jennings but is following up.
>
> I am worried about a number of issues particularly what has been and continues to happen to me when raising concerns. I wish to do this professionally and based on facts so would value some guidance as to what I should do next.
>
> Please let me know if this is not a reasonable request as I do not wish to make you feel uncomfortable – instead I am writing to you as a NED who takes his role seriously?"

167. A meeting was duly arranged for 2 December 2015. The tribunal has not received further evidence thereon.

168. From the documents before the tribunal, the tribunal notes that on 5 December 2015, the claimant wrote to Mr Holt in respect of them having had a meeting, advising that departing from the plan of action they had agreed, she was approaching the BMA to approach Ms French to have a three-way meeting, stating:

> "I appreciate this is a different approach to what we discussed and agreed however given this is such an important issue for the Trust – confident that all employees should be treated fairly and with dignity and adhere to MHPS principles – I feel it must be managed professionally and issue-focused. I remain concerned that many members of the executive team have portrayed the issues I have raised as personal and not as I see as examples of a bullying culture at WH.
>
> I do believe I have been victimised – I have been treated differently to others who raise concerns and with the issue I raised to Steve Hitchins on 1 October 2015 publicly undermined by the lack of defence from Simon Pleydell and Richard

> Jennings when they received that factually incorrect and deeply offensive letter from Kathy Pritchard-Jones, Chief Medical Officer, London Cancer."

169. With regards to the reference to Ms Pritchard-Jones, this concerns the MDT merger, which the tribunal addresses infra.

170. The claimant concluded her correspondence, stating:

> "I remain deeply committed to WH – patients and colleagues. My motives are to address the poor behaviours and culture created by the executive team and work constructively with the Board to develop an organisation that is well led."

171. With respect Ms French, on 4 December, Trish Dutfield, Senior Industrial Relations Officer of the BMA, wrote to Ms French, apologising for any upset caused to her by the claimant's email of 13 November, stating that that had not been the claimant's intention and that since July 2015, many members of staff including non-executive members and senior HR staff had made a commitment to resolve the claimant's issues but to date that had not occurred. Ms Dutfield requested that the three of them meet to discuss and resolve the claimant's outstanding issues as a matter of urgency, stating: *"I hope you will agree that, talking face to face is ultimately the best way to deal with matters that otherwise, can take a long time to deal with, if it is by email or post"* asking for dates for a meeting.

172. Ms French responded, advising that:

> "As I have already explained in my communication with Dr Leonard, I would like to help but in order to take this forward constructively, I have asked for certain information. If I cannot understand what issues are outstanding and remain to be dealt with, as I have previously set out to Dr Leonard, there is little more I can do and I can only refer Dr Leonard back to the normal Trust procedures on raising grievances.
>
> I am encouraged by your involvement in Dr Leonard's case and it may be helpful to me, to you and Dr Leonard once I have the required information."

173. On 11 December 2015, Mr Major furnished a draft of his report to Dr Jennings and Ms Davies. Dr Jennings advised that he would consider the report, and determine the next course of action.

174. On the 14 December 2015 the claimant wrote to Dr Jennings raising concerns about the merger between the respondent MDT and that of UCLH, to be addressed infra, following which she stated:

> "…
> My letter to Steve Hitchins and the NEDs was to raise my concern about the bullying behaviours I have experienced from both you and Simon with regards the Lung cancer service.
>
> Despite my expertise on a national level and my role as lead cancer clinician I have been excluded from any meetings with you and Kathy Prichard-Jones and Sam Janes. I have not had any action or discussions from your meetings with Simon Pleydell, Sam Janes, and Kathy Prichard-Jones shared with me

> You were in receipt of a letter dated 6 July 2015 which made several inaccurate allegations about our service yet at no time did you share its potentially defamatory contents with me nor send a rebuttal.
> …."

175. Equally on 14 December 2015, the claimant wrote to Mr Hitchins, Chairman, copy to the Non-executive Directors, giving account of recent events re; Ms French, Mr Pleydell, Dr Jennings and the Lung MDT issue, then advising:

> "I believe I have been victimised, that is treated differently to other employees who raise concerns.
>
> I am passionate about excellent care for our patients at WH which we can achieve if we all share the same goal. In my role as Lead Cancer Clinician I have uncovered areas of unsafe practice, issues of probity and lack of due process around decision making. I have raised such issues since May 2013 and over that time have found myself: a victim of vexatious counter-complaint which led to the postponement of my revalidation, involved in a team facilitation exercise which included Richard Jennings yet the agreement has now been broken with no redress, the victim of a potentially libellous letter (save only by not naming me but Richard Jennings admitted in a meeting on 4 August was about me) and most recently put under investigation without due process because I raised serious concerns about a colleague.
>
> It is fitting in the period where the CQC are inspecting us that I look to you and the NEDs once again to demonstrate we are a well-led organisation by arranging a meeting with me to further explore my significant concerns and how I have been treated by raising them.
>
> I would like to have all these issues addressed by the Trust in an adult, constructive way."

176. On 18 December 2015, Mr Hitchins responded to the claimant, advising that matters in respect of the Lung MDT were being addressed with the Chief Executive, for which he was not then to be involved, and in respect of the matters raised in respect of victimisation, advised that Ms French had written to her seeking further information, stating:

> "Norma French wrote to you asking you to identify in tabular format the concerns or issues that you had (and relevant details of these matters) so that the Trust could properly understand these and consider how they should be dealt with.
>
> I would repeat that request – in order for us to help you, we need to understand clearly what it is you complain of. The request for clarity on this is not unreasonable and so I would ask that you reply to the Director of Workforce with the information she has requested in the table format. Once that information has been received, the Trust will be in a position to address your concerns in a constructive way"

177. Mr Hitchins advised that he was referring the matter to Ms French to address once the claimant had furnished the relevant information, and that once the claimant's concerns were clear, it may at that stage be appropriate for him as a non-executive director to become involved in the matter.

178. Mr Hitchins then addressed the issue of the claimant raising Ms French's letter, being of "threatening language", identifying that the issue had been

raised by her BMA representative who at that stage had not seen Ms French's response to have been threatening, accepting that the claimant had not intended to cause upset thereby, stating:

> "The response from your BMA representative clearly does not complain that Ms French used threatening language – only that you felt upset by the response which presumably was because you did not, as expressed by your representative, intend a reaction that you caused. Instead your representative sought a meeting for you with Ms French on the basis she was the correct person to take this matter forward. In these circumstances I am satisfied that this matter should go back to Ms French in order that you can provide her with the information she sought and consider how best to take the matter forward."

179. On 18 December 2015, Mr Major furnished a final version of his report to Dr Jennings. A copy of Mr Major's report is at R1 page 2053-2110.

180. It was the conclusions of Mr Major's investigation that, there had been a serious breakdown of the relationship between the claimant and Ms Phillips which had deteriorated to a point where it was having a significant impact on them, both personally and their ability to work together in a constructive manner, that there had been a breakdown in trust which had led each of them to view the actions of the other in an overwhelmingly negative light and, in some instances, to skew their perceptions of each other's actions. Mr Major further found that a number of allegations raised by Ms Phillips concerning unfair or unreasonable criticism by the claimant were largely unsubstantiated, and that Ms Phillips had a tendency to have difficulty in distinguishing between unfair and unreasonable criticism, and legitimate instruction or direction from the claimant in her role as Lead Cancer Clinician, and had perceived the claimant to be demanding, obstructive or difficult in circumstances where, as the Lead Cancer Clinician, she had a legitimate right to question whether strategies and approaches that were being adopted were appropriate. The report further found that the claimant had become of the view that Ms Phillips was a threat to her authority within the Chemotherapy Service and Cancer Services, and that this had influenced her behaviour towards Ms Phillips. Mr Major concluded that, some of the claimant's behaviour towards Ms Phillips may have been intended to either emphasise her seniority to Ms Phillips in the Cancer Services hierarchy or minimise Ms Phillips' influence and standing within those services, and that the claimant's practice of sending emails containing critical, challenging and threatening content or otherwise confrontational in their tone, had contributed to the deterioration in the relationship with Ms Phillips which, on considering whether such communications could be construed as "bullying" as defined within the Trust's Bullying and Harassment policy, concluded that the claimant's practice of delivering criticism, albeit general low level criticism, did have the potential to leave individuals feeling undermined and upset, and in that sense "bullied" within the definition of the Respondent's policy, which was further inconsistent with the approach advocated by the settlement agreement.

181. The report further addressed the issue as to what impact, if any, the matters he had identified by his investigation had had on the safe and efficient running of the Trust's Cancer Services, concluding that he had not found any evidence to suggest that the interpersonal issues that existed between

the claimant and Ms Phillips, had any impact on the safe running of the Trust's Cancer Services, Mr Major stating:

> "More specifically I have not found any evidence that has given me reason to suspect that patient care or patient safety have been compromised or that PL and KP are unable to communicate reasonably in relation to patient care issues. Having said that, I conclude that the antagonism and ill feeling that now exists between KP and PL does give rise to a risk that communication around patient care could be adversely impacted and that this could in turn impact on the safe running of Cancer Services."

182. The report concluded:

> "There was also some evidence to suggest that divisions were being created within Cancer Services, with some staff being supportive of KP, some staff being supportive of PL, and some seemingly neutral. If these divisions are allowed to develop further they could begin to have a detrimental impact on the ability of individuals to communicate effectively, with consequent risks that would pose to patient care and patient safety."

183. On 21 December 2015, Dr Jennings wrote to the claimant, in respect of her correspondence to him of 14 December, Dr Jennings advising:

> "I am writing in response to your letter of 11 *(14 as amended in evidence to the tribunal)* December 2015 copied to Simon Pleydell and Steve Hitchins. Within your letter you make allegations of bullying by myself and Simon. These are serious allegations, therefore I have passed your letter to Norma French, Director of Workforce, as the responsible director for advice on taking these allegations forward formally."

184. The letter also addressed an issue in respect of process surrounding the MDT merger to be addressed infra, Dr Jennings advising that as the claimant had raised that matter with Mr Pleydell, he was leaving the matter to be addressed by him, so as not to duplicate communications.

185. On receipt of that correspondence on the 21 December, the claimant wrote to Mr Hitchins, stating:

> "I wrote to you in late September to highlight the unprofessional behaviours I have experienced from several members of the executive team
>
> My hope was as the Chair of WH along with the NEDs that the behaviour may be addressed in a constructive way. I did add that I hoped I wouldn't find myself on the receiving end of another reprisal.
>
> I am attaching a letter written by Richard Jennings hand delivered to my office now. I really am flabbergasted that this is the accepted behaviour of executive members of the board. I truly do feel victimised and unsupported as an employee of WH."

186. On 22 December 2015, the claimant and Ms Phillips were each written to, by a joint letter from Dr Jennings and Ms Davies, being furnished with a copy of Mr Major's report, the report being redacted, removing therefrom, Mr Major's findings relevant to the opposing party. The correspondence advised:

> "Please find attached the case investigation report submitted to us by the case investigator, David Major, on 11 December 2015. In accordance with Trust policy, we are sharing this with you within the timeframe of 10 working days."

187. The correspondence then advised of the reason for their respective redacted versions, advising of the confidentiality relating thereto, further advising that the case managers would consider Mr Major's report and write thereafter in the new year, to let them know what further action, if any, would be taken.

188. In respect of this correspondence being sent out on 22 December 2015, it is Dr Jennings' evidence that, given both parties were concerned about the investigation, and in particular, the claimant had raised the fact that there had previously been delays in dealing with her concerns about Ms Phillips, it had not felt right to him to hold back the report until after Christmas, stating that, had that been the case, the report would not then have been received by the claimant until nearly a month after Mr Major's report had first been sent to them, which he did not feel right in the context of the issues that were then important in relation to which the two complainants wanted as much clarity as possible, as quickly as possible. Dr Jennings was clear in his evidence that, there was no intention on his part, or that of Ms Davies, to inconvenience either the claimant or Ms Phillips, but merely thought that they would want to see the report as soon as it was available.

189. On 23 December 2015, Ms French wrote to the claimant in respect of the correspondence from Dr Jennings of 21 December, and the claimant's correspondence of 11 December, making allegations of bullying by Dr Jennings and Mr Pleydell, and of the issues raised with the Chairman and non-executive directors, and of Mr Hitchins' replies to the claimant, and again asked the claimant to furnish information relevant to her complaints in the tabular form as requested by her correspondence of 11 November, stating: "When I have that, I will be in a much better position to advise you how best to take these matters forward".

190. On 5 January 2016, the claimant (and similarly Ms Phillips) was written to, being advised that on the report of Mr Major being reviewed, it had been decided that there was a case of misconduct under the Trust's disciplinary procedure, potentially being that, she bullied the Lead Cancer Nurse through the following actions, namely that; she had inappropriately emphasised her authority and seniority over the Lead Cancer Nurse, that she had sought to impose an unreasonable set of expectations about the level of consultation that she should have on nursing-related matters, that she had been unfairly and unreasonably critical of Ms Phillips and appeared to have an unreasonable determination to find Ms Phillips at fault where the evidence suggested otherwise, that she had developed a style of sending critical emails that were aggressive, challenging and threatening in tone whilst there may have been a reasonable basis for raising her challenges, her method in raising them had been inappropriate, that she had adopted a repetitive style of questioning when interacting with others both verbally and in emails with the purpose of challenging and undermining them to bring about her desired outcome, that she subjected Ms Phillips to an unreasonable and inappropriate level of criticism and scrutiny, that she had undermined Ms Phillips and made her feel uncomfortable by challenging her

inappropriately in front of others, identifying that if the allegations were upheld, they may constitute serious misconduct, and further advised that a formal disciplinary hearing would be convened to consider the matters.

191. The correspondence then addressed the issue of mediation, advising that:

> "Once those processes are complete, and a line has been drawn under the issues you have both raised, we will arrange mediation between the two of you to develop a clear plan that will facilitate and support you both working together."

192. The correspondence to Ms Phillips was in similar terms, the allegations of misconduct here being that; she did not distinguish between potentially unfair and unreasonable criticism by the claimant and legitimate instruction or direction by the claimant, that she appeared to perceive malicious intent on the part of the claimant when there was no legitimate basis for that, and that on occasions she had behaved in an unprofessional way to the claimant including raising her voice and displaying an aggressive demeanour, being advised that if these allegations were upheld, they may constitute misconduct under the Trust's disciplinary procedure. Ms Phillips was equally advised as to mediation to follow.

193. On 6 January 2016, Dr Jennings and Ms Davies held meetings with both the claimant and Ms Phillips, further to the correspondence of 5 January, clarifying matters and advising of the process to be followed, and of their aim to hold the disciplinary hearings within the next four weeks. Notes of these meetings are at R1 page 1400 and 1401, respectively.

194. By correspondence of 20 January 2016, the claimant and Ms Phillips were invited to disciplinary hearings; Ms Phillips for 23 February, and the claimant for 26 February. The letter of invite further advised:

> "When you met with us on 6 January, you stated that you felt there were factual inaccuracies in Mr Major's report. It would be helpful to understand what these inaccuracies may be in case they impact on how and whether we proceed with any of the allegations above. To that end, please would you send us any comments in respect of factual inaccuracy by Monday 1 February. … This will allow us to consider these in advance of the hearing and decide on whether or not to proceed with all of the allegations above."

195. The individuals were further advised that, whilst the management statement of case would have then been sent out with the correspondence, in light of the factual inaccuracies alleged, they sought to await details of those inaccuracies before then sending out the management statement of case, which they undertook to do within five working days of receiving the comments of the factual inaccuracies.

196. The letter further asked that they provide any documents on which they sought to refer at hearing. The letter then advised of the constitution of the panel and persons that would be present, further advising of the right to representation.

197. On 23 January 2016, Mr Kuku, on behalf of the claimant, raised concern in respect of the disciplinary hearing, as to; the length of hearing to be

increased to two days, clarification of HR support to the disciplinary hearing, and that they sought the attendance of Ms Phillips to be challenged as to her allegations, arguing that a failure so to do would be a breach of natural justice, as Ms Phillips' position needed to be tested. Mr Kuku, further requested information as to additional witnesses to give evidence relevant to any evidence supporting the allegations against the claimant, and that they required the management case statement to clarify the basis upon which each allegation was then presented against the claimant.

