

Telephone Note In

Matter No: I&S - Ian Pace
Client: Countess of Chester Hospital NHS Foundation Trust
Matter: Countess : General Employment 2016
Lawyer: Ian Pace
Date: 18 July 2016
Subject: Telephone in from client re Sue Hodkinson regarding 1
Lucy Letby - neo-natal unit (Sue Hodkinson)

Call in from Sue Hodkinson. Sue calling IP in relation to a matter that Dee Appleton-Cairns had spoken to her about earlier last week relating to the neonatal unit. It relates to an employee called Lucy Letby.

I explained that I understood from my call with Dee that there were a number of ongoing issues relating to the neonatal unit. Specifically, there had been a rise in the number of patient deaths on the unit and a preliminary data investigation has been undertaken which had revealed that this particular employee was prevalent on the unit at all of the relevant times. The Trust has now downgraded its admission arrangements and has arranged for an external review.

The employee was on annual leave until last week. She was on leave for about two weeks. When she returned to work the Trust called her into a meeting (on Wednesday last week) to explain the current position. She asked whether it was her and she made a comment that she looks after all of the babies. The line manager and deputy director of nursing held a meeting with her. They framed the meeting on the basis that they wanted to provide her with support and arranged for her to continue working on the unit with close clinical supervision.

They put her on notice that the Trust may want her to work away from the unit for a period of time. She asked who was talking about her. The line manager and deputy director explained that the rota provides that she was prevalent at the time of the relevant incidents and the other consultants were raising some concerns about her.

She was happy to go under clinical supervision and this started to happen on Thursday of last week.

On Friday, there was a meeting which expressed some concern by the consultants relating to her continuing to work. A number of consultants have raised some concerns and have been particularly active talking about her. They are making comments such as she is the problem.

The Trust is now considering calling the police. She is due back on the ward today.

The Trust now want to consider redeploying her to another area of the Trust, pending further investigation into the incidents on the unit. The evidence does not at the moment say that it is her and this will only become clear pending completion of the internal review. All the information says at the moment is that she was on the rotas at the time of the relevant incidents. However, there is a significant body of staff saying "it is her".

Sue is holding an internal management meeting to discuss the situation and how to take things forward, at 9:00 am this morning. My call with Sue was at 8:40 am. I explained that one of the issues that we need to set out in the meeting is how the situation has changed from Wednesday of last week, when we concluded that it would be possible for her to continue in work with close clinical supervision, to today when we are now saying this is no longer possible. Sue explained that the staffing situation has changed even since last Wednesday meaning that there are fewer staff on the ward being able to be in a position to provide her with clinical supervision. This means that the Trust is no longer able to guarantee clinical supervision. I explained that provided we can show this and this is the reason for a change in situation since last Wednesday, then this would hopefully support our position that situations have changed and that it is now necessary to redeploy her rather than being allowed to continue on the ward with supervision (which cannot be guaranteed).

I explained that if we are holding a meeting with her (and her RCN representative) then we should explain the reasons for the change. We may also want to refer to the fact that this action is being taken not only in the interests of patient safety which of course is critical but also to protect her position going forward. I explained that we should explain that this is a completely neutral act and is being taken to allow a preliminary investigation to be undertaken on the ward. I explained that it is a slightly unusual situation insofar as this decision to redeploy has not been taken to allow an investigation to be undertaken against the employee but instead against the ward but we could justify this on the basis that the preliminary data review has revealed that a prevalence of her on the ward at the relevant time

We explored what the potential claims would be and there did not appear to be any claims for race discrimination and/or whistleblowing. I explained that in my view therefore the potential risk of taking the decision to redeploy would be a claim for constructive dismissal. She would need to resign and claim there has been a fundamental breach of her contract of employment. It was my view that provided that we can show that we've genuinely applied our minds to the decision as to redeployment and we can show that this is justified in the circumstances then I would expect that the prospects of a constructive unfair dismissal claim on this basis alone would be defensible. I advised Sue that we should keep a minute of the meeting when we discussed the potential options available to the Trust in terms of redeployment away from the ward and specifically why the situation has changed since last Wednesday.

Sue said that they did receive correspondence from the RCN following the last meeting raising concerns as to why the RCN were not present but these were the only issues that were raised.

They are going to invite the RCN to attend this meeting.

Sue believes that they are going to need to call in the police and she also mentioned that there was potential press interest in the story. She believes it might become a wider issue. There is also going to be an external review taking place on 18 and 19 August. I explained that I would arrange for a call with Corrine Slingo to provide advice from a regulatory perspective.

I explained to Sue that even if the claim for constructive unfair dismissal was successful this would be capped compensation. Sue confirmed that Lucy had been employed by the Trust for over two years. I explained that this is a band 6 (which she confirmed) and roughly speaking the compensatory award would be capped about £[I&S] (being a rough calculation of her annual salary which we could confirm later) plus a basic award. On the basis that there is no discrimination and/or whistleblowing claims then compensation would remain capped and on balance bearing in mind the issues of patient safety