

## Telephone Note In

Matter No: Ian Pace - [REDACTED] - Ian Pace  
Client: Countess of Chester Hospital NHS Foundation Trust  
Matter: Advice regarding neo-natal unit  
Lawyer: Ian Pace  
Date: 8 September 2016 1  
Subject: Meeting with Sue Hodgkinson, Dee Appleton-Cairns and Alison Kelly

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I discussed the ongoing issue regarding the neonatal unit with Sue Hodgkinson and Dee Appleton-Cairns during a client relationship meeting on 8 September 2016. During the course of the meeting we discussed issues arising regarding the employee, Lucy Letby. LL had been removed from the neo-natal unit following a correlation of baby deaths when she was on the unit.

LL has now been removed from the unit and has been placed in the risk management team. The decision was taken to remove LL from the unit because it was not possible to place her under close supervision and because of the ongoing concerns that had been raised by the consultant. She was placed in department pending the completion of the external review which has now been undertaken. The external review was not conclusive and has sought further forensic investigation in respect of the patient deaths. The barrister who was on the review particularly commented in relation to the treatment of LL and raised concerns regarding her treatment and exclusion from the ward.

LL is apparently suffering mentally and has now raised a grievance through her union, the RCN. They are suggesting constructive unfair dismissal. Sue Hodgkinson acknowledged that we had discussed that this was always going to be a risk and knew it would be from the outset when the decision had been taken to exclude LL from the unit and place her into the risk management team. There has been a reduction in her role and responsibilities which may be considered to be a fundamental breach of her contract. We considered the reasons why this had been done and particularly the fact that this had been done because of the concerns which had been raised and in the interests of patient safety albeit there is no information other than the correlation at the moment that she has been involved in any way in relation to the patient deaths.

We discussed the potential reputational consequences and the "Daily Mail test". We discussed what the impact would be if we had not taken the decision to remove her and place her in risk management and had left her on the ward and subsequently found that she had been involved, in some way, in a patient's death.

We considered that the risk of constructive unfair dismissal was, on balance, the risk worth taking bearing in mind that this appeared to be the only claim on the basis of the issues raised in the grievance and there doesn't seem to be any allegations of discrimination or protected disclosures. We were aware that the compensation for constructive dismissal would be capped at one year's salary which would be in the region of £[REDACTED] plus a basic award.

Dee discussed whether it would be possible to have a protected conversation with the trade union representative and I acknowledged that this may be possible. However, if we do manage to reach an agreement and that this was unlikely to achieve approval through NHS Improvement and also, although we would have a confidentiality clause, there was nothing really to prevent her from going to the press in saying that she is being paid off because the Trust thought she was a "baby killer". This is likely to have significant reputational impact for the Trust if this happens and I advised against it from the reputational perspective albeit I acknowledged that from an employment perspective this would be quite helpful.

We and discussed having an off the record conversation with the trade union representative. I explained that this could be done. However, we need to be aware of what we said could be disclosed at any point in the future so we need to be carefully guarded and this really depends on our relationship with the union representative (Tony Lillea). We could explain to him that the reasons we have taken the decision is to protect her because of the concerns and issues that have been raised on the ward and its really for her own reputational protection and also her mental wellbeing on the basis that it wouldn't be appropriate in our view to allow her to return to work on the ward when her consultants are talking about her.

In respect of the consultant, Dee and Sue both have concerns about him and said that more issues are being raised about him regarding behavioural issues. There seems to be a suggestion that he is bullying and harassing employees on the ward. I accepted that this was likely to be an issue which depending on the issues (whether it is bullying or whether it is a breakdown in relations) may need to be managed. However my concern was that there was a risk now that he has raised these concerns that he could allege that this was a protected disclosure and if we start managing these concerns at this stage she may say she has been subjected to a detriment as a consequence. Dee also mentioned the potential restructuring and the removal of his role in this way. I explained that he may point to the restructure and the potential dismissal as being an automatic unfair dismissal by reason from raising a protected disclosure and the reason why he has been selected for "redundancy" is because he has raised the disclosure. The consequences of this means the compensation would be unlimited and exposure would be much greater. This was especially bearing in mind he is a consultant and will be on a relatively high salary.

We discussed proposals for a way forward and my view was that we respond to the grievance in accordance with our grievance policy, we approach the consultant and ask him to raise his concerns formally in accordance with the safety policy and investigate those concerns. If following an investigation of these concerns and appears to be grounds for disciplinary action then we may need to commence a disciplinary investigation against LL. If following this investigation there do not appear to be any grounds for the disciplinary investigation then we may take steps (dependent also on the second external review) to allow LL to return to the unit.

I also had a telephone conversation with Sue Hodgkinson and Alison Kelly on 9 September and again we discussed the potential options open to the Trust. Apparently, Alison has now met with the welfare officer who has been appointed to keep in touch with LL and support her during the period when she's on risk management. The welfare nurse is particularly upset about the proposal to continue the exclusion pending the outcome of the second external investigation. Alison is concerned about the impact if this does go to Tribunal because she would be potentially a witness on which we are relying. I accepted her concerns and said that what we need to show is what we have sorry. an Sue said that the executive have also considered various options including whether to allow LL to return to the ward and whether to continue her in the risk management team and the executive have concluded that it would be appropriate in the circumstances for her to continue in the risk management team.

I explained that if she was going to bring a claim for constructive unfair dismissal its likely that the minutes of this meeting would be discloseable and we should be prepared to disclose that and be able to provide evidence to show that we have considered all alternatives to just simply allowing her to continuing in the risk management team which would include considering whether we could allow her to return to the ward with close supervision and with restrict her access to seriously ill babies. I said we should be able to provide evidence as to why this was not possible and why the decision has been taken to continue to put her on risk management.

In terms of her continued support we need to make it clear that this action is not a disciplinary sanction and has been taken to allow a second external investigation to be undertaken. We should diarise to meet her regularly and provide continuous support.

I explained that there is no two ways about it that there is a potential claim especially bearing in mind the issues raised in the grievance that she may bring a claim for constructive unfair dismissal bearing in mind that she is now becoming de-skilled as Alison confirmed and there is no other way of keeping her up skilled without her being on the unit. We need to be able to show that the action was necessary in the circumstances, was kept as short as possible and was in the interests of patient safety. We also need to be able to show that we continue to keep her supported and provide her with