198. A further request was subsequently made for a full, unabridged version, of Mr Major's report to be furnished.

199. On 25 January 2016, Dr Jennings responded to Mr Kuku advising that, a two-day hearing could not be convened until April 2016, further advising that should it be necessary, the hearing could be adjourned and reconvened if a day is insufficient. Dr Jennings further advised that they, as case managers, would present the investigation report's findings at the hearing and that Mr Major would be present for cross-examination. With regard to the attendance of Ms Phillips, it was identified that the claimant had had three opportunities during meetings held with Mr Major to challenge Ms Phillips' evidence, and that they did not propose to have her attend the hearing, stating:

> "Our reason for not calling Ms Phillips at this stage is that we are conscious that there needs to be an ongoing working relationship between Dr Leonard and Ms Phillips and therefore subjecting one or other to robust cross-examination would not be conducive to repairing the relationship. Secondly, the Trust has a duty to maintain Dr Leonard's confidentiality and therefore we have not informed Ms Phillips that Dr Leonard is subject to a disciplinary hearing."

200. Dr Jennings then asked for the claimant's agreement to their approach, and further advised that no additional witnesses were being called on behalf of the management case.

201. On Mr Kuku raising further issue as to the attendance of Ms Phillips, and of the need for disciplinary action, advocating mediation, Dr Jennings wrote to Mr Kuku addressing the issues raised, advising that:

> "Ms Phillips does not have a right to know that Dr Leonard is being disciplined and we did not tell her in order to protect Dr Leonard's confidentiality. However, we understand from your previous communication that Dr Leonard would be happy to waive that confidentiality with regard to Ms Phillips and we will therefore ask Ms Phillips if she would be willing to attend Dr Leonard's hearing as a witness. If Ms Phillips is willing to attend, we will need to decide whether or not to call her as a witness. If we decide not to call Ms Phillips as a witness, Dr Leonard could then decide whether she wishes to do so; in this circumstance Dr Leonard would be responsible for securing Ms Phillips' attendance at the hearing. If Ms Phillips attends the hearing as a witness, we would need to ensure appropriate safeguards are put in place to prevent any potential intimidation."

202. The correspondence concluded:

> "Finally, having identified potentially very serious misconduct, it would be inappropriate for the Trust not to deal with these matters formally. Given the

> investigation findings, the Trust had little choice but to refer this matter to a disciplinary hearing to consider the issues further."

203. On 2 February 2016, the claimant tendered her resignation in respect of her additional role as Lead Cancer Clinician.

204. On 16 February 2016, the claimant was furnished with the management statement of case, a copy of which is at R1 page 1507-1514. Ms Phillips was equally furnished with the management statement of case in respect of her disciplinary hearing on the same day.

205. Equally on 16 February, the BMA on behalf of the claimant, wrote seeking a postponement of the hearing on the basis that; there were then fewer than 10 working days before the hearing and the management case had not been furnished, that issues around witnesses' attendance remained unresolved, that they awaited a copy of the full investigation report, and that the claimant being on annual leave from 12 February to 23 February 2016, only had two days to consider the management case before hearing, advising:

> "You are under a duty to act reasonably in considering Dr Leonard's request for a postponement and in light of the above circumstances there would seem to be no reasonable grounds to refuse it."

206. On 17 February 2016, Dr Jennings responded, advising that the issues raised relating to the conduct of the disciplinary hearing were then for the Chair of the disciplinary panel to address, for which his views were then presented, namely that, on the management statement of case having been presented on 16 February, the claimant then had eight working days therefrom before the disciplinary hearing and that by the procedures, it provided ostensibly for the management statement of case to be provided 48 hours before the hearing. Dr Jennings further identified that, the claimant had received all documents relevant to the hearing and that they were satisfied that the information had been provided in a timely way which did not then justify an adjournment, and that annual leave was taken into account in respect of arranging the hearing but not in terms of preparation time for anyone involved, further advising:

> "There is an interest in ensuring that internal procedures are carried out without undue delay and given our views above, we see no basis to adjourn the hearing that has been arranged for 26 February."

207. With regard to the attendance of Ms Phillips, it was identified that Ms Phillips was prepared to attend as a witness to the extent that, that would assist the panel, it being further identified that:

> "The Trust is under a duty to protect those who have raised complaints of bullying and must balance that against your desire to put questions to a relevant witness to challenge their evidence. In the circumstances, we are prepared to allow Ms Phillips to attend as a witness. However, any questions you wish to put to her may only be submitted through the panel. You are required to submit any questions you wish to put to Ms Phillips to the panel in writing no less than two working days before the hearing. The panel will then put these questions to Ms Phillips provided they are not considered inappropriate and you may listen to that response. No questions other

> than those submitted in writing beforehand will be put to Ms Phillips. Management will also have the same requirements placed on it. If that arrangement is not acceptable to you, then Ms Phillips will not be called as a witness by the panel and it will be for you to procure her attendance should you wish for her to be a witness for you – the panel will not place any requirement on her to attend."

208. The disciplinary hearing in respect of Ms Phillips was heard on 23 February.

209. On 24 February 2016, the claimant furnished a statement and documentary evidence for the disciplinary hearing scheduled for 26 February, together with questions to be asked of Ms Phillips, which statement and documents are at R1 page 1532-1582.

210. The claimant has submitted that this correspondence and enclosures were a protected disclosure, and during the course of the hearing, the tribunal has been taken to the following extracts which are here set out for clarity:

> "1. I, Dr Leonard, am the appointed Head of the Chemo Service. A summary of the role as agreed in the most recent Standard Operational Policy 2014 states:
>
> …
>
> *To ensure that designated specialists work effectively together in team such that decisions regarding all aspects of diagnosis, treatment and care of individual patients and decisions regarding the team's operational policies are multi-disciplinary decisions;*
>
> ...
>
> I have given KP numerous opportunities to meet to discuss our roles and requested support from KP's line manager, Deborah Clatworthy (DC) since 2014 to address this but to date it has not been forthcoming.
>
> … I have worked extremely hard since my appointment to develop a safe and responsive multi-disciplinary Chemo Service. I invited KP to meet me on 19 June 2015, once again to address roles and responsibilities but she declined preferring "mediation"."

211. With regards to an email of 18 June 2015:

> "Dear Karen
>
> I am very keen we address our mutual concerns about decision-making around the Chemo Service – we do not need to compete – our respective skills are additive and if we can find a way to work professionally and harmoniously together, I am sure it will have an even bigger positive effect on the whole team and service."

212. And in a further email on 18 June 2015, Re: Validation SACT, that:

> "…
> As I am the accountable Lead of the Chemo Service, I need to be absolutely sure I understand the need for change and how it will be delivered safely."

213. And in respect of an email of 14 October 2015, to Dr Charlton – Deputy Director of Nursing, that:

"…
I am writing to you as I believe in fairness, openness, transparency and due process. I take my leadership role very seriously and believe however unpopular this makes me as long as my motivation is to do the right thing, I can live with my conscience.

The culture of our organisation is cast by the shadow of our leaders – I am asking you as a senior nurse to offer feedback and support to Karen that her continued behaviours are not modelling effective or compassionate care to her staff and peers.

214. And at point 3 of her statement, that:

3. I am the accountable Lead Medical Oncologist and head of the Chemo Service. I am responsible for all safe and protocol-driven prescribing.

- *To ensure that care is given according to recognised local and network guidelines (including guidelines for onward referrals) with appropriate information being collected to inform clinical decision-making and to support clinical governance/audit);"*

215. And in reference to an email of 4 July 2014, to Ms Phillips, that:

"I was very disappointed to learn that you felt unsupported by me at the meeting held on 28.2.14 which I chaired when we discussed moving the non-malignant work off the Chemo Unit.

It was a very challenging meeting and my understanding from you at the end of that meeting was that you were very glad of my support when conversations between you and Prof Dacre became quite heated.

I am copying in Deborah as your line manager as I am keen for you to know that you are supported by me and therefore if you believe there are things I am not addressing for the safety of the Chemo Unit and professionally for you as the Lead Cancer Nurse, then I would like this documented and addressed in an open and non-judgemental way to nip any concerns before the escalate.

I am keen to work constructively with you but take very seriously any express concern of lack of support."

216. With regard to point 6, the claimant stating:

"As Head of the Chemo Service, it is my responsibility to ensure adequate staffing. At that meeting, I wanted to understand a spend of over £10,000 on agency staff. It was not an unreasonable request. Given KP was authorising her staff including RR to undertake professional courses for professional development, I wanted to understand why we needed to fund agency staff. I have always taking *[sic]* an interest in the budget as Lead as I believe and support value-based care.

217. And in the claimant concluding her statement, that:

…
There is no evidence KP ever shared her concerns about me as in the email trail shared in the appendices of DM's report by as late as 23.2.15 FI is still asking her for her concerns in writing – appendix I. I believe all KP complaints were raised after I raised my concerns. Many of her complaints are about how she was left feeling not

what I intended as she never checked with me. Each time I have tried to enquire when she looks unhappy or uncomfortable, she does not engage.

As the appointed Lead of the Chemo Services, I have been left feeling undermined, unsupported and victimised by being open. I have not been treated fairly and instead treated differently to KP who is not the subject of any disciplinary matter. The report has not addressed how I have been left feeling by KP's behaviours. I stepped down as Lead Cancer Clinician on 2 February 2015 as I no longer felt supported in my vision and delivery for cancer services here. This in addition to not being supported to address the professional conflict between KP and me has left me feeling fearful and vulnerable in this role. If I am unable to be supported when conducting myself as a firm but fair manager but instead misrepresented and portrayed as a bully and aggressive colleague with a threat of dismissal I no longer feel safe in this environment.

218. The claimant further made reference to correspondence of 11 September 2014, from Ms Clatworthy that:

> "I understand that you met with Karen yesterday to discuss informally your working relationship. I hope this was useful.
>
> In relation to the issue you have raised again about the medication incident, I did send you a long email on 26 August about this detailing my involvement and I don't think there is anything else that I can add to this."

219. The claimant also made reference to correspondence of 11 September 2014, on her writing to Ms Phillips, that:

> "It was helpful to be able to discuss the issues and behaviours that had concerned me in an adult way.
>
> I am reassured by your explanations and accept your apology.
>
> I look forward to meeting weekly in your capacity as Lead Nurse to manage and develop Cancer Services. I offered you several opportunities to share any concerns you may have had but you said there were none…."

220. And again, later that day, that:

> "I am glad that you found our informal meeting helpful. I am glad it has reassured you and gave us a clarity *[sic]* anything that has been misconstrued in the past.
>
> …"

221. The final particulars of the claimant's statement which was referred to in evidence is correspondence from the claimant of 28 March 2015, to Ms Clatworthy, in respect of the Lung team, that:

> "…
> What is still not functioning is the relationship between Karen Phillips ad *[sic]* me. As you know I was rather uncomfortable with the suggestion she was part of the Lung MDT as she was and is not. Why I am writing to you today is some follow up with regards …

> Sadly the poor behaviour from Karen continues and I am seeking support and exploration to address it with Simon Pleydell and the Director of Nursing, Philippa Davis *[sic]*.
>
> Given what happened in the two days is bound by a confidentiality agreement, I need to steer from you as to what you did regarding that unprofessional outburst? Was it shared outside the group?
>
> Not being able to tell the truth is a huge stumbling block to building strong functioning professional relationships – Karen continues to lie or mislead and to help address this serious problem I would like to understand given your facilitation role and neutrality and your witnessing of that incident what if any of that interaction I can reference?"

222. Ms Phillips was provided with the decision from her disciplinary hearing on 29 February 2016, chaired by Stephen Bloomer – Director of Finance, which in respect of the allegation that, Ms Phillips did not distinguish between potentially unfair and unreasonable criticism and legitimate instruction or direction from the claimant, found that the treatment of the claimant was reasonable. On the case presented as to treating patients, it was decided to dismiss that allegation as a disciplinary matter.

223. Of the allegation that Ms Phillips perceived malicious intent by the claimant even when there was none, it was held on a balance of probabilities that, Ms Phillips' behaviour was not of a sufficient level of seriousness to merit a formal disciplinary sanction, for which the allegation was dismissed as a disciplinary matter, although concerns were noted that, that was not the type of behaviour expected of a senior nurse.

224. Of the third allegation that Ms Phillips behaved in an unprofessional way to the claimant, including raising her voice and displaying an aggressive demeanour, on accepting that Ms Phillips had demonstrated insight and acknowledged her fault in this, the allegation was nevertheless upheld, holding that Ms Phillips had behaved unprofessionally, for which Ms Phillips was issued with an "informal sanction," setting out behaviour that was expected going forward. Ms Phillips was further advised that should she not comply with the expectations, then she should expect any recurrence to be handled as a formal disciplinary matter.

225. It is here noted for completeness that, in respect of the claimant's disciplinary hearing, the claimant sought legal representation from solicitors. This was refused on the basis that the BMA had stated they were prepared to represent the claimant at hearing, and that in accordance with the Trust's disciplinary procedure, the provision for representation was restricted to trade union representation or work colleague. It is further here noted for completeness that, by Mr Bloomer's correspondence to the claimant of 21 March, in respect of the conduct of the disciplinary hearing, it was advised:

> "With regard to the allegation that you have been victimised for whistleblowing, please note that if you genuinely believe you are being victimised for raising a patient safety concern then this can be considered at the hearing. I will consider any evidence you wish to present of this during the course of next week's hearing."

226. On 24 March 2016, the claimant was written to, on behalf of Mr Bloomer, being informed of the witnesses being called by management and advised that Ms Phillips was not being called by them. The claimant was further advised that it was not a matter for the panel hearing the case, to determine which witnesses were to be called, noting that that was a matter for management presenting the case against the claimant, and for the claimant in her defence. The claimant was further advised that on Ms Phillips not being called by management side, it was for her to determine whether she would be calling Ms Phillips, and if so, it would be for the panel then to decide how to put the claimant's questions to Ms Phillips, noting that were Ms Phillips not called, the issue of the questions then did not arise.

227. The claimant's disciplinary hearing was heard on 29 March 2016, chaired by Mr Bloomer. The claimant attended represented by her BMA representative, Mr Boardman. The case against the claimant was presented by Dr Jennings and Ms Davies; notes of which are at R1 page 1772-1937.

228. The tribunal here records that, at the outset of the hearing, on neither the claimant nor Dr Jennings having called Ms Phillips as a witness, Mr Boardman on behalf of the claimant advised that having submitted a series of questions in advance for Ms Phillips, they had expected her to be present although they had not called her themselves. Dr Jennings advised that it had not been his intention to call Ms Phillips.

229. It was Mr Bloomer's decision that, with regard to the questions submitted, these were adversarial rather than focused on addressing the factual issues in dispute. As to their usefulness, as they appeared more intent on undermining Ms Phillips' account of events by questioning her credibility, rather than establishing a balanced perspective as to whether the claimant's behaviour as described was acceptable, Mr Bloomer concluded that there was sufficient information by Mr Major's investigatory report and appendices**,** plus testimony of other witnesses, for him to form a view, and that on a number of the allegations concerning emails, which they then had sight of, he would be in a position to make a balanced decision, such that Ms Phillips' presence was not then required in order to allow the claimant to present a credible defence, or for him to take a balanced view of all the circumstances in the case against the claimant.

230. Notes of the disciplinary hearing are at R1 page 1772-1937. The questions to be asked of Ms Phillips are at R1 page 1581-1582

231. The hearing received oral evidence on behalf of management from Mr Major, Ms Isaccsson, Operations Director for Surgery, and Ms Clatworthy, Head of Nursing and Surgery. The claimant equally called three witnesses, Dr Ghei, Aderonke Adebiyi and Dawn Beaumont-Jewell. The panel also received written evidence from Patricia Booth, who was unable to attend in person and also written evidence from witnesses to incidents as provided by the claimant.

232. It was the finding of Mr Bloomer that, in respect of the allegation that the claimant had sought inappropriately to emphasise her authority and seniority over Ms Phillips and to thereby diminish her by email of 1 July 2015, after

giving consideration thereto and viewing the content objectively, as to whether it could be described as inappropriate and diminishing, as distinct from whether the claimant had intended the correspondence to be received as such, he found that, whilst the claimant had not intended to undermine Ms Phillips, there was nevertheless evidence that that was the direct impact of her email, concluding that the allegation was proven and was unacceptable behaviour.

233. Of the allegation that, the claimant sought to impose an unreasonable set of expectations about the level of consultation that she should have on nursing related matters, having reference to an email exchange of 13 and 14 October 2015 about RR's professional development, and the behaviour having the potential of undermining Ms Phillips, on there being no dispute as to the emails having been sent, and on an objective reading and review of the events and email, Mr Bloomer concluded that Ms Phillips had reasonable grounds to consider she was being bullied, which was corroborated by both the investigation and management case, for which Mr Bloomer concluded there was bullying behaviour of the claimant.

234. Of the third allegation, that the claimant had been unfairly and unreasonably critical of Ms Phillips and appeared to have an unreasonable determination to find Ms Phillips at fault where evidence suggested otherwise, reference being had to Ms Phillips being pursued in respect of the Savene incident by the claimant's email of 4 March 2015, Mr Bloomer found that:

> "Having reviewed the allegation and evidence that, there was no issues whatsoever about your raising concerns about the use of this medication. The issue is solely focussed on whether you unreasonably sought to find Ms Phillips at fault. After a careful review of all the evidence before me, I accept the chronology of events as set out by David Major. I also took account of Dr Spurrell's evidence, and was satisfied that David Major had been entitled to rely on it. I accept your assertion that your concern was motivated to ensure that this set of circumstances should not occur again, with regard to the sequence of events. I also acknowledge that Ms Phillips played a part in recommending the drug; however, it is clear that the responsibility and decision was taken by those with the delegated authority in our structure. To what degree they relied on Mrs Phillips was not a relevant matter for this hearing.
>
> I found however that the management case was clear and Ms Phillips was not responsible for the incident. I specifically considered your repeated inference that Ms Phillips was at the heart of this, rather than assessing the contributions of all concerned in this incident, which had occurred whilst you were away from the Trust, to be inappropriate bullying behaviour. This is particularly so given that you were made aware that it was Dr Spurrell who authorised the purchase of this drug and was therefore technically accountable, but you continued to direct your criticism at Ms Phillips."

235. Of the allegation that the claimant had developed a style of sending critical emails that were aggressive, challenging and threatening in tone, that while there may be a reasonable basis for the claimant challenging colleagues, her method of raising these challenges was inappropriate, reference being had to emails relating to the Urology CNS vacancy and emails relating to the use of Savene, again, on there being no question of the emails being sent, Mr Bloomer acknowledged that the claimant accepted the impact of the emails, nevertheless determined that there was no doubt that these were

inappropriate, both viewed individually and as a whole, identifying that in respect of the Savene incident, the tone of the claimant's email of 21 January 2015, was challenging both as to the decision to make the purchase and the true cost of it, and that the clear implication of the challenge by the claimant's email of 4 March 2015 was that she held Ms Phillips accountable for the Savene incident and that the claimant considered Ms Phillips had made the drug purchasing decision, upholding the allegation against the claimant. However, in respect of the Urology CNS vacancy, Mr Bloomer found that there was mitigating circumstances for which that allegation was not then upheld.

236. Of the fifth allegation against the claimant, that she had adopted a repetitive style of questioning when interacting with others, both verbally and in emails, with the purpose of challenging and undermining others to bring about her desired outcome, reference being had to the chemotherapy management team meeting on 24 March 2015, on the claimant repeatedly questioning Ms Phillips about the availability of a budget for an additional CNS, and that this repetitive style had been used in relation to other employees, Mr Bloomer concluded that there was clear evidence showing that the claimant repeatedly questioned Ms Phillips, and in respect of her questioning *RR* about treatment of a patient, whilst it was correct to explore such treatment, with respect the inappropriate manner in which this was done, Mr Bloomer upheld the allegations against the claimant.

237. Of the allegation that the claimant subjected Ms Phillips to an unreasonable and inappropriate level of criticism and scrutiny on occasion, reference being had to her scrutiny of the nursing budget at a meeting on 5 May 2015. On there being little dispute as to the facts, albeit with different assessments of the claimant's intentions and the impact of her actions, on the evidence presented from witnesses other than Ms Phillips, Mr Bloomer found that the claimant had been "*pushy and inappropriate*". Mr Bloomer determined that the claimant was inappropriately and unreasonably challenging towards Ms Phillips, upholding the allegation.

238. Mr Bloomer, conscious of the claimant's submission that she had not intended to undermine Ms Phillips, on an objective assessment, and on the accounts of the witnesses to the events, determined that the claimant had done just that, finding that by the claimant's expertise in communicating as she advanced, made it hard to believe that the claimant was then unware that her challenges were having a negative impact on colleagues.

239. Of the final allegation against the claimant that, she had undermined Ms Phillips and made her feel uncomfortable by challenging her inappropriately in front of others, reference being had to the claimant questioning Ms Phillip at the HOPE course, challenging Ms Phillips about her body language at the Chemotherapy Management Team meeting on 24 February 2015, and the claimant's criticism of Ms Phillips at the meeting on 20 April 2015 with the Cancer Research Network representatives, Mr Bloomer did not uphold the allegation against the claimant in respect of the HOPE course, or otherwise at the meeting of 20 April 2015 with the Cancer Research Network representatives, but upheld the allegation as regards the claimant's

challenge to Ms Phillips' body language at the Chemotherapy Management Team meeting on 24 February 2015.

240. Mr Bloomer concluded his findings, stating that;

> "I find that your repeated inappropriate behaviour over a substantial period of time amounts to bullying and harassment of Ms Phillips and, in one instant, RR.
>
> Even where you had demonstrated some insight, the evidence provided did not show intent to modify behaviour particularly with regard to emails which I find were unnecessarily widely distributed through the generic account where, as a very senior member of the team, it would be reasonable for you to understand this would be challenging and difficult for others.
>
> I fully appreciate that you had understandably found it upsetting that Ms Phillips and others were talking about your interactions with her and making allegations about these. However, I consider that by raising Ms Phillips' behaviour with Phillipa Davies and then with Simon Pleydell you had in fact done something similar and that your records of the meetings appeared to be more construed as condemnatory towards Ms Phillips than to seek an improvement to a worsening working relationship. I also noted that the particular concerns referenced in your evidence which indicated that staff were taking sides with regard to your/Karen Phillips' input and that this was also unhealthy. However, I have to say that the remediation of this lies with the two of you as very Senior Clinicians. Specifically, I noted that you raise complaint but no approach to improvement, other than complain about Ms Phillips' behaviour.
> ……..."

241. On Mr Bloomer then addressing shortcomings in management in managing matters following mediation, he noted that it had not detracted from the claimant's own responsibilities, but that it had failed to facilitate matters being addressed through other routes, advising that he would be addressing the matter with Dr Jennings and Ms Davies to ensure that a properly led improvement plan for the service to enable it to improve and for collegiate working relationships to be re-established, further acknowledging that the claimant had a role to play therein.

242. With regards the claimant's allegation of being victimised on having whistle blown, on Mr Bloomer reviewing all the papers presented to him, he did not accept that any of the issues there set out could reasonably be defined as whistleblowing, as referenced to the issues addressed at the hearing.

243. Giving consideration to mitigating factors as presented by the claimant; the claimant's clean disciplinary record, and the allegations upheld against her and their common features, and of the claimant's limited insight into the impact or potential impact her behaviour was having, Mr Bloomer determined that the claimant be issued with a final written warning for unacceptable behaviour, which he considered constituted bullying and harassment, which by the number of incidents and pattern of repeated behaviour represented a serious case of misconduct, for which the warning was to remain on her file for 18 months.

244. The claimant was thereon given the right of appeal, which she exercised. The claimant presented her appeal on 3 May 2016, a copy of which is at R1 page 1669 to 1690.

245. The tribunal pauses here, as it is the claimant's evidence that following the disciplinary sanction, she was dissuaded from appealing by Ms French, on grounds that Ms French was concerned for the claimant's mental health, further advising that both she, Ms French, and Mr Pleydell wanted to protect her and that *"they planned to offer me monthly one:one and if they became aware of any whispers about my behaviour again, they would nip them in the bud."* the claimant further stating that, Ms French further asked her not to rush into any decisions, but to take time. It is Ms French's evidence to the tribunal that, on 13 April, she had met the claimant who wanted to discuss the outcome of her disciplinary hearing, which on Ms French advising her that she had not been aware of the outcome, the claimant advised that she had been found guilty. Ms French's evidence is that she then spoke to the claimant about her right to appeal and what the panel would consider, and left it for the claimant to consider whether or not she would appeal. The following day the claimant wrote to Ms French thanking her for meeting her. They again met on the 15 April, whereon the claimant informed Ms French that she was grateful for the time she had given her and that she had decided to proceed with appealing the outcome of the disciplinary panel for which Ms French wished her well.

246. On the evidence before the tribunal, the tribunal prefers the evidence of Ms French. The tribunal does not find the circumstance to have been as advanced by the claimant.

247. The claimant's appeal was chaired by Karen Gillen, Chief Operating Officer. The claimant was represented by Mr Boardman from the BMA. The appeal hearing took place on 16 June 2016, notes of which are at R1 page 1961 to 2029.

248. The claimant's appeal raised issue that; Karen Phillips was prevented by management from attending her disciplinary hearing, and there were flaws in the process, that Ms Phillips did not raise concerns about the claimant's emails at an early stage, that the claimant had no idea of the allegations against her until July 2015 and that they were alleged to constitute bullying until January 2016, that the sanction of a final written warning for 18 months duration was disproportionate and unduly harsh, that the decision to uphold the allegations was based solely on the contents of three emails and there was no objective evidence in those emails that the claimant had bullied Ms Phillips, that Mr Bloomer relied on Dr Spurrell's evidence to reach his conclusion on the "Savene" email, but Dr Spurrell had subsequently made a request to withdraw her interview notes and, that there was a failure to properly consider the claimant's arguments in mitigation.

249. Ms Gillen addressed each issue in turn, giving her determination thereon, which is set out in her appeal decision letter, and is at R1 page 2031 to 2036.

250. The tribunal however, here records Ms Gillen's finding in respect of the sanction being disproportionate and unduly harsh, that there was clear evidence before Mr Bloomer evidencing the effects of the claimant's emails

being critical and undermining, and that the claimant had inappropriately challenged and/or questioned Ms Phillips amounting to bullying, stating;

> "I consider the emails to be inappropriate, taking into account both their tone and the volume of emails e.g. your email to Ms Phillips dated 4 March insisting on a reply from her even after Dr Spurrell had taken responsibility for prescribing the dexrazoxane. These suggest when read objectively that you were seeking to assert your authority over Ms Phillips e.g. in an email dated 1 July 2015 titled "Chemo team", email exchange from 17 June 2015 titled "validation SACT", your email dated 27 May, titled "updates", your email of 27 March 2015 titled "IMG_3284.png" and, in particular, that you would persist in sending emails on a particular point in order to try and impose your point of view.
>
> …. I can also see that there was evidence regarding your behaviour at the meetings upon which it was reasonable for Mr Bloomer to base his decision to uphold the allegation. This is supported by witness statements from Lee Martin, Debra Clatworthy, Helen Ormiston, Maureen Bluden and Mark Rose.
>
> Given the serious nature of the allegations that were upheld. I consider that it was reasonable for Mr Bloomer to have imposed a final written warning. It is clear from my view that it was reasonable for allegations 1 to 6 and 7.2 to be upheld and I accept Mr Bloomer's view that the number of instances and the pattern of repeated behaviour made this a serious case of misconduct justifying a final written warning, rather than a lesser sanction. Also, in view of the fact that you signed up to the mediation agreement which you have clearly departed from, I expect that you should have more insight into the impact of your actions and prevented a situation from deteriorating to this level. However, on review, I consider that the duration of this final written warning should be reduced to nine months, backdated to the original date the sanction was issued and I have made a number of recommendations about what should happen going forward to help move this situation on and to resolve matters."

251. Ms Gillen duly recommended that; 1) there should be a review of the mediation outcome and the implementation of the recommendations actioned. A further review should be conducted after three months, 2) there should be monthly one to one meetings between the claimant and her line manager followed up with a written note of the discussions, 3) the claimant's line manager and Ms Phillips' line manager should liaise to define their respective roles and responsibilities and communicate this appropriately, 4) that the claimant and Ms Phillips should attend a "managing conflict" course if they had not already attended and 5) that a meeting should take place for the claimant's line manager to outline to her, expected standards of behaviour including the use of emails, the need for team working and the need to adhere to the mediation action points. Ms Gillen further advised:

> "I do hope that you will take this opportunity to reflect on your communication style and that you will be able to take steps with Ms Phillips to resolve your difficulties and to foster an appropriate working relationship that is expected at your level of seniority."

252. In respect of the appeal hearing, in evidence to the tribunal, the claimant was asked whether she had any criticism of Karen Gillen's, involvement and decision. The claimant answered, I found this a much more conducive listening experience but I was bothered that when I got the outcome letter, she left out two major points in my appeal, 1) Around Dr Jennings' being the

case manager and 2) around whistleblowing. The Employment Judge asked the claimant whether this was a detriment and she said it was not.

Lung MDT

253. The tribunal now addresses the issues arising concerning the lung cancer MDT, as above referred, which circumstance runs in parallel to those mentioned supra.

254. The Lung Cancer MDT is a group established to ensure that specialists from different disciplines, involving the treatment of lung cancer are able to meet to share knowledge and discuss options for treating patients, seeking to reach consensus on the investigation and treatment of each patient. MDTs are designed to promote best practice and to help ensure that the patients benefit from the best possible treatment plan. MDTs are central to cancer services within the National Health Service.

255. The quality of cancer services is overseen by the National Cancer Peer Review Programme (NCP), which is managed by the National Cancer Action Team. National guidance on the characteristics of an effective MDT has been issued by the National Cancer Registration and Analysis Service (NCRAS) as part of Public Health England.

256. It is common for there to be joint MDTs between different NHS Trusts in the same area to develop and share expertise and promote best outcome for patients.

257. The Whittington Hospital NHS Trust Lung Cancer MDT was relatively small in terms of the number of Clinicians attending and the number patients discussed per year, relative to other NHS Trusts. It was however, supported by input from Clinicians from the University College London Hospital NHS Foundation Trust (UCLH).

258. The tribunal here notes that London Cancer (the body which oversees the strategic direction of cancer services in North East and Central London to help improve outcomes), having expressed an intention to issue a Lung Cancer Pathway Specification, because there were differences in treatment rates and one-year survival figures for patients from different Trusts, issued a pathway specification to London Trusts in February 2015. It was observed that London Lung Cancer MDTs had been small by national standards, and that by having MDTs that were fewer in number, but larger in size, patients would have better access to expert decisions, up to date diagnostics and treatment, and clinical trials.

259. As above referred, at paragraph 16, the respondent Trust's Lung Cancer MDT, being somewhat dysfunctional was the subject of mediation and from which the above referred mediation agreement was reached. It is pertinent here to note, which is not in dispute that, an issue arising at the Lung Cancer MDT was the claimant's concern about the impact on the Lung Cancer Service at the Trust, if the Trust worked more closely with the Cancer Service at UCLH; the claimant of the view that there was a risk that if UCLH became involved in direct diagnostic and treatment interventions,

there was a risk that UCLH might then influence patients to have all their subsequent treatment at UCLH instead of the Trust, the claimant here being somewhat proud, having developed the Acute Oncology Service and overseen the development of Cancer Services in general at the Trust, and it is fair to say that the claimant was somewhat protective of Cancer Services and the way they were run within the Trust.

260. With regards to the London Cancer Lung Pathway Specification sent to London NHS Trusts in February 2015, which recommended the combining of MDTs to help increase expertise, see R1 page 722-1 to 722-42, a number of meetings were held at the Trust on the future structure of the Lung Cancer MDT, namely; whether it should merge with the Lung Cancer MDT of UCLH. In this respect, the Islington Council Commissioning Group (CCG) and London Cancer, had examined statistics looking at patient outcomes and survival rates, which appeared to show a marked contrast between the survival rates one year on, from diagnosis of patients with lung cancer treated at UCLH, compared to patients treated at the respondent Trust.

261. With regards to the statistics, the claimant, whilst not disputing the statistical facts, nevertheless maintains that the statistics were not representative of the true state of affairs, which did not take account of significant differences in patient population of the different Trusts, and that inter alia, patients at the respondent Trust were of a more acute stage of cancer then those at UCLH, and as such, the survival rate for cancer patients at the Trust would naturally be lower, which was not reflected by the statistics, and in respect of which it was agreed, following a meeting between Dr Jennings, Dr Lock, Simon Pleydell and the claimant, that the Trust would go back to Professor Sam Janes, Lung Cancer Pathway Director at London Cancer, to ask for a more detailed breakdown of the data, to better understand the apparent difference in patient outcomes between UCLH and the Trust.

262. In respect hereof, Dr Jennings sought the claimant's views together with those of Dr Lock, by correspondence of 9 February 2015, stating that, he would like to be as precise as he could about what they thought might cause a difference in the figures for outcomes, and what data would best help the Trust understand the difference.

263. The draft correspondence to Professor Janes, also advised that Dr Jennings would be writing to Kathy Prichard-Jones, suggesting that he and Mr Pleydell have a further meeting at which Professor Janes was welcome to attend.

264. The claimant responded later that evening, furnishing her views on the draft correspondence. It is also here noted that, for the purposes of the Trust's meetings held as to a merger, the claimant had prepared a presentation entitled *"case against WH accepting the London Cancer Specification",* a copy of which is at R1 page 693 to 716.

265. It is not in dispute that the claimant was vehemently opposed to the merger of the Trust Lung Cancer MDT with UCLH, and it is also worthy to note that other members of the Trust Lung Cancer MDT equally held reservations as to the merger, as too were others who looked on the merger as positive,

having some real benefit; Dr Lock being one, who felt that whilst the data should be treated with caution, there were significant numbers of the Trust's patients who might benefit from having better access to the expertise, diagnostic techniques and vigorous treatment approaches of the UCLH Clinicians. Dr Lock also agreed with London Cancer, that it could only benefit patients if they were to increase the number of expert cancer clinicians participating in the MDT discussions about how patients should be treated.

266. With regards to the state of play then existing, the tribunal has been taken to minutes of the London Cancer Lung Pathway Board meeting of 16 April 2015, where it is recorded under the "Pathway Specifications update" that:

> - The Pathway Specification has been released to all Trusts within London Cancer, with the agreement of all Trusts with the exception of the Whittington.
>
> - SJ (*Professor Janes*) has had two meetings with Chief Executive and Medical Director at the Whittington who advised that they felt they could not argue with the specifications, but are not in a position to commit to it, as the team is opposed to it……"

267. On 20 April 2015, the claimant wrote to Dr Jennings stating, *"Sara and I would be very keen to follow up our last meeting about optimising Lung Cancer Services for our local patients – who best should we organise this meeting through?"* The claimant did not receive a reply hereto.

268. The claimant here submits that, she was by this correspondence, chasing up the product of Dr Jennings' correspondence to Professor Janes of 9 February, and is evidence of Dr Jennings' attempt to exclude her from further input into the Lung Cancer MDT merger discussions. The tribunal does not find this to have been the case; the content of the claimant's correspondence does not address the issues alleged, as to an update following the claimant's concerns as raised by her correspondence to Dr Jennings on 9 February 2015.

269. It is also relevant here to note that, the Trust's Lung Cancer MDT, despite the mediated agreement amongst its members, the group still remained dysfunctional, with members refusing to attend. In respect of this, the tribunal was taken to correspondence from Professor Geoff Bellingan, Medical Director at UCLH, with regards to concerns raised by a Consultant Clinical Oncologist at UCLH, as to behaviour in the Trust's Lung Cancer MDT, and that patient care was suffering, who found the situation stressful and was thinking of withdrawing from the London Cancer MDT, together with another clinician, the General Manager of Oncology at UCLH, seeking action from Dr Jennings, advised *"I think this issue is approaching a critical state….."*

270. On Dr Jennings meeting Professor Bellingan, Dr Jennings was pressed to commit to a merger of the Lung Cancer MDT, based on the concerns being raised by the colleagues at UCLH, for which Dr Jennings requested some time to be able to manage the situation at the Trust, whilst he sought to obtain the buy-in of all colleagues within the Trust Cancer Service, to the merger.

271. On 23 June 2015, Professor Prichard-Jones, Chief Medical Officer for London Cancer, furnished Dr Jennings with further data regarding the variation in processes and outcomes across their system, to facilitate discussions about the Whittington's future strategy for lung cancer, identifying that, there was a lot of variation across all parameters that could be measured in lung cancer and that they were concerned that the Trust's outcomes remained persistently low for one year survival; the data was to be discussed at the next Lung Cancer Pathway Board meeting on 25 July 2015.

272. Subsequent thereto, on a Consultant Clinical Oncologist at UCLH, withdrawing completely from the Trust's Lung Cancer MDT, Dr Jennings was contacted by Professor Bellingan, who, as the Medical Director at UCLH, having an obligation to provide the Trust with some of the clinical expertise that the Trust Lung Cancer MDT needed, so as to be quorate, on finding it hard to meet this obligation, he advanced and stressed that it then made the potential merger of the MDT even more necessary and pressing. On Dr Jennings sharing Professor Bellingan's concerns, he agreed that they would need to consider what interim measures they could put in place to keep the lung cancer MDT quorate and functioning. The tribunal accepts Dr Jennings' evidence to the tribunal, that at this this stage, he had not agreed that the MDTs would merge and equally had not himself come to a firm view that the MDTs should merge, although holding the view that there was a strong case for a merger following the most recent event here referred.

273. Following Dr Jennings' discussion with Professor Bellingan, the Divisional Manager of Cancer Services at UCLH, Mr Kirby, forwarded proposals to Dr Jennings as to how a joint Lung Cancer MDT could work, and in respect thereof, Dr Jennings proposed that he respond thereto following discussions with Dr Lock's deputy, Professor Prichard-Jones, the claimant and Professor Bellingan, sending an email to his assistant to remind him thereof.

274. With regards to the Trust's cancer patient outcomes, the tribunal here notes that Dr Jennings commissioned a national expert in lung cancer outcomes and service design, Dr Peake, Clinical Lead for the National Lung Cancer Audit Programme, to analyse patient outcomes.

275. On 3 July 2015, Dr Jennings received a phone call from Professor Prichard-Jones in respect of correspondence received from Dr Sennett, Clinical Lead for cancer at the Islington Clinical Commissioning Group (CCG), who was the *"key voice*" of the Trusts Commissioners in relation to the Trust Cancer Service, who had requested an explanation as to the problems within the Trust's Lung Cancer MDT. Dr Jennings was thereon read Professor Prichard-Jones' draft reply to Dr Sennett, which the tribunal accepts on the evidence of Dr Jennings, that the response suggested that there was a real issue with the outcomes for lung cancer patients at the Trust, with the functioning of the Lung MDT, and the behaviours within it, further suggesting that the Trust would not take appropriate action to address the situation without being pushed to do so by the CCG.

276. On Dr Jennings' being fearful of the reputational damage to the Trust by this correspondence, he advised that the Trust was taking proactive steps to address the situation, and of his having commissioned Dr Peake, further advising that the trust intended to follow the advice provided by London Cancer in the specifications, and that the Trust would amalgamate the Lung Cancer MDT with that at UCLH, Dr Jennings giving the following rationale, which the tribunal accepts;

> "The Trust was an outlier amongst London NHS Trusts by not following the evidence of London Cancer. In this regard and the data on outcome for lung cancer patients suggested to me that there was a real chance, patients might benefit from a merged Lung Cancer MDT, that was larger and had increased access to a greater diversity of views and clinical expertise. While I still felt it was important to interrogate the data that had been presented by London Cancer on the outcomes for lung cancer patients at the Trust, I certainly did not think that a merger could disadvantage those patients. I was also very concerned that the Lung Cancer MDT at the Trust again seemed to be dysfunctional, despite the great effort put into the mediation in November 2014, with some individuals clearly finding it difficult to work with the claimant…. This meant it was difficult for the Lung Cancer MDT at the Trust to continue to function and presented the Trust and UCLH with a governance issue.
>
> Crucially, it also meant the situation had now moved on and that there was no longer the option to postpone a decision on the merger on the Lung Cancer MDT. This was because of the damaging perception of the Trust that was going up externally at London Cancer and the CCG. I felt that I needed to give a positive commitment to Professor Prichard-Jones regarding the Trust's intention with regard to the proposed merger of the Lung Cancer MDT that could be communicated to Dr Sennett… my view at this time was that the merger should go ahead. I felt this decision was within my remit as Executive Medical Director with responsibility for patient safety. The issue had been discussed for months at the Trust, albeit without agreement, so I felt confident that I understood all of the issues and points that had been raised during various discussions and I felt that I was acting in the best interest of both the Trust and its patients by making this decision."

277. Dr Jennings then on 3 July, wrote to Mr Pleydell, advising of his discussion with Professor Prichard-Jones, stating:

> "…draft letter, which was worded in extreme terms, would have given commissioners the impression that we are not dealing with the situation ourselves, and that the commissioners would have to force our hand in order to get change, which is not correct.
>
> I told Kathy of our conversation with Nick Peake…. I assured her that we are taking very active steps, the details of which have to be confidential, to address the behaviour concerns that have been raised since the Lung MDT mediation.
>
> I also told Kathy that we intend to follow the Pathway advice that London Cancer has given us and amalgamate our Lung Cancer MDT in a way that she and Sam Janes have described. I said this on the basis of all the data we have seen so far, the discussions we have had since then, and finally on the basis of this email that Kathy sent to me last week. In my view, the quality and safety argument for us following London Cancer's advice in this is compelling, and it is quite impossible for us to make an equally strong argument to maintain the current arrangement. Had I not made this commitment to Kathy this evening, the letter that is going to Karen Sennett would have created an inaccurate and very negative impression of the Whittington.

> Kathy is amending the letter….
>
> I will send to tell all our clinical colleagues, including Pauline, about this on Monday."

278. In respect of the then existing circumstance, the tribunal has also been referred to correspondence from Professor Bellingan to Mr Kirby and Dr Jennings, advising that the move was vital as the current MDT had ground to a halt in its current format, and could only very temporarily be supported with extraordinary measures that had been put in place to keep it compliant, advising that the UCLH MDT as a joint process should help significantly improve performance.

279. An amended version of the letter to be sent to Dr Sennett from Professor Prichard-Jones and Professor Janes, was forwarded to Dr Jennings on 5 July 2015, for his observations, which he provided as to factual accuracy, informing the tribunal that whilst the letter was not as he would have drafted it, he nevertheless had to respect the letter as being that of Professor Janes and Professor Prichard-Jones. A copy was then furnished to Mr Pleydell.

280. The letter advised the London Cancer Lung Pathway Specification rationale, and of its agreed implantation across all London Cancer Trusts, save for the respondent Trust, advising that data shows that the Trust had the worst one-year survival rate within the London Cancer integrated system with no sign of improvement over the last three consecutive years, and that London Cancer expected patients seen at Whittington to be able to benefit immediately from a partnership with UCLH. The letter then provided:

> "We know that Simon and Richard share our concerns about their lung cancer outcomes and MDT functioning. Late last year, the Trust invested in a major piece of work to improve relationships and address unhelpful behaviour within the MDT. However, this is yet to bear fruit and we have now reached the point where several members of the UCHL Lung Cancer team that gave expertise to the Whittington MDT have withdrawn because they feel the practice is unsafe and decisions are inappropriately dominated by a single individual. Sam has spoken with three members who are based at UCLH and all feel that barely a patient decision is made that they agree with, but they are fearful to communicate this.
> …"

281. The tribunal pauses here, as it is the claimant's contention that she has suffered a detriment by Dr Jennings not making comment on the reference to *"decisions are inappropriately dominated by a single individual"*, it being agreed that the individual there being referenced was the claimant, and was evidence of Dr Jennings' negative attitude towards her. On the facts before the tribunal, the tribunal does not find this to be the case; the correspondence reflecting the views of London Cancer namely, Professor Janes and Professor Prichard-Jones, based on reports they had received, into which Dr Jennings had not had input, and in respect of which the tribunal accepts Dr Jennings' evidence that, it was not open to him to reject or challenge what Professor Janes and Professor Prichard-Jones had been told by their colleagues.

282. The correspondence then made reference to the assurances that had been given by Dr Jennings, of the Trust's need to make the Pathway change

recommended by the London Cancer Service specification, and of Mr Peake being commissioned to work with the respondent Trust to understand its lung cancer outcomes and try to help identify any areas in which changes might be made to improve, and of the Trust's need to act presently, and of the Health Executive's intention to make contact with the Commissioners to discuss the changes to be made in the Lung Cancer MDT. A copy of the correspondence is at R1 page 1359 to 1360.

283. On 8 July 2015, Dr Jennings was written to by Mr Machray, Director of Quality and Integrated Governance of Islington Clinical Commissioning Group, being an individual who had been copied into Professor Janes and Professor Prichard-Jones' correspondence, stating that, as a consequence, the expectation had been shifted to them as Commissioners to move things forward, suggesting a meeting between himself, Dr Sennett and Dr Jennings, and a representative from London Cancer, asking that they focus on how to improve patient outcomes and getting greater consensus in a Lung MDT meeting, without focusing on personalities or on whose patch something happened. A meeting duly took place on 22 July 2015, between Dr Jennings, Dr Lock, in her capacity as Chair of the Lung Cancer MDT at the Trust, Mr Machray and Dr Sennett, discussions being had inter alia, as to practicalities of joining the two MDTs by the autumn, and of interim measures to maintain quoracy of the Trust DMT, until the merger.

284. On 17 July 2015, Dr Jennings requested a meeting with the claimant, the claimant requesting that the request be put in writing which was subsequently done, the correspondence stating:

> "I would like to talk to you about the lung cancer treatment MDT…. I am sorry that this comes at rather short notice before you are away, but I think it is important that we speak.
>
> You and Sara Lock have been very helpfully involved in discussions with me and Simon Pleydell about lung cancer outcomes, the Lung Cancer MDT and the Pathway recommendations from London Cancer. Since we last spoke about this, Simon and I have both been in conversations with Nick Peake, and in response to an enquiry from Islington CCG, Sam Janes and Kathy Prichard-Jones have jointly written a letter to Karen Sennett and Teresa Moss that I would like to share with you.
>
> As I am sure you know, there have also been some changes in the availability of clinicians from UCLH at the current MDT and I have been in conversation with Geoff Bellingan about this. Collectively, these developments necessitate some changes on our part and I would very much appreciate the chance to talk this through with you today."

285. A meeting with the claimant did not however take place before she commenced annual leave, which then did not take place until she had returned on 4 August 2015.

286. On 25 July 2015, in reply to correspondence from Professor Bellingan for confirmation as to progress, Dr Jennings confirmed the intention to join the Lung Cancer MDT of the Trust, with that of UCLH; Dr Jennings advising that, he (Professor Bellingan) could regard his (Dr Jennings) email as formal confirmation of the decision having been made by the Trust. Dr Jennings further advised of the claimant being on annual leave, asking that he be

given a chance to talk with her and other colleagues before the move was widely discussed.

287. In respect hereof, the tribunal notes correspondence of Dr Lock to Dr Jennings, of 28 July, advising:

> "….. just wanted to let you know that I'm informally informing members of the Lung MDT by speaking to individuals as I didn't want them to hear on the grapevine. As I haven't been able to discuss it with Pauline I am trying not to make a formal announcement at the Lung MDT meeting itself."

288. As above referred, Dr Jennings met with the claimant on 4 August, notes of which are at R1 page 1361 to 1365.

289. The claimant was advised of the merger being agreed on the back of circumstance in a very short space of time. The claimant expressed her objection to the decision, further advising that it went against the ethos of the National Peer Review, and that Dr Jennings did not have the authority to make the decision. Dr Jennings thereon sought to explain to the claimant his rationale for the decision. In respect of his rationale, Dr Jennings shared with the claimant the correspondence of Professor Janes and Professor Prichard-Jones, and on the "dominate individual" having been identified as the claimant, the claimant's evidence to the tribunal is that:

> "I felt numb and ganged up on as Dr Jennings sat there and watched me and read this letter for the first time. He expressed no sorrow about the content of the letter or made any attempt to enquire as to whether I felt the allegations were true. I felt betrayed by the assertions that three UCLH consultants, all of whom had signed up to the Lung Mediation Agreement. There was no truth in the allegations and yet it felt as if a very large and powerful mob were now determined to betray me in a very negative light.
> ……
> Dr Jennings went on to inform me that a meeting had been held in my absence and that he had acted on this highly defamatory letter as the Commissioners had asked him to make a decision to merge the Lung MDT with UCLH's MDT. I was upset and unhappy to be informed of this, and I told him he did not have the authority to make the decision and I would be challenging it as lead cancer clinician as part of that remit which I held……I tried to discuss my concerns about the decision with Dr Jennings in the meeting, but it became clear to me that a decision had been made in my absence, without any consultation with me. I felt that I had been purposefully left out of this important decision as I had up until now recommended that WH did not sign up to the specification but wait for the National Lung Cancer Specification."

290. On discussion being had as to the letter of Professor Janes and Professor Prichard-Jones, Dr Jennings on asking the claimant if there was anything she felt either he or Mr Pleydell could do to appropriately support her, he states he further advised the claimant that, he did not believe that by deciding that he thought that the lung cancer treatment MDT should merge with that of UCLH, that he was expressing or implying agreement with any negative perceptions expressed in London Cancer's letter, and that it was not his intention to endorse all the views expressed in the letter, and that as Medical Director, he thought that it had to be his first priority to ensure a safe service, and his second to his colleagues, who were working very hard through difficult times, agreeing with the claimant that he had said, in public

many times, what a fantastic job she had done in setting up the Acute Oncology Service and giving kind and compassionate care to patients, and that if there was anything else the claimant thought that he could do to be appropriately supported she was to let him know. The claimant advised that she would have liked someone to have taken her to one side and talked to her and perhaps encourage reflection.

291. The meeting concluded on Dr Jennings advising that he had every respect for all the hard work and commitment that the claimant had demonstrated to all her patients, and that of the issues discussed as part of the meeting they had not been intended to be disrespectful to her, the claimant responding, that *"unfortunately these were just words and she would like to believe them but felt they needed to be backed up by actions".*

292. The claimant further sought a meeting with Mr Pleydell, Professor Janes and Professor Prichard-Jones, together with Dr Jennings, and that Dr Jennings advise Mr Pleydell how she felt and that the Trust should think again about the issue.

293. Dr Jennings agreed to a meeting being arranged between the claimant, Mr Pleydell and herself, but could not give an undertaking in respect of Professor Janes or Professor Prichard-Jones, who did not work for the Trust.

294. On Dr Jennings subsequently discussing the situation with Mr Pleydell, Mr Pleydell informed Dr Jennings that he did not have authority to take the decision he had, and that it was important that process was followed and that all those effected had their say, before any final decision was made. It was accordingly agreed, that there be an extraordinary meeting of the Lung Cancer MDT to discuss the proposed merger and to try and reach a consensus, on whether it should or should not go ahead. An extraordinary MDT meeting was arranged for 23 September 2013.

295. On 17 August 2015, at the Lung MDT meeting attended by Dr Lock – Lung MDT Chair, Dr Stern – Deputy Chair, the claimant, Dr Hawling – Lead Consultant Radiologist for Lung MDT, and Dr Berovic – cover Consultant Radiologist for Lung MDT, the letter of Professor Prichard-Jones and Professor Janes was circulated by the claimant and discussed, it being noted that the content of the letter was uncomplimentary of the whole of the Trust Lung Cancer Team, and that the content of the letter would mean that bridges would need to be rebuilt in relationships, in order for the Trust and UCHL teams to work together in a joint MDT.

296. Further discussion was had as to the benefit and concern in establishing a joint MDT.

297. It was agreed that, the issues arising, namely, the merger of MDT and a response to Professor Janes and Professor Prichard-Jones' letter, be dealt with as two separate matters, and in respect of addressing the letter, it was agreed that Dr Lock meet with Mr Pleydell and Dr Jennings to discuss a Trust executive management response to the letter; the letter not having been addressed to, or otherwise copied to members of the Lung MDT.

298. With regard to the merger of the MDT, it was proposed that they *"enter into a positive and open negotiation with the UCLH team to establish a joint MDT,"* and that there should be a trial period for a defined period of time, which would give them evidence to determine whether it was practically workable and had improved benefits for patient care. In this respect, it was agreed that Dr Lock would meet Neal to discuss the logistics of a joint MDT.

299. It was also agreed that Dr Lock would call an extraordinary meeting of the Lung MDT, to ensure all members of the local MDT were informed and involved in the formation of a joint lung cancer treatment MDT between the Trust and UCLH.

300. The tribunal has not been able to determine the chronology of events, giving rise to the extraordinary meeting of the Lung MDT, whether emanating from the discussion between Dr Jennings and Mr Pleydell above referred, or from the agreed outcomes of the MDT meeting of 17 August. It is however here noted that neither Mr Pleydell, nor Dr Jennings were members of the Trust's MDT.

301. For completeness, the tribunal also here notes that, Mr Pleydell has no medical background and was reliant on clinical engagement to help him make decisions for patient services. It was Mr Pleydell's evidence to the tribunal that, if the consensus view from the Trust's Lung MDT, was that a merger would be contrary to patient interest, this is something he would have accepted as the approach to take, Mr Pleydell further advising the tribunal that, he had left the issue with Dr Jennings to take forward in consultation with Dr Lock and the claimant.

302. On 20 August 2015, the claimant wrote to Mr Allen, Chair of London Cancer, regarding the letter of Professor Prichard-Jones and Professor Janes, stating,

> "I believe its wholly unfounded contents are not in line with the values of the UCL Partners Board which I believe genuinely wanted to work with all local hospitals in partnership to ensure first class care for our patients."

303. and that as Lead Cancer Clinician at the Trust she would have valued Professor Prichard-Jones raising any concerns she had about the Trust's Lung Cancer Service, to have been raised with her, as opposed to what she had appeared to do, stating that Professor Prichard-Jones had:

> "…used her very powerful position as Chief Medical Officer to London Cancer and Programme Director for the integrated cancer system … to raise doubt in our Local Commissioner's mind about the quality of care our patients with Lung cancer are receiving.
>
> I feel such an underhand and unprofessional approach sets a poor precedence if individuals who are entrusted with power do not act with integrity, openness and transparency
> …
> I look forward to your thoughts and reflections."

304. Mr Allen responded on 27 August, having been briefed on the background to the issue raised by the claimant, and having reviewed relevant emails, advised that he was satisfied with the statements made in the correspondence of Professor Janes and Professor Prichard-Jones, as being well founded and that there had been full and open communication with the Trust throughout the process. Further advising;

> "I am completely satisfied that the actions that have been taken are clearly in the very best interest of patients with lung cancer who are being treated at Whittington Health."

305. The claimant was thereon referred to Mr Pleydell and Dr Jennings to further discuss her concerns, further being advised that following such discussion, should the Trust wish to meet with London Cancer, he would be happy to participate.

306. The extraordinary meeting was duly held on 23 September 2015. Notes of which are at R1 page 1423, the purpose for the meeting being identified to *"discuss the proposed establishment of a joint treatment Lung Cancer MDT with UCLH."* Dr Lock further acknowledged that there was a separate issue around whether the Trust should make a response to Professor Prichard-Jones and Professor Janes' correspondence, which was planned to be addressed in a separate meeting.

307. In respect of this meeting, Dr Jennings furnished correspondence setting out his views for the merger, a copy of which was presented to the meeting.

308. The meeting set out the background to the merger and after addressing Dr Jennings' letter, open discussion was then had. It was the overall view of the group that Professor Prichard-Jones and Professor Janes' letter, did not represent the Trust's service fairly. It was accepted that the Trust currently operated differently from other MDTs in the London Cancer network, and were the only Trust not to accept the London Cancer Lung Cancer Pathway Specification, recognising that there were potential benefits to having larger MDTs with the crossover between senior clinicians and a greater range of clinical input to decision making. It was further agreed that, the group try to arrange a meeting with the UCLH team to establish relationships and discuss how a joint treatment MDT might be established and function.

309. With regards Dr Jennings not being present at the extraordinary MDT, and in respect of which the claimant states she had expected his attendance, the tribunal notes from the claimant's correspondence of 14 December 2015, referred to supra, the claimant states in respect of concerns she was then setting out, that:

> "I will set out my concerns, one of which was the lack of attendance by both you and Simon, neither of whom attended the extraordinary meeting held on 23 September 2015. My understanding from Sarah Lock on 5 August 2015 was that she would invite you both to a meeting to share the data you had that gave you such concern that you decided to move part of local MDT to UCLH along with an account of the process followed".

310. The tribunal has seen no correspondence from Dr Lock requesting the attendance of Mr Pleydell or Dr Jennings to the extraordinary meeting, although there is correspondence from Dr Lock, seeking a meeting with Mr Pleydell and Dr Jennings, as proposed following the MDT meeting of 17 August 2015, namely, a Trust executive management response to Professor Janes and Professor Prichard-Jones' letter.

311. In respect of Dr Jennings' non-attendance at the extraordinary MDT, his evidence to the tribunal is that he had not sought to attend the extraordinary meeting *"because I wanted to give the members space to debate the issues amongst themselves".*

312. The claimant wrote to Dr Jennings on 27 September 2015 raising her concerns about his non-attendance, stating;

> "we were lead to believe you planned to explain why you as Medical Director made such a decision without any authority to do so and it appears by believing the unsubstantiated content of a letter dated 6 July written by Prof. Kathy Prichard-Jones and Prof Sam Janes which you shared with me on 4 August." …..the majority of the Lung MDT (8/10 members present on 23rd 9.15am) remain deeply unhappy about the proposal.
>
> I remain Lead Cancer Clinician of WH and as such it is my remit and responsibility to determine the structure and function of all MDTs. We comply with the National Peer Review process and I have no concerns about our service except for the withdrawal of the Consultant Clinical Oncologist in July……
>
> Your behaviour has been both professionally and personally undermining to me as Lead Cancer Clinician and by not rebutting the unsubstantiated claims made in the letter dated 6 July…. many believe your actions have caused unnecessary reputational damage to Lung Cancer Service at WH.
>
> I am sorry that the Lung MDT lead, Sara Lock does not support either my view of (sic) those of the wider team.
>
> As Lead Cancer Clinician I am asking Sara Lock not to pursue her plan of a planned merger until a competent review of Lung Cancer Service is undertaken…"

313. The claimant then advised that she had escalated her concerns to the Chair and Non-Executive Directors of the Trust, as to a lack of due process and "undermining behaviour" of Dr Jennings.

314. In respect of the claimant raising her concerns with the Chair and Non-Executive Directors, the claimant on 27 September, requested an opportunity to attend the Trust Board to share her concerns about:

> "lack of due process and exclusion of me as Lead Cancer Clinician for WH in the decision to merge part of the WH Lung Cancer Multidisciplinary Team meeting (MDM) to UCLH?"

315. The claimant then set out the circumstance of her having put forward her views regarding the merger and the supporting evidence, and further addressed Professor Prichard-Jones and Professor Janes' correspondence having presented unsubstantiated and affirmatory statements about the Trust Cancer Service, having been acted on by Dr Jennings, stating;

> "I last met Simon Pleydell and Richard Jennings on 9 February 2015 with Sara Lock, Lead of Lung Cancer at WH to discuss the London Cancer specification. I shared my expert view as a specialist Medical Oncologist for lung cancer supported by an evidenced base why this specification did not represent patient focused value based care and instead we should await the national specification due to be published in September 2015.
>
> Since that meeting I have learnt that not only have I been excluded from any dialogue with our Executive team, London Cancer and our Local Commissioners but a letter written by Prof Kathy Prichard-Jones and Prof. Sam Janes dated 6 July which contains unsubstantiated and affirmatory statements about the WH Lung Cancer Service has been acted on by Richard Jennings without either a rebuttal to the untrue claims or a competent review of our Lung Care Service.
>
> I feel deeply uncomfortable that local commissioners have been misled by Richard Jennings and Simon Pleydell by not challenging the unsubstantiated allegations and the reputational damage to WH Lung Cancer Service by recommending all decisions for treatment for lung cancer are made at the UCLH MDM".

316. The claimant then set out that she felt undermined on a personal and professional level, setting out her professional credentials and experience, then stating;

> "I believe if this decision, made by Richard Jennings and Simon Pleydell is not challenged by the Non-Executives of the Board, it sets a worrying precedence for the loss of other cancer services as neither RJ or SP have an official role in determining the structure and function of any of our MDTs. That is my role under National Peer Review guidance.
>
> I look to you as Chair of WH to ensure there is openness and transparency in all decision-making that effects WH and that concerns can be raised without fear of reprisal or demonstrating we are a well led organisation."

317. The tribunal pauses here, as the claimant submits that this correspondence was a qualifying disclosure. The tribunal from a perusal of this correspondence and the relevant facts, as would have been known to the Trust Board, the tribunal has not been able to find anything therein or circumstance then, existing that would have disclosed information as to health and safety of any individual having been, was being, or was likely to be endangered. Neither is there anything there referenced to any person having failed, failing or was likely to fail to comply with any legal obligations to which they were subject. The tribunal accordingly does not find there to have been a qualifying disclosure by this correspondence.

318. The claimant also on 27 September 2015, wrote to Mr Machray, Director of Quality and Integrated Governance, Islington Clinical Commissioning Group, in similar terms to the correspondence sent to the Chair and Non-Executive Directors of the Trust, seeking an explanation as to the data interrogated, stating that she had not been given the opportunity to share her concerns, about lack of due process, and of her exclusion as Lead Cancer Clinician for the Trust in the decision to merge the Trust Lung Cancer MDT with UCLH. The claimant further advised that she had raised her concerns with the Chair and Non-Executive Directors of the Trust Board.

319. Mr Machray responded by correspondence of 1 October 2015, advising that the content of Professor Prichard-Jones and Professor Janes' correspondence had been poorly worded, he identified that the substantive item that was being considered was that of ensuring the Trust met all the standards laid out for the Lung MDT by London Cancer, and that whilst the letter was long and mentioned a number of things the location of the MDT was the only substantive issue and which the Trust responded to.

320. Mr Machray then addressed the issue of the claimant feeling undermined, and advised that he fully appreciated the services provided by the Trust through the claimant and her team, and they were keen to maintain the service to their residents, and that the wider MDT was a small, but important part of the pathway.

321. The claimant responded to Mr Machray on the 2 October, thanking him for his comments, further advising as to the impact of Professor Janes and Professor Prichard-Jones' and of her being excluded from the decision-making process. The claimant thereon advised;

> "For the record our MDT was fully functional with a complete team up until July 2015 when the visiting Clinical Oncologist from UCLH withdrew her services – a matter that only came to my attention after the event. The lack of a Consultant Clinical Oncologist put our MDT under threat of having a team fit (sic) for excellent evidence based decision making. We now have a locum Clinical Oncologist for UCLH joining us by telelink.
>
> I do hope after a thorough review of the events to date, we can restore confidence in our local service and work with you and London Cancer to ensure we are delivering patient focus value based care."

322. With respect the claimant having raised issues with the Chair and Non-Executives of the Trust, as to Dr Jennings having misled the CCG, Mr Machray advised that, he was writing to Dr Jennings asking for his comment on the claimant's concerns.

323. With reference the claimant's correspondence to the Chair, Mr Hitchins and the Non-Executive Directors of the Trust, Mr Hitchins responded on 30 September 2015, advising that there would not be any adverse implications from the claimant having raised legitimate concerns, advising that he had passed her letter to Mr Pleydell and Dr Jennings for them to respond directly to her setting out the decision-making process surrounding the issues raised. He thereon advised that he would consider the position thereafter.

324. Mr Hitchins further advised that, should the claimant have any issues of immediate patient safety, she was to meet with Dr Jennings and the Head of Governance as the appropriate mechanism for her to raise her concerns.

325. The claimant responded to Mr Hitchins by correspondence of 2 October, asking Mr Hitchins to consider the correspondence of Professor Janes and Professor Prichard-Jones, stating;

> "I think you need to read the letter… which I feel demonstrates not only exclusion but a collusion of the unsubstantiated claims as one month went by before it was brought to my attention by Richard Jennings and then only after he had made a

> decision with the Commissioners based on no evidence or review of the service. It reads to me that both Simon and Richard asked for the Commissioner's support to accelerate the proposed London Cancer specification as they were concerned about poor outcomes for our local patients and poor MDT functioning.
> …….
> The reason I have raised my concerns to the Board and Non-Executives is because I understand it is the Board which has a duty to uphold the highest standards of integrity and probity and to scrutinise the performance of the executive team.
>
> This is such an important issue for the Trust's services and reputation that I of course accept you will need time to consider the case carefully."

326. As referred supra, following the claimant's letter to Mr Hitchins, referencing the issues relating to the Lung MDT being an operational matter, and on which the claimant had been corresponding with the Chief Executive, he determined, so as to avoid a number of people at the Trust discussing the issue with the claimant, that the matter be referred to the Chief Executive for his consideration. With regards the claimant's allegations as to victimisation, Mr Hitchins noted that Ms French had written to the claimant in respect of her presenting her concerns in tablet format, as above referred, determined that Ms French was the appropriate officer to address those issues for which he forwarded a copy of the claimant's letter to Ms French and for the claimant to provide the details requested, being of the view that once the concerns were clear, if then appropriate, either he or a Non-Executive member would then become involve at that stage, which was not seen as appropriate at that stage.

327. Mr Hitchins also gave consideration to the claimant raising issue as to Ms French's "threatening language", as referred supra.

328. The tribunal here notes that, Mr Hitchins having drafted correspondence to be sent to the claimant in the above terms was not sent, owing to an administrative oversight. The correspondence nevertheless is illustrative of the circumstances then existing at that time.

329. With reference the claimant and the MDT, there does not appear to have been further matters arising thereon until around 24 November 2015, when the claimant wrote to Mr Holt, Non-Executive Director, seeking a meeting, advising of the correspondence she had sent to Mr Machray and of having met Mr Hitchins that day, who was then wheelchaired bound having lost a leg, stating that;

> "I am worried about a number of issues particularly what has been and continues to happen to me when raising concerns. I wish to do this professionally and based on facts, so would value some guidance as to what I should do next?"

330. Arrangements were then made for a meeting on 2 December 2015, Mr Holt asking that they restrict themselves to issues around the process and/or the issues around the claimant's perception of how she was being treated having raised her concerns, Mr Holt advising;

> ".. Am keen to avoid getting into the concerns themselves as don't want to impinge on the dialogue that I assume you are having with other members of the Exec/NED team.

331. On meeting with the claimant, and the claimant setting out her issues, the claimant was advised to see Ms French informally, personally as oppose to communicating in writing, which on the claimant intending then to do, she later determined that things had gone too far for an informal discussion with Ms French, advising Mr Holt accordingly by correspondence of 6 December, further advising Mr Holt that she preferred to have a meeting with her BMA representative present. Mr Holt responded advising that with such representation any meeting would then become "formal" advising that he was then not aware of what the correct process would be.

332. It is the claimant's evidence that, having received Mr Holt's reply she no longer felt that he was then supportive of her situation.

333. On 9 December 2015, Dr Jennings responded to the claimant's correspondence of 27 September, apologising for his delay, further advising that he had been furnished a copy of the claimant's correspondence of the same date, to Mr Hitchins and the Non-Executive Directors. Dr Jennings therein set out his rationale for a merger as he had set out in correspondence to Dr Lock for the purposes of the extraordinary DMT meeting, advising that he did not think there was anything for the Trust to fear from the merger in terms of quality and safety of the patients care. Dr Jennings further invited the claimant to meet with him to discuss any other safety or quality concerns she had stating*;*

> "it is essential that any concerns you may have about patient safety and quality are heard and considered and I would like to take this opportunity to assure that I am always available to discuss any such issues with you"

*a*dvising that both he and Mr Pleydell would be pleased to meet with her.

334. It is the claimant's evidence in respect of Dr Jennings' letter that, she thought his intervention was highly irregular, in that she had turned to the Chair raising concerns of how Dr Jennings actions had *"not only personally undermined me, but had caused significant reputational damage to the Trust*" and that she *"now began to feel as if Mr Hitchins was taking advice directly from Dr Jennings and therefore not appreciating or believing my legitimate concerns".*

335. By correspondence of 14 December 2015, the claimant responded to Dr Jennings, raising concern as to which of her correspondence he was responding to, thereon setting out her concerns arising from his non-attendance at the extraordinary DMT meeting and of his failure to update her following their meeting of 9 February 2015 with regard the data around one year survival rates, further advising that her correspondence to Mr Hitchins and the Non-Executive Directors had been to raise concern about bullying behaviour she had experienced from both Dr Jennings and Mr Pleydell with regards the Lung Cancer Service, then stating:

> "despite my expertise on a national level and my role as Lead Cancer Clinician I have been excluded from many meetings with you and Kathy Prichard-Jones and Sam Janes. I have not had any actions or discussions from your meetings with Simon Pleydell, Sam Janes and Kathy Prichard-Jones shared with me.

> You were in receipt of a letter dated 6 July 2015 which made several inaccurate allegations about our service yet at no time did you share its potentially defamatory content with me nor send a rebuttal.
>
> I understand you met with Martin Machray, Lead Commissioner for Islington CCG and reassured him the service would merge as you too had concerns about safety and outcomes of our local service…
>
> To summarise I am deeply concerned about lack of due process in your actions with regards to local Lung Cancer Service and the majority of the Lung MDT are opposed to a merger at the current time".

336. By correspondence of 21 December 2015, as referred supra, Dr Jennings responded, advising the claimant that with regards her allegations of bullying by himself and Mr Pleydell "these are serious allegations, therefore I have passed your letter to Norma French, Director of Workforce, as the responsible Director to advise on taking these allegations forward formally," noting that as the claimant had raised issues surrounding the MDT decision with Mr Pleydell, so as not to duplicate communication, he would leave the matter for Mr Pleydell to address.

337. With regards the merger of the Lung Cancer MDT, on there being no consensus of the Trust MDT in respect thereof, on 10 December 2015, Mr Pleydell made arrangements for the matter to be referred to the Trust management group for a decision to be made collectively by the appropriate Clinical Leadership Team, at which Dr Lock as Chair of the MDT together with the claimant, as Lead Clinician for Cancer, would be invited to present the issues for discussion, advising that should the Trust Management Group not be able to reach a majority consensus, the Trust would then seek independent external advice.

338. The Trust Management Group (TMG) is the most senior clinical decision-making body in the Trust. It comprises seven of the most senior doctors in the Trust, each a Clinical Director responsible for one of the Trust's integrated service delivery unit, plus the Executive Members of the Trust Board. The Trust Management Group is chaired by Mr Pleydell.

339. By correspondence of 11 December 2015, the claimant responded to Mr Pleydell's proposal, stating:

> "…however as Lead Cancer Clinician for this Trust, I am responsible as set out by National Peer Review measures for the optimum structure and function of all the cancer sites specific MDTs…
>
> To enable me as Lead Cancer Clinician to agree to what you have proposed I would like first my following concerns answered in writing; ..."

340. The claimant then set out eleven questions ranging from the terms of reference of the Trust Management Group and membership, when Mr Pleydell met the London Cancer Medical Director, when and with whom had Mr Pleydell met and London Cancer Pathway Lead for Lung Cancer; why Mr Pleydell had not shared the letter of Professor Janes and Professor Prichard-Jones with her and why she had not been invited to any follow up

meetings post 9 February 2015, and of his becoming aware of the UCLH Consultant Clinical Oncologist withdrawing from the Trust Lung MDT.

341. In respect of this correspondence, the tribunal notes correspondence in reply from Mr Pleydell dated 21 December 2015, by which he raises issue as to the eleven questions being raised by the claimant, further advising that by his correspondence of 10 December, he had made it clear that no final decision had been taken regarding the merger and that the claimant was being invited to participate in the process by which a decision would then be made, further advising that, save for the question of the merger, should the claimant have outstanding complaints about her perceived lack of personal participation in the process she could raise a grievance in respect thereof, albeit this correspondence was not sent, circumstance having developed whereby a face to face meetings was held between the claimant and Mr Pleydell on 21 December 2015, where the claimant's ongoing participation in the decision making process was discussed together with the claimant's views of the process having been followed; a record of the claimant's account of the meeting dated 22 December 2015, is at R1 page 1339 to 1340.

342. The tribunal pauses here, and notes that in respect of the merger, it had been made known that a decision had not finally been made, correspondent within UCLH attesting thereto, by correspondence of Mrs O'Leary, General Manager Oncology at UCLH, giving an update of the merger, advising that;

> "…currently unable to progress the move of the Whittington Lung MDT. A meeting with all the MDTs members was held and there was not agreement for the MDT to move and the original decision taken by Richard Jennings has been referred to the Whittington Trust Board. Therefore, the current stance of the MDT Head Sara Lock is that they cannot process anything until the Trust Board has met and discussed, she does not have a date for this or any indication of timescales. In the meantime, the MDT remains dysfunctional with poor clinical care being provided. Also, UCLH Clinical Oncology input is difficult as Ruheena is not attending the MDT until it moves to UCLH."

343. The tribunal equally pauses here, as the claimant has given evidence to the tribunal that by her meeting with Mr Pleydell on the 21 December, Mr Pleydell had used threatening language and angry tones, *"reminding me he was the CEO and he wasn't happy with the way business had been conducted and how I had undermined Dr Jennings"* and of her being challenged to attend a Trust Management meeting for 18 January, on her having advised that she could not attend that day, the claimant stating:

> "Mr Pleydell got very shirty with me insisting I had to be there. He insisted the date of the meeting was non-negotiable….."

344. Mr Pleydell denies such events, or of his making reference to his position as CEO, as alleged.

345. From the summary of the meeting furnished by the claimant of the 22 November above referred, the tribunal notes that there is no reference to any of these events, which the tribunal would have expected to have been

referred to, had the events occurred as alleged and for which the claimant was as offended as she presents to the tribunal.

346. The tribunal on a balance of probabilities prefers the evidence of Mr Pleydell, and as appears to have been recorded by the claimant's record of the meeting, that the meeting was a productive meeting at which she was reassured, and for which, in correspondence that she immediately sent to members of the Lung DMT following the meeting with Pleydell, where she records:

> "I am convinced having spoken with him for 45 minutes that it is not a "done deal".
>
> I will be given a date tomorrow of when Sara and I will be asked to present our case for collaborative working with UCLH Lung MDT for the best outcomes of our patients." (R1 page 1322)

347. The Trust Management Group meeting was held on 2 February 2016, at which both Dr Lock and the claimant made presentations; the claimant's presentation is at R1 page 1439 to 1453 entitled "Whittington Health readiness for the National Clinical Pathway for suspected and confirmed Lung Cancer, and Dr Lock's presentation is at R1 page 1436-18 to 1436-43.

348. The draft Trust Management Group's minutes are at R1 page 1501 to 1504; the minutes recording;

> "The Trust had been requested by London Cancer and the Trust's Commissioners to merge WH Lung Cancer treatment MDT with UCLH.
>
> - There had not been consensus on whether to take this forward so the issue had been brought to TMG to discuss further as the most senior clinical decision-making body in the Trust beneath the Trust Board itself.
>
> - …… Pauline Leonard and Sara Lock made presentations on local and national policy with data relating to North Central London activity and outcomes.
>
> - The data was not conclusive in terms of supporting arguments for or against change.
>
> - TMG members discussed the robustness of the current WH MDT arrangements and explored whether there were any arguments as WH should not merge with the UCLH as requested by London Cancer and the Trust Commissioners.
>
> - A detailed and lengthy discussion took place and colleagues conclusions confirmed that WH should combine with the UCLH Lung Cancer treatment MDT to form a single MDT.
>
> - TMG agreed that it was important to find solutions which supported local treatment and local pathways for patients.
>
> - TMG agreed the Trust will join UCLH to form a single merged Lung Cancer treatment MDT and negotiations will ensure the amalgamation of the WH team with UCLH MDT.

- SP will inform the Trust Board of the decisions to amalgamate to UCLH MDT.

- RJ and the WH team to meet with Geoff Bellingan UCLH Medical Director and the UCLH team to determine the pathway to protect the local service to ensure WH patients are treated locally."

349. The tribunal pauses here, as it is the claimant's evidence in respect of the TMG Group's decision, that;

> "Although Mr Pleydell said there would be a vote after our respective presentations, there wasn't. Instead Mr Pleydell went on to say he heard no convincing evidence not to merge the Lung MDT at WH with UCLH. A decision was made by Mr Pleydell to go ahead with the planned merger.
>
> Feeling utterly disrespected and not in alignment with the vision and values held by Mr Pleydell as CEO, I decided to step down from my appointed role as Lead Cancer Clinician."

350. It was Mr Pleydell's evidence to the tribunal that there had been a full consideration of the respective presentations of Dr Lock and the claimant, and that the decision was the consensus of the Trust Management Group, which the tribunal finds is borne out by the minutes of the meeting, and which the tribunal accepts to have been the course of events.

351. With regards the further events and of the claimant's account in stepping down from the role as Lead Cancer Clinician, the tribunal notes the following events.

352. At 10.37am on 2 February 2016, immediately following the Trust Management Group meeting, Dr Lock updated the further members of the Lung DMT, advising;

> "The group listened carefully to the presentations Pauline and I gave and then had the opportunity to ask questions and express their opinion.
>
> The outcome from the meeting was that the Trust Management Group has asked us to work with our colleagues at UCLH to establish a joint MDT and to collaborate with them on how this should operate. I have agreed with Pauline to set up a meeting with the Lead Clinicians at UCLH and both Operational Managers to start discussion about how we move this forward ..."

353. At 10.55am the claimant wrote to Dr Lock and the further members of the Lung MDT Group thanking Dr Lock for her prompt summary, advising;

> "It is worth adding the fact that the lack of Clinical Oncologist at our local MDT left the TMG feeling uncertain about the robustness of our local MDT – Richard Jennings went as far as saying he would not be happy for any relative of his to be treated by our local MDT if they had lung cancer at present.
>
> Clarissa raised the very good point that as we agreed to work to UCLH on how best we set up a joint treatment MDT that followed patients' specific pathways that that was conditional on UCLH supporting our MDT immediately with a Consultant Clinical Oncologist.

> Richard Jennings offered to speak with Geoff Bellingham immediately to convey that view.
>
> For the record the majority of us were never opposed to a joint more efficient way of working together, we were just very unsettled about the lack of due process in July & August propelled by a factually incorrect undermining letter.
>
> I look forward to a new beginning and hope we can achieve a flourishing Lung MDT with our UCLH colleagues."

354. At 4.57pm on 2 February, the claimant then wrote to her line manager, Nick Harper tendering her resignation from her role as Lead Cancer Clinician, stating;

> "Please find my resignation letter with regards my specific additional role as Lead Cancer Clinician".

355. The tribunal has not been furnished with a copy of the claimant's resignation letter.

356. The tribunal does not find the reasons advanced for the claimant's resigning from the role of Lead Cancer Clinician to be supported by the evidence before the tribunal which, following the TMG meeting the claimant then appeared to have been on board with the merger. The evidence does not support the claimant's contention for her resigning from the role.

357. With regards the merger of the Trust's Lung MDT with UCLH, and the issues for the tribunal's determination, the above facts are they, and feeds into the factual matrix thereafter set out at paragraph 201 and following, as referred supra.

358. The claimant presented her complaints to the tribunal on 2 September 2016.

The law

359. The law relevant to the protection afforded to public interest disclosures can be found at s.43A to s43H, s47B and s48 of the Employment Rights Act 1996 (ERA).

360. The meaning of "protected disclosure" is provided for by section 43A of the ERA which provides:

> "In this Act a "protected disclosure" means a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H.

361. By section 43B, it provides that a 'qualifying disclosure" means any disclosure of information which, in the reasonable belief of the worker making the disclosure is made in the public interest and tends to show one or more of the following, - w*hich for the purposes of this case are that*:

> (b) a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject

…
(d) that the health or safety of any individual has been, is being or is likely to be endangered
…
(f) that information tending to show any matter falling with in any one of the preceding paragraphs has been, or is likely to be deliberately concealed.

362. Sections 43C to 43H then sets out the bodies to whom the disclosure is to be made for the protection to attach.

363. In order to fall within the statutory definition of a protected disclosure, for the purposes of s.43A there must be a disclosure of information. There is a distinction between "information" and an allegation for the purposes of the Act, see Cavendish Munro Professional Risks Management Ltd v Geduld [2010] IRLR 38. EAT per Mrs Justice Slade,

> "20. That the Employment Rights Act recognises a distinction between 'information' and an 'allegation' is illustrated by the reference to both of these terms in section 43F. Although that section does not apply directly in the context of this case nonetheless it is included in the section of the Act with which we are concerned. It is instructive that those two terms are treated differently and can therefore be regarded as having been intended to have different meanings……."
> ……..
> 24. Further, the ordinary meaning of giving 'information' is conveying facts. In the course of the hearing before us a hypothetical was advanced regarding communicating information about the state of a hospital. Communicating 'information' would be 'The wards have not been cleaned for the past two weeks. Yesterday sharps were left lying around'. Contrasted with that would be a statement that 'You are not complying with health and safety requirements' in our view this would be an allegation not information."
>
> 25. In the employment context, an employee may be dissatisfied, … with the way he is being treated. He or his solicitor may complain to the employer that if they are not going to be treated better they will resign and claim constructive dismissal. Assume that the employer, having received that outline of the employee's position from him or from his solicitor, then dismisses the employee. In our judgment, that dismissal does not follow from any disclosure of information. It follows a statement of the employee's position. In our judgment that situation would not fall within the scope of the Employment Rights Act section 43"
>
> …..
>
> **Disclosure**
>
> 27……The natural meaning of the word disclosure is to reveal something to someone who does not know it already. However section 43L(3) provides that 'disclosure' for the purpose of section 43 has effect so that 'bringing information to a person's attention' albeit that he is already aware of it is a disclosure of that information. There would be no need for the extended definition of 'disclosure' if it were intended by the legislator that 'disclosure' should mean no more than 'communication'"

364. On there being a disclosure, it is necessary, for the protection to attach that, the employee holds the reasonable belief in that which is disclosed, which is a subjective requirement, ie what the employee in question believed rather than what anyone else might or might not believe in the same circumstance. This is not, however, a test solely of subjectivity, which had this been the case the requirement would be for the employee to show that they genuinely believed that the disclosure tended to show one of the events set out at s43B(1)(a)-(f). Instead, s.43B(1) requires a "reasonable" belief which introduces an objective element into the relevant test, being some substantial basis for the holding of that belief. It is to be noted that, having a reasonable belief does not mean that it must necessarily be true and accurate, it is only necessary that the disclosure "tends to show" that the relevant failure has occurred, is occurring or is likely to occur. Accordingly, if the employee is wrong but reasonably mistaken in the belief held, this can still amount to a protected disclosure, see Darnton v University of Surrey [2003] ICR 615, as approved by the Court of Appeal in Babula v Waltham Forest College [2007] ICR 1026. The determination of the factual accuracy of the employee's allegation being of relevance in helping to determine whether the belief was reasonably held, showing or tending to show the relevant failure sought to be disclosed.

365. Once a qualifying disclosure has been found for the purposes of section 43B to H, the tribunal, having regard to section 47B, will be concerned to determine whether the acts of which the claimant maintains to be a detriment, were done on the grounds that she had made a protected disclosure. In this respect the tribunal is aided by authority of Fecitt and Others and Public Concern at Work v NHS Manchester [2012] IRLR 64 CA, per Lord Justice Elias, at paragraph 45, that:

> "In my judgment, the better view is that section 47B will be infringed if the protected disclosure materially influences (in the sense of being more than a trivial influence) the employer's treatment of the whistle blower. If Parliament had intended the test for the standard of proof in section 47B to be the same as for unfair dismissal, it could have used precisely the same language but it did not do so."

366. And per Lord Justice Davis, at paragraph 65

> "… the test to be applied under section 47B was not simply an objective 'but for' test: there was required an enquiry into the reasons why the Employer acted as it did …"

367. With regards to detriment, the tribunal is assisted in its task, in authority from Shamoon v the Chief Constable of the Royal Ulster Constabulary [2003] IRLR 285 HL, per Lord Hope, that:

> "As May LJ put it in Desouza v Automobile Association [1986] IRLR 103, 107, the court or tribunal must find that by reason of the act or acts complained of a reasonable worker would or might take the view that he had thereby been disadvantaged in the circumstances in which he had thereafter to work."

368. The tribunal further has particular reference to paragraphs 9 to 12 of the claimant's submissions as to the test for reasonable belief and public interest for the purposes of section 43B of the Employment Rights Act 1996,

and of the burden of proof being on the claimant to establish the alleged failures, following McMillan J in Boulding v Land Securities Trillium (Media Services) Ltd [2006] UKEAT/0023/06/RN, and of the burden of proof as lies on the employer as to detriment following Fecitt v NHS Manchester [2012] IRLR 64, as succinctly set out in Harvey on Industrial Relations and Employment Law, that;

> "the legislation requires that the acts or deliberate failure to act of the employer must be done on the ground that the worker in question has made a protected disclosure. This requires an analysis of the mental process (conscious or unconscious) which caused the employer to act and the test is not satisfied by the simple application of a "but for" test (Harrow London Borough v Knight (2003) IRLR140). The employer must prove on the balance of probabilities that the act, or deliberate failure, complained of was not on the grounds that the employee had done the protected act; meaning that the protected act did not materially influence (in the sense of being more than a trivial influence) the employer's treatment of the whistle-blower."

Submission

369. The tribunal received written submission on behalf of the respondent which were augmented by oral submissions. The claimant submitted skeleton argument supported by oral submissions.

370. The tribunal has given careful consideration to the submissions.

Conclusions

Disclosures

Meeting with Mr Pleydell on 10 March 2015 – reliance on section 43B(1)(d) ERA.

371. On a balance of probabilities, giving consideration to the claimant's letter seeking the meeting with Mr Pleydell, being in relation to her relationship with Ms Phillips, and on a consideration of the issues to discuss in the document furnished by the claimant, headed 'Meeting notes with Simon Pleydell 10.3.15' and on which she held her discussions, from that document, there is on its face, nothing to suggest issues of health and safety or patient safety being raised. The tribunal does however acknowledge that the claimant's reference in that document to *"overt conflict between both KP and me is impacting on wider team"*, expanding on the reference *"impacting on a wider team*", there could be read thereinto, the impact on the team then affecting the care offered to patients, and ipso facto, the patients' safety. To achieve this result however, requires the tribunal to read into what is there set out which, when taken in context of the reason for the meeting being arranged, and the context of the issues being raised as set out, this interpretation would not be a natural consequence. The tribunal accordingly finds on a balance of probabilities, that issues of health and safety or patient safety, were not here being raised.

372. Further, giving consideration to the claimant's evidence as to what transpired at the meeting, namely, Mr Pleydell having his head in his hands and appearing to be at a loss, and on there being nothing following that meeting from Mr Pleydell raising issues of safety, in circumstances where

the tribunal finds that, had issues of safety been raised in some form, there would have been some form of action taken following that meeting, which when giving further consideration to the claimant's correspondence of 8 July 2015, as set out a paragraph 109 that, *"My original concerns regarding Karen's unprofessional behaviour towards me and the concerns I have raised about Karen Phillips have been left unaddressed by you as a senior team for an unacceptable long time, that patient safety issues are now an added concern"* is a clear expression that, by the correspondence of 8 July, the claimant was only then seeing issues of patient safety as a concern, as she states *"now an added concern"*. The tribunal finds that issues of patient safety had not prior to this period been a matter raised by the claimant.

Meeting with Mrs Davies on 20 March 2015– reliance on section 43B(1)(b) and (d) ERA

373. On the tribunal being taken to the notes of the meeting, which are at R1 page 734, from a perusal of these notes, it is evident that the claimant there raised issues as to the personal relationship between her and Ms Phillips. The tribunal does not find that the claimant there raised issue as to patient safety as she now submits before the tribunal, there is nothing by the notes referencing patient safety being raised. Despite this, on the matters being raised, the tribunal accepts that it is possible to read into those issues matters of safety, however, from the tenor of the notes, patient safety was not an issue focused on, which the tribunal finds would have been the case had patient safety been raised, and that some record would have been made thereof. This was not the case.

374. The tribunal further restates its observations at paragraph 369 above, as to the claimant's reference in her correspondence to Ms Davies and Dr Jennings of 8 July 2015 that, *"My original concerns regarding Karen's unprofessional behaviour towards me and the concerns I have raised about Karen Phillips have been left unaddressed by you as a senior team for an unacceptable long time, that patient safety issues are now an added concern"* being a clear expression that, by that correspondence, the claimant was only then seeing issues of patient safety as a concern, which had not been the case on the 20 March 2015.

Email to Ms Davies on 7 May 2015 – reliance on section 43B(1)(b)(d) and (f) ERA

375. From a perusal of the claimant's email of 7 May 2015 to Ms Davies, the tribunal has found nothing therein making reference to any issues as to health and safety of any individual having been, was being or was likely to be endangered. Neither is there anything there referenced to any person having failed, failing or was likely to fail to comply with any legal obligations to which they were subject, or that information tending to show any matter falling within any of the proscribed criteria under sections 43B(1)(a) to (e) of the ERA, has been, or was likely to be deliberately concealed.

376. The tribunal does not find there to have been a qualifying disclosure by this correspondence. The tribunal should further add that, in arriving at this determination, the tribunal has also considered the claimant's earlier alleged disclosures and the meetings there had, to aid interpreting this document,

and there is nothing there from that would suggest otherwise than as the tribunal has found

377. The tribunal again restates its observations at paragraph 109 above, as to the claimant's reference in her correspondence to Ms Davies and Dr Jennings of 8 July 2015, being a clear expression that, by that correspondence, the claimant was only then seeing issues of patient safety being a concern, which had not been the case on the 7 May 2015.

Meeting with Dr Jennings on 21 May 2015 – reliance on section 43B(1)(b) and (d) ERA

378. The tribunal as set out at paragraphs 98 above, find that the claimant at the meeting on 21 May 2015, and the notes of the meeting she furnished to Dr Jennings, did not raise thereby issues of health and safety; the claimant there raising issues as to her relationship with Ms Phillips, and as detailed by Dr Jennings, and of whose evidence the tribunal accepts, the claimant had there identified that patient safety had not been an issue in respect of the Savene incident.

379. The tribunal again restates its observations at paragraph 369 above, as to the claimant's reference in her correspondence to Ms Davies and Dr Jennings of 8 July 2015, being a clear expression that, by that correspondence, the claimant was only then seeing issues of patient safety being a concern, which had not been the case on the 21 May 2015.

Letter to Dr Jennings and Ms Davies on 8 July 2015 – reliance on section 43B(1)(b)(d) and (f) ERA

380. The tribunal finds that by the claimant's correspondence of 8 July 2015, whilst not readily discernible from its contents, giving consideration to the circumstance and reading the correspondence in its broadest terms, it is possible to glean therein, the claimant alluding to information tending to raise issues of patient safety and from which it is just sufficient, in the circumstance, to be disclosing information as to patient safety, reasonably believed by the claimant to be of concern, and of information tending to show that the issue has been, or is likely to be deliberately concealed. The tribunal finds that the claimant had by this correspondence made a qualifying disclosure.

Email and attachment to Ms Shamima Choudhury (Human Resources) on 15 July 2015 – reliance on section 43B(1)(b)(d) and (f) ERA

381. The tribunal is satisfied that the claimant's correspondence of 15 July 2015 to Ms Chowdhury, was a document disclosing information relating to health and safety; the claimant setting out that by the failure of the lead cancer nurse, refusing to engage with her, she had concerns for the safety of the cancer service and was sufficient to amount to a qualifying disclosure.

List of issues of concerns provided to Mr David Major on 19 August 2015, in respect of the investigation process – reliance on section 43B(1)(b) and (d) ERA

382. From a perusal of the claimant's list of concerns furnished to Mr Major, for the purposes of his investigations, the tribunal has found nothing therein making reference to any issues as to health and safety of any individual having been, was being, or was likely to be endangered. Neither is there anything there referenced to any person having failed, failing, or was likely to fail to comply with any legal obligations to which they were subject.

383. The tribunal does not find there to have been a qualifying disclosure by this correspondence. The tribunal should further add that, in arriving at this determination, the tribunal has also considered the claimant's earlier alleged disclosures and the meetings there had to aid interpreting this document, and there is nothing there from that would suggest otherwise than as the tribunal has found

384. The tribunal does however acknowledge the claimant's submission that, there could be read thereinto, the impact of Ms Phillips' probity competence and professionalism in her senior role, then affecting the care offered to patients, and ipso facto, to patients' safety. To achieve this result however, requires the tribunal to read into what is there set out which, when taken in context of the reason for the list being furnished, and the context of the issues being raised as set out, such an interpretation would not be a natural consequence. The tribunal accordingly finds on a reasonable reading of that document, that issues of health and safety, or patient safety, were not there being raised, or otherwise that, information tending to show any matter falling with in any of the proscribed criteria under sections 43B(1)(a) to (e) of the ERA, had been, or was likely to be deliberately concealed.

Email to Ms Norma French (Human Resources) dated 2 November 2015 – reliance on section 43B(1)(b) and (d) ERA

385. The tribunal finds that the claimant's correspondence of 2 November was sufficient to amount to a protected disclosure; not based on the content of that correspondence, but by its reference to previous correspondence of which the correspondence of the 15 July 2015**,** as above referred having been identified as a qualifying disclosure was one, and on Ms French being referred thereto and of which she states she had reviewed, the tribunal finds that the composite of those correspondence amounted to a qualifying disclosure, pursuant to section 43B(1)(d) but not 43B(1)(b).

Statement of case, provided to the disciplinary panel ahead of the hearing, on 24 February 2015 – reliance on section 43B(1)(b) ERA

386. With regards to the claimant's statement for the disciplinary hearing, from the particulars that the tribunal has been referred to, the tribunal has not been able to identify anything thereby disclosing information as to a person having failed, was failing, or was likely to fail to comply with any legal obligation to which they were subject, or that the health or safety of any individual had been, was being, or was likely to be endangered. The references to the terms of safety, and the claimant stating her role in respect of safety, is not sufficient to amount to a disclosure of information as espoused by Mrs Justice Slade in Cavendish Munro Professional Risks Management Ltd v Geduld.

Letter to the Chair of the Trust board, Steve Hitchins, on 27 September 2015 – reliance on section 43B(1)(b)(d) and (f) ERA

387. As set out at paragraph 314 supra, the tribunal has not been able to find anything stated within this correspondence or circumstance then existing, that would have disclosed information as to health and safety of any individual having been, was being, or was likely to be endangered. Neither is there anything there referenced to any person having failed, failing or was likely to fail to comply with any legal obligations to which they were subject, or that information tending to show any matter falling within any of the proscribed criteria under sections 43B(1)(a) to (e) of the ERA, had been, or was likely to be deliberately concealed. The tribunal accordingly, does not find there to have been a qualifying disclosure by this correspondence.

Letter to Steve Hitchins on 14 December 2015 – reliance on section 43B(1)(b)(d) and (f) ERA

388. From a perusal of the claimant's correspondence to Mr Hitchins of 14 December, the tribunal has found nothing therein making reference to any issues as to health and safety of any individual having been, was being or was likely to be endangered. Neither is there anything there referenced to any person having failed, failing or was likely to fail to comply with any legal obligations to which they were subject, or otherwise information tending to show that any matter falling within any of the proscribed criteria under sections 43B(1)(a) to (e) of the ERA, had been, or was likely to be deliberately concealed.

389. The tribunal does not find there to have been a qualifying disclosure by this correspondence. The tribunal should further add that, in arriving at this determination, the tribunal has also considered the claimant's earlier disclosures and the meetings there had, to aid interpreting this document and there is nothing there from that would suggest otherwise than as the tribunal has found

Detriments

Detriment 1
The conduct of Mr Pleydell at the meeting on 20 May 2015:

On 20 May 2015, the claimant met with Mr Pleydell to follow up on the lack of progress in addressing her concerns. Mr Pleydell was visibly bad tempered with the claimant saying he wanted nothing to do with it. He reminded the claimant several times that he was the CEO and she was a mere employee of the Trust. This intimidated the claimant. When pressed as to what he was doing about the patient safety issue which the claimant had raised, he agreed to ask that Dr Jennings meet with the claimant. The conduct of Mr Pleydell at that meeting was a detriment to the claimant.

390. By the tribunal's finding at paragraph 93, preferring the evidence of Mr Pleydell, the tribunal does not find the acts as alleged by the claimant to have occurred. The tribunal does not find any substance to the claimants claim as alleged.

Detriment 2
The decision not to pursue mediation to resolve the matters:

On 13 July 2015, the Trust wrote to the claimant abandoning its proposal of a mediation, and stating instead that there would be a formal investigation under one or more of the following policies (without specifying any basis for the same). 1. Bullying and harassment, 2. Grievance, 3. Conduct performance and ill-health for medical and dental staff, 4. Disciplinary procedure. No allegations, grievances or complaints were articulated in the letter; the claimant did not know what was being investigated insofar as it related to her conduct or anything else under her control. The decision not to pursue mediation to resolve matters was a detriment to the claimant.

391. The tribunal has not found facts to support the claimant's allegations. By the respondent's correspondence of 13 July 2015, that correspondence did not abandon its proposals for mediation, to the contrary, by that correspondence it had stated that the claimant would be written to separately regarding the offer of mediation between herself and Ms Phillips.

392. The tribunal equally does not find the correspondence of 13 July 2015, to have made reference to there being a formal investigation under one or more of the respondent's policies, without specifying any basis for the same; the correspondence made clear that the investigation was to determine whether there had been any breaches of policy and on receipt of a report following the investigation, a decision would then be taken as to whether any breach had occurred for which a decision would then be taken as to whether further action should be taken. The tribunal further makes reference to the meeting of the 27 May 2015, as set out at paragraph 103 supra, from which there was a clear explanation and understanding, albeit not to the claimant's satisfaction, of the situation going forward.

393. The tribunal accordingly finds no substance to the claimant's allegation.

394. For completeness, it is here noted that, by the claimant's correspondence of the 15 July 2015, to Ms Chowdhury, in respect of mediation being proposed, the claimant expressed her opposition to the proposal, such that the tribunal has been unable to follow how the claimant now maintains, had the circumstance been as she alleges, this had then been to her detriment on mediation being abandoned, where she had been opposed thereto, sufficient for the purposes of s47B ERA.

Detriment 3
The appointment of Dr Jennings and Ms Davies, as case managers, having a conflict of interest:

Dr Jennings and Ms Davies appointed themselves as Case Managers notwithstanding that their own conduct in terms of addressing the concerns raised was squarely in issue. This was an obvious conflict of interest. The act of appointment in this context amounted to a detriment to the claimant.

395. The tribunal does not find the circumstance of Dr Jennings' or Ms Davies' appointment, as case managers, to be that as advanced by the claimant,

the claimant raising issue as to Dr Jennings' appointment at the material time, the appointment being mandated by trust policy, as set out at paragraph 139 supra.

396. It is further noted that, the substance of the investigation of which Dr Jennings and Ms Davies were case managers, did not relate to them personally, or otherwise were they to be witnesses to the matters, and of their role as case managers, this did not involve them making any determination, which was the remit of an independent panel, neither were they investigators, the investigation being undertaken by an independent third party.

397. The tribunal can find no basis on which to support the claimant's contention as to a conflict of interest arising, in respect of Dr Jennings or Ms Davies, as case managers.

398. The tribunal equally, can find no causative link between the claimant's qualifying disclosure of 8 July 2015, and the appointment of Dr Jennings or Ms Davies as case managers.

399. The tribunal finds no substance to the claimant's contention.

Detriment 4
The commencement of a formal investigation into the claimant's conduct or behaviour:

The instigation of the formal investigation into the claimant's conduct or behaviour was the first of a series of detriments …. which the claimant suffered because she had made one formal protected disclosure. The claimant considers that this heavy-handed behaviour was designed to subdue and repress her from raising concerns and that the senior management team would all have been aware of the protected disclosures which she had made. In this context, the commencement of a formal investigation into the claimant's conduct or behaviour was a detriment.

400. The tribunal addresses this issue briefly, in that, the decision to instigate a formal investigation into the claimant's conduct and/or behaviour, was presented to the claimant at the meeting with Dr Jennings and Ms Davies on the 27 May 2015. The first qualifying disclosure made by the claimant was on 8 July 2015, and as such, the decision to instigate a formal investigation into the claimant's conduct and/or behaviour, predating the claimant's qualifying disclosure, could not then have been the reason for the decision to instigate a formal investigation.

401. The tribunal accordingly finds no merit in the claimant's contention

Detriment 5
Retaliation from Ms Phillips of raising complaints, warranting a formal investigation process, in response to the claimant raising queries, and then escalating concerns about the Savene incident to the Trust, which directly implicated Ms Phillips:

The raising of complaint warranting a formal investigation, on the part of Ms Phillips, was not only in breach of the mediation agreement, but the claimant infers from all the surrounding circumstances that this amounted to direct retaliation for the claimant raising queries and then escalating concerns about the Savene incident to the Trust, which directly implicated Ms Phillips. This too was a detriment.

402. The tribunal further addresses this contention briefly, in that, on the evidence before the tribunal there is no evidence of Ms Phillips raising complaints seeking a formal investigation in response to queries raised by the claimant. To the contrary, Ms Phillips had been raising issues against the claimant as far back as the mediation process in 2014, which following a short hiatus thereafter, her complaints against the claimant resurfaced and was a continuum, until Dr Jennings and Ms Davies made the determination that there be a formal investigation. This decision was not something advocated by Ms Phillips, but a consideration of management to resolve a situation, where two employees had raised complaints against one another.

403. With regards the Savene incident, the tribunal accepts that in respect of the claimant raising queries and escalating her concerns about the Savene incident implicating Mr Phillips, Ms Phillips did raise complaint against the claimant in respect thereof, however in this respect, the tribunal does not find Ms Phillips to have raised her complaints because of the claimant raising issue about the Savene incident, but by the manner in which it was raised and persistently pursued, and was not an act in retaliation to the fact of the claimant having raised her concerns.

404. Despite this, giving consideration to the period when Ms Phillips raised her complaint against the claimant in respect of the Savene issue, being February 2015, this was significantly before the claimant had made her first qualifying disclosure in July 2015, and as such, could not then have been action consequent upon the claimant having made a protected disclosure, so as to amount to a detriment pursuant to section 47B ERA.

405. The tribunal accordingly finds no substance to the claimant's contention

Detriment 6
The response email from Ms French on 23 November 2015, which concluded by threatening the claimant with disciplinary action:

The claimant was asked to put her concerns in a table and when she objected to this, and asked for a face to face meeting to cut through the proliferating correspondence, Ms French sent her an insensitive and aggressive response on 23 November 2015, and did not agree to a meeting. It concluded by threatening the claimant with disciplinary action. This was a detriment and coming from the Director of HR was especially egregious and harmful to the claimant who was already feeling extremely vulnerable and isolated.

406. The tribunal finds that on Ms French having written to the claimant on 11 November 2015, setting out a specific format to be used and requesting information relevant to the claimant's concern, for her to then be in a position to fully understand the claimant's concern and take those matters further, the reaction of Ms French by her correspondence of 23 November

2015, was a direct consequence of the claimant's response to that correspondence of the 12 November, which then did not address the issues requested, but instead challenged Ms French, being dismissive of her (Ms French's) efforts to understand the claimant's complaints and progress the claimant's concerns as she had offered.

407. The tribunal does not find the acts of Ms French to have been predicated on any disclosure made by the claimant, but was because of the tenor of the claimant's correspondence of the 12 November 2015.

Detriment 7
The claimant being sent the investigation report on 23 December 2015; the timing of which (just before Christmas) was particularly vindictive or at least hugely inconsiderate and inappropriate, given the delays to date:

408. The tribunal finds that the furnishing of Mr Major's report to the claimant on 23 December 2015 could be regarded as inconsiderate, however, the tribunal is conscious of Dr Jennings' evidence to the tribunal, in respect hereof that, he had the option on the one hand, of sending it just before Christmas to the Claimant and Ms Phillips or, of sending it after Christmas, which would have meant them not receiving it until a month after its receipt by the Trust, further advising that he did not feel it right to hold back the report given that the Claimant and Ms Philips wanted clarity as quickly as possible. The tribunal does not find this decision vindictive or inappropriate.

409. Despite this, the tribunal has found no evidence to suggest that Dr Jennings sending it just before Christmas was predicated on the Claimant having made her qualifying disclosure.

410. The tribunal is equally here conscious of the fact that, both Ms Philips and the claimant were sent the report at the same time, where there is no suggestion that the respondent was acting in any untoward way against Ms Philips, and as such, the equal treatment of the claimant and Ms Philips in this regard does not allow for the claimant's contentions.

Detriment 8
The disciplinary process and its instigation was high-handed and oppressive:

The respondent did not allow the claimant to question Ms Phillips requiring her to submit questions before hand to the panel in advance of the hearing. The Trust did not make arrangements for, or call Ms Phillips to attend the disciplinary hearing and criticised the claimant for treating the hearing as an adversarial process and wanting in her defence, to ask questions or challenge propositions, Ms Phillips, was immediately labelled and treated as the victim in the process well before any findings were made, which evidenced a closed mind in respect of the claimant who, by this time, would have been mis-characterised by the senior management team of the trust and HR as a difficult consultant due to the concerns she kept raising or persisting in raising

411. The tribunal accepts the reasoning of Mr Bloomer, as set out at paragraph 227 above, that the presence of Ms Phillips was not necessary for him to determine the issues before him; the matters of concern being principally those emanating from email correspondence sent by the claimant which

correspondence spoke for themselves, and that in respect of the questions sought to be put to Ms Phillips, being of an adversarial nature seeking to undermine Ms Phillips with little probative value, the tribunal does not find the actions of Mr Bloomer, in not having Ms Phillips called to give oral evidence, to have been predicated on the claimant being seen as a difficult consultant due to the concerns that she raised and/or persistent in raising. Mr Bloomer's sole reason for taking such action was to prevent Ms Phillips any further hostility which would inevitably have flowed from the nature of the questions proposed by the claimant, where Ms Phillips had raised issues of bullying, Mr Bloomer sensitive thereto. The tribunal does not find the action of Mr Bloomer in this respect to have been predicated on the claimant having made any disclosures or otherwise being seen to be a difficult consultant

412. The tribunal further here notes that, on the claimant being advised as to the procedure to be followed, following the claimant's submission of her written questions for Mr Phillips, and on the claimant being informed that the management side was not calling Ms Phillips as a witness, it is clear by Mr Bloomer's correspondence of the 24 March 2016, that the respondent had not sought to prevent the attendance of Ms Phillips at the hearing, save that management side were not seeking to require her to attend, it remained open to the claimant to arrange for Ms Phillips attendance had she so wished

Detriment 9
The disciplinary sanction, insofar as it was on the ground of the claimant having made one or more protected disclosures:

The disciplinary sanction was a detriment insofar as it was on the ground of her having made one or more protected disclosures. The process was infected by the involvement of Dr Jennings, Mr Pleydell and Ms Davies. The claimant considers that her disclosures were known to most if not all of the senior management.

413. On the findings of Mr Bloomer as set out at paragraphs 230 -238 supra, it is clear that Mr Bloomer had focused his attention on the specific correspondence, and witness evidence the subject of the allegations, and addressed those to exclude any subject of disclosures being made by the claimant, or otherwise the involvement of Dr Jennings or Ms Davies, or their presenting the management case; Mr Bloomer focusing on the tone and communication style of the claimant towards Ms Phillips.

414. On the evidence before the tribunal, the tribunal can find no substance to the claimant's contention that the outcome of the disciplinary hearing and issuing her with a final written warning to remain on her record for the period of 18 months, were because the claimant had made protected disclosures, but to the contrary, it was solely due to the behaviour of the claimant as analysed by Mr Bloomer on the evidence presented before him.

415. The tribunal finds the claimant's contention unsubstantiated.

Detriment 10

Dr Jennings deliberately excluding and undermining the claimant because of the protected disclosures she had made by then.

Dr Jennings deliberately excluded and undermined the claimant because of the protected disclosures she had made by then. The claimant had openly challenged Dr Jennings, which no doubt made her deeply unpopular. It was easier for the Trust to seek to demonise her as the root cause of problems rather than to act upon and address the issues she had raised. The claimant had demonstrated persistence in her concerns notwithstanding the lack of support from the Trust which would have deterred many whistle-blowers in her position.

416. The tribunal has found no evidence of Dr Jennings seeking to exclude or otherwise undermine the claimant, this in respect of the Lung MDT merger, where there is no challenge from the claimant prior to 9 February 2015. At each juncture where the claimant advances her exclusion or otherwise being undermined, the tribunal finds to have been a consequence of circumstance, where Dr Jennings has reacted thereto, and far from seeking to exclude the claimant, has sought to update her as to the circumstance as soon as was practicably possible, as is evident, for example, by Dr Jennings' approach to the claimant and subsequent correspondence of 17 July 2015, as set out at paragraph 282 supra, and his subsequently apprising and reassuring the claimant as to her value, in respect of Professor Janes' and professor Prichard-Jones' correspondence.

417. On the evidence before the tribunal, the tribunal has equally found no evidence on which to support the claimant's contention of the Trust seeking to demonise her as the root cause of problems rather than to act upon and address the issues she had raised, or otherwise failed to support her. At all material times, the tribunal has found the respondent to have acted with due regard to the claimant and circumstance then existing, which had no bearing on the claimant having made her qualifying disclosure.

418. The tribunal finds no substance to the claimant's contentions.

Detriment 11

The claimant suffering the ongoing detriment of having to work in an uncomfortable environment, in which she did not feel "safe" as a whistle-blower, and was under the cloud of a disciplinary warning:

Further to the above detriments, the claimant is suffering the ongoing detriment of having to work in an uncomfortable environment in which she does not feel "safe" as a whistle-blower and is under the cloud of a disciplinary warning

419. The tribunal deals with this issue briefly, in that, save for the above addressed detriments the claimant has not taken the tribunal to further detriments from which the tribunal can make a determination thereon. The tribunal having found as it has in respect of the above detriments, and in particular as regard the disciplinary warning; this not having been because the claimant had made a protected disclosure, the tribunal finds no substance to the claimant's contention.

420. For the reasons above stated the tribunal finds that the claimant has not suffered detriment on having made protected disclosures.

421. The claimant's claims are accordingly dismissed.

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Employment Judge Henry

Date: …26 September 2018…..

Judgment and Reasons

Sent to the parties on: 26 September 2018

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For the Tribunal Office